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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Thursday 10 March 2022

11 am

Prayers—read by the Lord Bishop of Leeds.

Royal Assent

11.06 am

The following Act was given Royal Assent:
Public Service Pensions and Judicial Offices Act.

Women: Cost of Living
Question

11.07 am

Asked by ***Baroness Crawley***

To ask Her Majesty's Government what plans they have to mitigate the impact on women of the rising cost of living; and in particular, the impact on single mothers in poorer households.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office and Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, the Government are acting to support families with the challenge of rising living costs by providing £12 billion of support for this financial year and next, increasing the national living wage and cutting the universal credit taper. Through our Way to Work programme and a new network of specialist progression champions, we are helping people to get a job, get a better job and build their career, which we believe is the best route to managing living costs. In everything through Way to Work, we are cognisant of single parents' issues.

Baroness Crawley (Lab): My Lords, I am glad that the Government see the need for some intervention in response to this tsunami of rising household costs, but I have to say to the Minister, for whom I have a lot of respect, that it does not go nearly far enough, especially for lone parents, 90% of whom are women and 43% of whom live in poverty according to the Women's Budget Group. Will the Government increase all benefits by 7%, in line with inflation? Will they reintroduce the £20 increase in universal credit and working tax credit equivalent, as well as paying the childcare element of universal credit up front instead of in arrears to make it easier for lone parents to re-enter the workplace? Women should not be shouldering this cost of living catastrophe.

Baroness Stedman-Scott (Con): I thank the noble Baroness for her intervention. I say again that we are cognisant of and understand the issues faced by lone parents, not least in respect of childcare and the barriers that stop them getting into work. That is why our work coaches are there. I shall pass to the Treasury the exam question that the noble Baroness has given me; she will forgive me if I cannot answer it.

Baroness Fookes (Con): My Lords, I hope I am right in assuming there will be some extra benefits for households subject to the benefit cap. If so, can my noble friend say what they are and, just as important, how easy or difficult it will be to access them?

Baroness Stedman-Scott (Con): Claimants can apply to their local authority for a discretionary housing payment if they need help to meet rental costs. We have the flexible support fund to help people as well, and we have given help with energy costs, which are rising exponentially. Of course, I have not tried to claim those benefits myself, but I know from somebody who has that it is reasonably straightforward, and I am not aware of any backlog in dealing with those claims when they have gone in.

Baroness Lister of Burtersett (Lab): My Lords, as the main managers and shock absorbers of poverty and inadequate social security benefits, women are bearing the brunt of not just the benefit cap but the two-child limit. When will the Government take the advice of the former Minister, the noble Lord, Lord Freud, and scrap these poverty-creating policies?

Baroness Stedman-Scott (Con): I understand the passion with which the noble Baroness makes her points. All I can say, and I have said it time and again, is that I will take the representation back to the department and make it known, but I am not able to give the response.

Lord Forsyth of Drumlean (Con): Will my noble friend look again at the report of the Economic Affairs Committee on universal credit and in particular reconsider the decision to take away £20 a week from the poorest families in the country? I understand that it is very expensive—it costs £6 billion—but that is because it affects 6 million people: 6 million people who are going to have to cope with these astonishing increases in bills, not just energy bills but bills across the piece. Surely, in the name of humanity if not in the interest of politics, we should look at this again, given that the Chancellor is getting increased revenue from the rising costs of petrol and other energy sources.

Baroness Stedman-Scott (Con): Many noble Lords have made the point about the £20 uplift. To be absolutely straightforward and open, there is nothing I can say about it, other than that for those on universal credit the taper rate compensated for some of the withdrawal. There are moments when I wish I was Chancellor.

Baroness Sherlock (Lab): My Lords, let me spell out what this is going to do. Inflation is running at record rates. The Bank of England forecasts that, next month, it will go up to 7.25%. That forecast was made before the war in Ukraine. Benefits are going to go up by 3%. Next month, the energy price cap will go up to £2,000. People are currently being offered £3,500 fixed-price tariffs. To put that in context, that is £67 a week. We give an adult on universal credit or JSA £75 a week to live on. How are they possibly meant to manage?

Baroness Stedman-Scott (Con): The noble Baroness's explanation of the metrics is absolutely accurate. Inflation is gathering momentum, mainly because of pressures from rising energy prices and disruptions to global supply chains. We understand about the higher cost of living, but at the risk of repeating myself—I have no desire to annoy noble Lords—there is no comment I can make about what the Government may or may not do about the situation.

Baroness Pinnock (LD): My Lords, here is a simple action the Government can take that will help the poorest households, many of which are forced on to prepayment meters for their energy bills. The cost they have to pay per unit of energy is hugely more than the average household has to pay. First, does the Minister agree that it is scandalous that we are asking the poor to pay the most? Secondly, will she force change on to the energy companies so that the poorest pay the least—the cheapest rate possible?

Baroness Stedman-Scott (Con): In our debate yesterday the noble Lord, Lord Shipley, raised the issue of the higher energy costs due to the method of payment that many people face. I have agreed to take that back to the department, and I will do so. Again, I can make no promises. As for forcing change, I will have a good go.

Baroness Meacher (CB): My Lords, yesterday evening, believe it or not, I hosted a dinner for those in the bailiff industry, as I call it, and they are expecting a veritable explosion in debt, because people on benefits simply cannot pay council tax and all the other things they have to pay. Does the DWP have an estimate of that huge explosion in debt? If not, will it please get that information, because it will need it? This can be resolved only by the Treasury, and the DWP needs its ammunition.

Baroness Stedman-Scott (Con): I am not aware that the information the noble Baroness suggests we should have is there. She makes a good point, and again, I shall go back, talk to my colleagues and try to get that information.

Baroness Altmann (Con): My Lords, many single women are older—including mothers—and in poorer health, and they are also at greater risk of long-term unemployment. What are the Government doing to address that issue?

Baroness Stedman-Scott (Con): The Government are doing an awful lot in this area. Despite the unacceptable rise in the cost of living and all the impacts on people, we are working morning, noon and night to get people back to work—into a job, a better job and a career, so that they can be self-sufficient. The Restart programme really helps them to do that. It is intensive tailored support, which I am sure will have great benefits for some people.

Baroness Ritchie of Downpatrick (Lab): My Lords, the Spring Statement is due on 23 March, so will the Minister talk directly to Chancellor of the Exchequer to ensure that there is a one-off windfall tax on energy prices? They have risen exponentially in the last two weeks, therefore disproportionately impacting on women, households and, in particular, single parents.

Baroness Stedman-Scott (Con): Again, we have another question that is very Treasury driven. I have no doubt—indeed, I know it for a fact—that the Chancellor is well aware of the points that the noble Lord, Lord Sikka, has been making on this subject.

Baroness Bennett of Manor Castle (GP): My Lords, the 15 years from 2007 to 2022 are forecast to be the worst on record for household incomes. Is the term "cost of living crisis" really adequate for the situation we are in now? What we are really seeing is a long-term collapse in the financial stability of British lives; this is not just a crisis of the moment. Do we not need to take a different approach to offer people true security, particularly, as the noble Baroness, Lady Lister, said, single parents—overwhelmingly women—who are bearing the greatest weight? Do we not need a universal basic income?

Baroness Stedman-Scott (Con): We have spoken many times about universal basic income, and I have heard nothing on the airwaves to suggest that it is being considered. I will finish this Question by saying that it is a difficult time, and that we understand the great challenges people face. Please do not think this Government do not care—because they do.

Belarus

Question

11.17 am

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

To ask Her Majesty's Government what assessment they have made of (1) the detention of political prisoners, (2) the attacks on journalists, and (3) the constitutional referendum, in Belarus; and what representations they have made to the government of that country on these issues.

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 have been clear in our condemnation of the repressive campaign by the Belarusian authorities against the human rights of the people of Belarus. We have repeatedly urged Belarus to release all political prisoners immediately and unconditionally. These reprehensible actions continue, of course, in the context of the Belarusian regime's support for Russia's illegal and unprovoked attack against Ukraine; this support must stop. The constitutional referendum fell well below international standards, and again denied genuine choice to the Belarusian people. The Minister for Europe and North America's public statement on 28 February made it clear that we firmly support the Belarusian people's right to determine their own future.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am really grateful to the Minister for a helpful reply. I have just come from a meeting of the all-party group, and I would like to welcome Svetlana Tsikhanovskaya, the leader of free Belarus, who is sitting in our Gallery today—[*Applause.*] When I tabled this Question four weeks ago, it was to ask about political prisoners like the one I have adopted—Stepan Latypov. But the Minister has answered that, saying that the Government are

putting pressure on for their release. What I now want to ask him, given the complicity of Belarus in the Russian attack on Ukraine, is: will he say unequivocally that the UK Government will impose the same sanctions it is imposing on Russia on the Lukashenko regime in Belarus?

Lord Goldsmith of Richmond Park (Con): My Lords, I join the noble Lord in welcoming the leader of Belarus's opposition, Mrs Svetlana Tsikhanovskaya. The UK absolutely recognises that the current regime does not speak for the majority of its people, and supports the extraordinary bravery of the opposition and civil society. On the question of sanctions, I can confirm that what the noble Lord said is correct. This goes back some way: since August 2020, the UK has introduced more than 100 sanctions designations in response to the fraudulent elections and human rights violations in that country. This includes sanctions against senior ranking officials in the regime, including the President of Belarus and his son, and BNK Ltd, an exporter of Belarusian oil products. More recently—in fact, just a few days ago—the Foreign Secretary launched a package of sanctions on those individuals and organisations who have aided and abetted Russia's reckless aggression against Ukraine, and we continue to develop that position.

Lord Russell of Liverpool (CB): My Lords, I am a fellow member of the Council of Europe, along with the noble Lord, Lord Foulkes, and I also had the privilege of monitoring the rather farcical parliamentary elections in Belarus in 2019. Having just been at the same meeting and having listened to the leader of the opposition, it is very clear that the Russians are already beginning to use some Belarusian enterprises, state enterprises and banks as a means of avoiding the sanctions stranglehold we are trying to impose on the Russians, so I can only re-emphasise how important it is that we try to block off any opportunity for Russia to use Belarus as a means to try to evade sanctions.

Lord Goldsmith of Richmond Park (Con): The noble Lord makes an extremely important point. This view is shared by the UK Government, and it is reflected in the approach we are taking in relation to sanctions on individuals and organisations in Belarus.

Baroness Northover (LD): My Lords, I, too, welcome the leader of free Belarus, and I hope we will not have to wait too long before she is in the position that she should be in. She told us how important those sanctions are and, as the noble Lord, Lord Russell, just referred to, that the Russians are using loopholes. We need comprehensively and urgently to address this. We will put some people from her group in touch with the FCDO with further details. One of the other things that struck me from what she said is how vital it is for unbiased news to reach the citizens of Belarus, which we will come on to later. What action is being taken to support news organisations, particularly the BBC, in relation to Belarus?

Lord Goldsmith of Richmond Park (Con): I thank the noble Baroness for making the introduction. I can tell her that Foreign Office Minister James Cleverly met the leader of the opposition, Svetlana Tsikhanovskaya, only yesterday, but we will certainly continue that dialogue, important as it is.

The noble Baroness is also absolutely right on the question of the media. We condemn the politically motivated crackdown on independent media in that country and remain deeply concerned about the safety of journalists there. Dozens of journalists, bloggers and media workers are under arrest or in jail. Websites of reputable media outlets have been declared extremist by the regime. One of the priorities of our programme funding in Belarus is supporting media freedom. We appeal to the Belarusian authorities to unconditionally and immediately release all political prisoners and to fully restore the free media space in Belarus, online and offline. Finally, we have increased our funding in this area, I believe threefold. If that is wrong, I will get back in touch with the noble Baroness.

Baroness Smith of Basildon (Lab): My Lords, I thank the Minister for his answers today. I think the whole House stands alongside the people of Belarus. As somebody who also sponsors a political prisoner, on behalf of our side of the House, I welcome the leader of the opposition. As a leader of the opposition myself, I think she has to face things that nobody in this country ever has to.

The Minister's answers today have been welcome. On his response to the noble Baroness, Lady Northover, on the role of the BBC and getting information, it is so important for those who stand for freedom in Belarus to have accurate information to support civil society. It is very important that we have a strong civil society in Belarus that can speak out for the people who also support a free Belarus. Will the Minister report back to the House at some point to say what more the Government can do in all areas, not just the media, to support civil society and give strength to those people who are standing up for freedom and democracy?

Lord Goldsmith of Richmond Park (Con): The noble Baroness is absolutely right. Although she is asking a broader question, at the root of this, without a free press, freedom of speech and guarantors of that sort, it is very hard to imagine a flourishing and free civil society. To confirm what I hinted at earlier, we are, of course, supporting civil society and independent media in Belarus, and we have tripled our programme funding compared with pre-crisis levels, so it is now £4.5 million. We continue to look for opportunities to support civil society and, in particular, a free press in that country.

Lord Cormack (Con): My Lords, do we not need to salute the courage of the leader of the opposition—the rightful democratic leader of Belarus—and all those thousands of people who, week after week, took to the streets last year? I am deeply disturbed about the BBC World Service, which is a wonderful example of soft power. Belarus needs to have free information, unfettered, yet the BBC World Service's budget has not been guaranteed beyond April of this year.

Lord Goldsmith of Richmond Park (Con): My Lords, that is an important point, but I point out that in two Questions' time, that will be the subject of a 10-minute question and answer session, where I hope to be able to provide some reassurance at least.

Lord Alton of Liverpool (CB): My Lords, will the Minister take the opportunity to criticise and condemn the reprehensible actions of the Lukashenko regime in Belarus for the way in which it uses refugees as cannon fodder—deliberately bringing in refugees from the Middle East, including Syria, and then using them to promote its own interests by pushing them against the Baltic states and Poland? Given the number of refugees now being displaced in Poland—maybe as many as 7 million, according to some estimates—does he not agree that the situation is going to go from bad to worse?

Lord Goldsmith of Richmond Park (Con): It absolutely will go from bad to worse if trends continue. The actions the noble Lord described are reprehensible. We have been clear in our condemnation of Lukashenko's actions in engineering a migrant crisis to try to undermine our partners in the region. We have deployed a small team of UK Armed Forces to Lithuania and Poland to provide support to address the ongoing situation at the Belarusian border. We are also supporting our humanitarian partners to help alleviate the suffering of migrants at the border, including through our contributions to the Disaster Relief Emergency Fund.

Baroness Crawley (Lab): My Lords, I, too, welcome the leader of free Belarus today. Is the Minister aware that last week I spoke to the mother of young Dzmitry Zherbutovich, who wanted me to raise his prison treatment in our Chamber this morning? He is serving a five-year prison sentence in Belarus for the crime of standing in front of a water cannon. For the first year, he was forced to be in a five square-metre cell with 14 other prisoners, all of whom except Dzmitry smoked, with no ventilation and where they all had to stand during the day. Will the Minister put even more pressure on the Belarusian regime about its inhumane treatment of political prisoners?

Lord Goldsmith of Richmond Park (Con): I thank the noble Baroness for raising the case of young Dzmitry. I am not familiar with his case, but I am familiar with many others which are no less appalling. We are deeply concerned about the conditions in which political detainees are held in that country. Many of them have limited or no access to anything like proper healthcare and are subject to relentless interrogation, intimidation and psychological pressure techniques, all of which amount to a form of torture. This is contrary to Belarus' international obligations to which the authorities have committed themselves on numerous occasions but continuously fail to uphold. We make our solidarity with political prisoners clear frequently, attend trials and engage with the families of political prisoners at every opportunity.

Care Homes: Evicted Residents

Question

11.28 am

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of the annual numbers of care home residents (1) evicted, (2) threatened with eviction, or (3) facing a visiting ban, following complaints against the care home.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): It is unacceptable for a care home to punish a resident for raising concerns. This would be a breach of existing regulations, and the CQC will investigate any such cases. Although the Government do not collect figures on this, the CQC collects data on care home evictions and seeks assurances that visits are allowed by care homes on an ongoing basis. We are exploring ways to improve the complaints system and the quality of care.

Lord Hunt of Kings Heath (Lab): My Lords, may I urge the Minister to do even more than he suggested today? We know that some care homes are still being very highly restrictive on visits. The Alzheimer's Society, the Relatives and Residents Association and other organisations report that many relatives are frightened to go through the homes complaints system for fear of reprisals such as visit bans, or even evictions in the most extreme cases. The CQC will not investigate specific complaints. Will he change that policy and give support to relatives who wish to make legitimate complaints?

Lord Kamall (Con): I thank the noble Lord for raising this issue. I am sure he will recognise, from when we have worked together on a problem, that the first question I ask officials is: what is the problem and what are we doing about it? When I asked this question, I found that my colleague Gillian Keegan, Minister for Care and Mental Health, has met relatives and residents' associations to hear directly about their experiences and focus on how we could strengthen the CQC role. In addition, in the *Living with Covid-19* strategy, we are reviewing a range of measures in place for homes, including visitor restrictions. The updated position will be set out in guidance by 1 April. We are encouraging representatives, patients and patients' groups to come forward and feed into that.

Baroness Finlay of Llandaff (CB): My Lords, I declare my role as chair of the National Mental Capacity Forum. There are many people with impaired capacity in care homes, whose mental state is deteriorating through lack of stimulation, inability to be taken outside and lack of general overall mental activities. Does the CQC have any idea of the number of people with impaired capacity still subject to restricted visiting by their relatives?

Lord Kamall (Con): The noble Baroness has identified a potential issue that we have to address, which is drilling down into detail. One of the things that the CQC does is to look at aggregate numbers of complaints and concerns. Of course, there is a Local Government Ombudsman who looks at this issue as well. We are looking at ways where that works and where it does not work, and at how we could improve the system. This is all part of the ongoing review to build up a better, integrated health and care system.

Baroness Wheeler (Lab): My Lords, on the issue of carers hesitant to make complaints to care providers, the confusion and muddle over the current complaints system and the roles of the care home, the CQC and the ombudsman compound the problem. Does this

not underline the urgent need for the review of the current arrangements to ensure that people making complaints about their loved ones feel reassured and protected through the process and comforted that appropriate action will be taken?

Lord Kamall (Con): Having looked at the different procedures, I am sure that the noble Baroness is absolutely right. One thing that we want to do is to ensure that the guidance is quite clear. The CQC collects certain data and the ombudsman can investigate certain cases, but the CQC cannot investigate individual cases. It clearly is confusing and one thing that we want to do to improve the system is to make sure that we have a better complaints system and, overall, a better quality of care for patients all round.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the noble Baroness, Lady Brinton, will make a virtual contribution.

Baroness Brinton (LD) [V]: My Lords, the provision of high-quality, personalised care in residential care settings is likely to reduce the chance of complaints being raised in the first place. The Skills for Care workforce review showed that only 44% of care staff have any training on dementia. Will the Government commit to all social care staff receiving tier 2 training in the dementia training standards framework?

Lord Kamall (Con): The noble Baroness raises a very important point. When we look at the current landscape in the social care sector, it is clear that people do not really understand the overall sector. One thing that we are looking at in regard to the voluntary register is encouraging care staff to come forward to register. Registration includes their standard of education and the qualifications they have received. We will look at how we can improve and have a more consistent qualification system, so that being a care worker is a more rewarding vocation in the future.

Baroness Pitkeathley (Lab): My Lords, is the Minister aware that restrictive practices about visiting in care homes extend not just to relatives and friends visiting but to the outside people who come in to provide stimulation to residents? These include people who bring in animals, for example, and people who do physiotherapy or all sorts of word games and so on. Those people are also restricted now by some homes, though not all. That results in further deterioration in the mental and emotional health of residents, as referred to by the noble Baroness, Lady Finlay.

Lord Kamall (Con): One thing that has clearly upset a lot of people is that they are unable to visit. This means not just relatives but, as the noble Baroness rightly said, people who enter care homes to offer healthcare, stimulation and other services to residents. These issues were brought up, I understand, in a meeting with my colleague, the Minister for Care and Mental Health, when she met residents' associations. It is very important that we recognise all the problems and that we tackle this in a holistic way to make sure that, as we improve the quality of our social care system, and make it more joined-up and integrated with the health system, we are aware of all these problems so that the patient experience is far better all the way through.

Baroness Neville-Rolfe (Con): My Lords, I agree with my noble friend the Minister and noble Lords opposite that it is very important that people can visit their family and their friends in care homes. My husband has had a copy of *Wisden* from last year for a friend who has been in a care home, and he has not been able to deliver it.

I want to make a wider point about the importance of focusing on social care, despite other preoccupations of the Government. How many care homes do we have now in this country? Is provision going up, or do we have a serious problem?

Lord Kamall (Con): I am afraid I do not have the detailed answers to my noble friend's questions, but I will write to her. On the overall sentiment behind that question, it is clear that people now recognise—as we have an ageing population and people are living longer—that we should not see social care as a sort of bolt-on or a Cinderella service. It should be properly integrated, which is why we published the paper on health and social care integration and why we want to make sure that people and patients, all the way through their lives, have access to good-quality care, whether in the current health system or in the care system, at whatever stage of their lives they need it.

Ukraine: BBC World Service

Question

11.36 am

Asked by ***Baroness Bonham-Carter of Yarnbury***

To ask Her Majesty's Government what steps they are taking, if any, to support the provision of the BBC World Service to the people of Ukraine.

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 strongly value the work of the BBC World Service and its independent and impartial broadcasting. Putin's invasion of Ukraine means that BBC World Service channels play an increasingly valuable role in challenging the disinformation emanating from the Kremlin. BBC Ukrainian services are wholly funded by the licence fee, and officials from the Foreign, Commonwealth & Development Office and the Department for Digital, Culture, Media and Sport are working closely with the BBC to consider how best to support BBC services for the people of Ukraine.

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I thank the noble Lord for his reply. We have had a bit of a warm-up, but there is no harm in that. Among the many incredibly distressing events unfolding in Ukraine is Putin's manipulation, distortion and, most recently, penalising of free media. I pay tribute to all those courageous journalists who continue to bring us the truth. From the Minister's response to an earlier Question, he clearly recognises that the BBC

[Baroness Bonham-Carter of Yarnbury]
World Service is a beacon in this, so can he confirm—I think he has—that the FCDO will provide funding at levels that will allow the World Service to continue to be this beacon?

In response to the same request—from my friend Christine Jardine MP in the other place—the Secretary of State at the DDCMS appeared not to know that the World Service was part of her department, although 75% of its funding comes from the licence fee. Can the Minister assure this House that she now understands that it is, and does he agree that support for the BBC World Service is not compatible with the freezing of the licence fee, from which it gets so much of its funding?

Lord Goldsmith of Richmond Park (Con): My Lords, I strongly agree that the BBC World Service provides just that: a world service and a world-class service. It is something that we are, and can continue to be, very proud of, particularly in these dark circumstances of today. It now reaches 364 million people every single week, a 40% increase since the FCDO's well-funded World2020 programme began in 2016. That is a big jump in a short period. Global audience measure data for last year demonstrates that it is the top-rated international broadcaster for trustworthiness, reliability and depth of coverage. I therefore very strongly agree with the premise of the noble Baroness's question. I cannot give her financial answers, because that will not be possible until the spending review settlement has been made public, but I can tell her that the final decisions will reflect the importance and respect with which we hold that organisation.

Lord Collins of Highbury (Lab): My Lords, I have never heard such a dissatisfactory Answer. We are in a global crisis. Ukraine has been invaded by a hostile force which is committing war crimes. One of the most important contributions we can make is our soft power through the BBC World Service, which is 75% funded from the licence fee. The Government should now urgently take steps to properly fund the BBC World Service, extend its coverage, particularly through the internet, and find ways to circumvent the Russian Government's ban on access to the BBC. Will the Minister take that message back to other Ministers? It is important that it receives vital funding now.

Lord Goldsmith of Richmond Park (Con): My Lords, it is worth pointing out that, since the war began, the BBC Ukrainian website has had 7 million page views, with just under 1.5 million for the live page YouTube channels alone—a 100% audience increase. BBC News reaches 5.5 million people in Ukraine, with BBC Ukrainian reaching 3.7 million and 1.5 million accessing English language news content. Demand is increasing and the supply is there. The service is being provided at an absolutely critical time and is providing a service that is second to none. As the noble Lord knows, I am not in a position to make spending commitments on behalf of the department at this point, but I can tell him that no one in the department, or indeed in government, questions the value or importance of the World Service that I have just recognised in my answer. That will be reflected in decisions taken.

The Lord Bishop of Leeds: My Lords, no other broadcasting company could have flexed as quickly as the BBC has in this emergency, particularly in relation to HF shortwave broadcasting. Could the Minister at least give a commitment that the BBC as a public service broadcaster at home and abroad will be adequately supported and resourced and not undermined in the public discourse?

Lord Goldsmith of Richmond Park (Con): I thank the right reverend Prelate for his question. I hope that the answers I have already given demonstrate that there is nothing other than respect for the service that the BBC World Service provides and an absolute commitment that that service will continue. For all the reasons we know, it is so important.

Lord Howell of Guildford (Con): My Lords, the noble Lord, Lord Collins, has a point: the time has come to use our soft power effectively. The entire Russian murder campaign is conducted behind a cover of a wall of lies and fake news and that has to be countered. Even though there may be separate views about the long-term funding of the BBC's excellent World Service, now is the time to concentrate reviews, resources and effort on boosting our counter to this battle of lies, which is where the war is being fought. Could my noble friend take back this very strong message to his colleagues? I think we could do a lot more in this area.

Lord Goldsmith of Richmond Park (Con): I strongly agree with the point made by my noble friend. I do not think there is any question on this; I am certainly not aware of anything that has been said that would in any way suggest that the Government do not recognise the tremendous value that the World Service provides, particularly in circumstances such as today's, where, as my noble friend said, we are up against a brutal regime which is second to none globally in the art of misinformation. So I strongly agree with my noble friend's comments and will convey the message from him and other noble Lords to the department.

Baroness Northover (LD): The integrated review proudly and rightly states that

"The BBC is the most trusted broadcaster worldwide",

and the Minister has repeated that. When the review was published, with the cut in ODA and the attacks on the BBC, that struck me as extreme irony. The Minister has just said that he cannot comment on funding, but he should be able to, and the noble Lord, Lord Collins, is right that he can certainly make sure that the constant and insidious attacks on the BBC, including the World Service, are silenced.

Lord Goldsmith of Richmond Park (Con): My Lords, the BBC as an organisation is absolutely gigantic. We are talking today about a critical part of that service, but it is just one part. It should be possible to be critical of many different aspects of the BBC as an organisation or its focus, without that being seen to undermine what everyone recognises as the extraordinarily valuable and unique international service it provides. I reiterate what I said earlier: that service will continue.

The Earl of Clancarty (CB): My Lords, I was expecting DCMS to answer this Question. Nevertheless, as this is a cultural question, I ask the Minister: what advice and assistance are we giving to help protect Ukraine's artistic and cultural heritage, which is substantial and threatened? What role can our own cultural institutions play in this?

Lord Goldsmith of Richmond Park (Con): My Lords, I am not going to bluff this answer. I am afraid I do not know. I recognise the merit of the noble Earl's question, but I am not the right person to answer it. I will convey his question and secure a response.

Baroness Sugg (Con): My Lords, it is clear that there is support for the BBC World Service across the House, and I welcome the commitment made in the October spending review that the Government will continue to invest in it. I understand what the Minister says about the spending review, but might he be able to say when the BBC World Service will receive its future funding settlement, so that it can continue to plan for its important work in Belarus, Ukraine, Russia and elsewhere?

Lord Goldsmith of Richmond Park (Con): I would love to be able to give my noble friend a precise answer. However, I can tell her only that the department making the decision will hear the message from this House loud and clear and that I will do what I can to ensure that we have a resolution as soon as possible.

Lord Alton of Liverpool (CB): My Lords, in the aftermath of the Cold War, I met a young Ukrainian woman who told me that the proudest moment of her life was when she told her parents that she was going to work for the BBC World Service. They had listened to it clandestinely throughout the whole Soviet era. As the noble Lord told us, last week 5 million Ukrainians listened to the BBC via its digital platform. In addition to that, 17 million Russians—triple the usual number—listened to the BBC last week alone. Can we urgently do as so many noble Lords have urged and come to a decision within the next week? The money runs out at the end of March or beginning of April. In these urgent, desperate times, we need a decision on this.

Lord Goldsmith of Richmond Park (Con): My Lords, I do not disagree with what the noble Lord has said and, as I said, I will push for the earliest possible resolution. Finally, I would just reiterate that the value this Government place on the service that is being provided internationally is absolute and there is no question of it being cut back.

Elections Bill

Committee (1st Day)

Relevant documents: 13th Report from the Constitution Committee, 5th Report from the Joint Committee on Human Rights, 21st Report from the Delegated Powers Committee

11.48 am

Clause 14: Strategy and policy statement

The Lord Speaker (Lord McFall of Alcluith): I call the noble Baroness, Lady Meacher, to move Amendment A1.

Baroness Meacher (CB): I ask the House to forgive me, but I am not aware of having anything to do with Amendment A1.

The Lord Speaker (Lord McFall of Alcluith): I assure the noble Baroness that it is on the Marshalled List.

Amendment A1

Moved by ***Baroness Meacher***

A1: Clause 14, page 21, leave out lines 6 and 7

Baroness Meacher (CB): My Lords, I beg to move.

Lord Ashton of Hyde (Con): Now we have a debate, which the Minister can answer.

Lord Stunell (LD): I thank noble Lords and join in the general confusion about where we are up to. I speak in favour of the two amendments in this group tabled by the noble Baroness, Lady Meacher. They seem to be a ranging shot on one of the most important issues embedded in this Bill.

I hope that noble Lords will excuse me if I take this opportunity to explore what the amendments do and why it is so important that they and other matters relating to Clauses 14 and 15 are given serious consideration. These provisions are at the heart of the matter which I want to speak about. The question is really: is the United Kingdom to retain, as one of its trusted institutions and symbols of democratic legitimacy, the Electoral Commission, or is it to join an increasingly long list of countries that have, step by step and little by little, eroded their democratic base, undermined trust in their electoral processes and cast doubt on the legitimacy of their elected representatives?

The Electoral Commission was set up as a direct result of recommendations by the Committee on Standards in Public Life, on which I serve. The committee is chaired by the noble Lord, Lord Evans of Weardale, and its first chairman was Lord Nolan. People refer frequently to the Nolan principles but those are in the guardianship of the Committee on Standards in Public Life; so, we believe, is the Electoral Commission. It is a body which emerged from recommendations presented to the Prime Minister by the CSPL. It has since been overhauled and reviewed by the CSPL and there have been changes made in legislation, again based on recommendations made directly by the CSPL. In a report last year, the Committee made further recommendations to the Prime Minister about changes that needed to be made in response to the inquiry and the evidence that it took. All those recommendations were designed to make the Electoral Commission a more effective body, with clear and specific recommendations on how that should be done in each case.

[Lord Stunell]

The Electoral Commission was set up on the advice of the CSPL. It was updated on advice from the CSPL, and the Government have before them clear recommendations from the CSPL on how it could be improved further. Our report strongly emphasised what every piece of evidence showed: that to maintain trust in the electoral integrity of our democratic processes, it was essential that the Electoral Commission retains its independence from political interference—interference from any political party or faction, but particularly from the party in power at any one time. Unfortunately, Clauses 14 and 15 take our country in the wrong direction. The two amendments tabled by the noble Baroness, Lady Meacher, try hard to pull it back from the brink, so yes, they have our support.

At Second Reading, I asked whether the Minister would be ready to hand over to a future radical-left Government the powers that the Bill, in its present form, would give them. He is far too skilled an operator to answer that question, but it is very hard to believe that he would. It could start off with something as innocuous as a requirement for the Electoral Commission to have regard to the Government's manifesto policies; levelling up, for instance, or maybe levelling down, as will surely be achieved as a completely accidental by-product of other provisions in the Bill.

In many areas, but particularly Clauses 14 and 15, the Bill seems to have been drawn up by people who have never been in opposition, which is startling because the Minister has plenty of experience of that, having lived as an oppressed political minority in the Liberal Democrat-run London Borough of Richmond upon Thames. The Minister may protest that there is to be a comprehensive consultation with various bodies before any strategy statements come into force. Of course, the amendments of the noble Baroness, Lady Meacher, very much bear on the question of the terms and conditions on which such a strategy report might be made.

The Minister might refer me to the elaborate wording of proposed new Section 4C, which is in Clause 14. But when I pointed out to him at Second Reading, as many noble Lords did, that practically every outside body that had expressed an opinion on these changes had strongly advised against them, and that the CSPL itself, which created the commission, had said that our electoral processes must be overseen by an independent regulator protected from political pressures and separate from the Government, and that it must demonstrate its impartiality and effectiveness at all times, the Minister's reply was that the Government take a different view.

Noble Lords should bear in mind that five bodies must be consulted, according to proposed new Section 4C, before any such strategy document moves forward. It would be interesting to know what they will do when they get their first strategy statement. Actually, we do not have to wonder, as they have already commented on the proposals in front of them. Two opted out in disgust, which is why the Scottish and Welsh amendments flow in the next group. The Public Administration and Constitutional Affairs Committee has strenuously protested and recommended that the Government take these provisions out of the Bill. That is three of them. The Speaker's Committee is packed with Cabinet Ministers, which is an offence when it is the budget holder for the Electoral Commission—a matter we shall talk about later. It is also worthy of note that all but one of the Electoral Commissioners jointly wrote an open letter of protest, pointing out that this fundamentally undermines their legitimacy and our democratic system. Therefore, of the five consultees in proposed new Section 4C, four have expressed vigorous dissent with the proposal and one is packed with Cabinet Ministers.

Interestingly, neither the CSPL or any local government institution was consulted: the one which created the electoral commission, and the people who will receive the benefit of its administration above anybody else. What we learn from this is that a fig leaf of consultation, even when we have a benign regime such as this, is not a safeguard. Under a less benign regime, as seen from the Minister's viewpoint, that fig leaf could be gone in the space of a short consultation. I repeat my question: is the Minister completely at ease with the provisions in these two clauses? I and my noble friends are certainly not.

A look at the international stage may help noble Lords to understand our deep unease more clearly and explain why we are so strongly in favour of the Minister giving a fair wind, at the very minimum, to the amendment of the noble Baroness, Lady Meacher.

Noon

Any power-hungry regime anywhere in the world, on coming to power and wishing to keep it, looks around to take steps to make that happen without having to take too much account of the vagaries of public opinion, if necessary. Some well-understood steps to take are set out in the autocrat's playbook. High on the list is undermining the independence of the election regulator. Following that, guidance can be produced that facilitates the selection or deselection of candidates, the application of rules and the prosecution of offences—I will not give away any more trade secrets. But noble Lords can see where that goes by looking at Russia today. Mr Putin's most dangerous opponent in the last presidential election managed to overcome the requirement to get a million signatures on his nomination form, obviously placed there by the election regulator, but it was deemed that there were a few duds in his list of nominees, and, although he had a million valid ones, he was disqualified for submitting fraudulent names—strictly according to the rules, of course.

Another entirely rules-based democratic disaster is playing out in Hong Kong. Legislation on elections there, largely bequeathed by Britain, has been subtly modified by the applications of government strategies on the election regulator. That should give the Minister nightmares. Candidates there could stand for election only if they had signed up to one of that Government's key manifesto policies—unification with mainland China. It was hardly a surprise that only unification candidates were elected and that the election had the lowest turnout of voters since British handover.

I ask the Minister to consider a hypothetical UK Government with a majority of 80 and a core policy of rejoining the European Union and the power that these two clauses would give that Administration to

facilitate their desired outcome. I ask the Minister for a third time: is he completely at ease with forcing these disastrous and damaging clauses through Parliament?

When the Berlin Wall came down, the United Kingdom Government, driven on by Mrs Thatcher, set up the Westminster Foundation for Democracy as a vehicle to help the newly emerging civic societies in eastern Europe understand the basic rules of a democratic multiparty system. There were many exchanges between politicians of all parties in the UK with civic and political organisations in those emerging democracies as part of that effort, and one group visited the Liberal Democrats as part of that study tour. Members of that group had never heard of knocking on doors and engaging with electors. They were absolutely at ground zero. After a day of seminars and discussions, we had a feedback session. There was a lot of enthusiasm and excitement coupled with some trepidation about the lessons that they had learned and the work ahead of them. However, the spokesman for three dour Albanians simply said, "We prefer to win our elections by administrative means", and that sounds a great deal more chilling with an Albanian accent.

There are some faint echoes of that today. Mrs Thatcher knew the importance and value to Britain of our soft power and our reputation for robust multiparty democracy, fought on a level playing field with a referee who did not take instructions from whichever club happened to be top of the league when the match was played. Mrs Thatcher knew the value of and invested in democracy. Perhaps in a small way, the responses of those same eastern European nations to the current Ukraine disaster show that it was money well invested. I ask the Minister not to throw all that away. Give some comfort to the noble Baroness, Lady Meacher, and adopt her amendments as a small first step to undoing the harm proposed in the Bill. He needs to take these two dangerous clauses out of the Bill, and my noble friends and I will energetically make that case in the debates that follow.

Lord Lipsey (Lab): My Lords, when the noble Baroness, Lady Meacher, came into the Chamber, I do not think that she was expecting to have to move any amendments, and when I came into the Chamber, I certainly was not expecting to speak on any of them. But in a few sentences I would like to inject a broader perspective.

At the moment, we see a conflict between democracy and totalitarianism in Ukraine such as we have not experienced since the end of the Cold War. Democracy must win. But at this very perilous moment, the Government are introducing measures to shackle the independent Electoral Commission and put in its place the will of government Ministers. The Minister may say that they have no intention of doing anything naughty, but I would not trust him on that and, even if I did, I certainly would not trust every subsequent Government to go the same way. This is a disgraceful proposal. It undermines the democratic case that we are making to the world, and I hope that the Committee will have none of it.

Baroness Noakes (Con): My Lords, this is the most extraordinary debate that I have ever taken part in, with the noble Baroness, Lady Meacher, first disowning the amendment in her name on the supplementary list of amendments and then moving it formally but not explaining what we are debating. I hope that the noble Baroness remains to withdraw her amendment at the end. Otherwise, we may be in a little trouble.

I was unable to take part at Second Reading on this Bill because I was not in the country, but I have of course read *Hansard* on that debate and I hope to take part in the remaining stages. I will not range as widely as the noble Lord, Lord Stunell, because I hope to say more about Clause 14 generally when we get to the stand part debate, where I think it would be most appropriate. But I will say a couple of things about the two amendments in the name of the noble Baroness, Lady Meacher, because neither of them is necessary.

Amendment 4A states that the Electoral Commission only needs to comply with the strategic and policy statement if it conforms with its own objectives. The amendment is unnecessary because the only requirement in new Section 4B in Clause 14 is for the commission to "have regard to" the statement. Nothing compels the commission to do anything specific as a result of the statement being published, and nothing in Clause 14 changes the requirement for the Electoral Commission not to do anything which conflicts with its statutory duties. In short, its regulatory independence is already protected by Clause 14.

I was somewhat mystified by Amendment A1 which removes the role and responsibilities from the strategic and policy statement. These strategic and policy statements merely set out what the Government's priorities are and what the Government see as the role and responsibilities in relation to those priorities. It does not override the commission's independence but gives guidance as to the Government's priorities and of course those priorities will be approved by Parliament. Public bodies do not exist in a vacuum; they exist in a political context. The strategic and policy statements just give that context—nothing more, nothing less. Clause 14 does not impact on the independence of the Electoral Commission.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, this is an astonishing Bill. I understand why there was confusion at the start; I do not blame the noble Baroness, Lady Meacher, in any way and I hope no one else will, given what we are facing today.

This is an outrageous Bill in almost every way: a 171-page compendium of political bias. In the case of the Electoral Commission, I can understand why the Government are embarrassed. As I understand it, the commission pointed out the kind of money that the Conservative Party was getting and where it was getting it from. Given that we are now in the middle of a war in which the Russian state—Mr Putin and his cronies—are invading Ukraine, the fact that some of the money was coming from Russian sources must be an acute embarrassment to the noble Lord and his cronies. That is why they do not like the Electoral Commission.

We just have to look at what is in the news today about the Charity Commission. The story is that the Government are about to put in a Tory placeperson—a placeman, as it happens—as the chair of the Charity Commission, as they have done before. This is what

[Lord Foulkes of Cumnock]
they do, and it is happening throughout our public system. A Member of this House, who used to be a Labour MP, has been appointed to post after post because they supported the Government in the last election and supported the Vote Leave campaign. It is cronyism squared—cubed, probably.

The Liberal Democrats mentioned the Westminster Foundation for Democracy in a speech earlier. I used to be a board member of that foundation and am now on the executive of the Commonwealth Parliamentary Association. We are about to have a seminar, with representatives from all around the Commonwealth, at which we will be talking about good governance. How on earth can we try to put forward the idea that this so-called mother of Parliaments is an example of good governance if this Bill becomes an Act? We must do everything we can, not just to amend it but to scupper it.

Look at today's amendments: after the two from the noble Baroness, Lady Meacher, we have over 100 government amendments. What on earth is going on with this legislation? We will soon be moving towards Prorogation and the Queen's Speech. This Bill should be totally abandoned. In many ways we are wasting our time going through amendment after amendment; I do not think there is any prospect of the Bill moving forward.

I am a member of the Parliamentary Assembly of the Council of Europe and the Organization for Security and Co-operation in Europe Parliamentary Assembly. We go around monitoring elections in other countries and we see what happens. If there is no effective independent electoral commission in a country then we criticise that and say it is not a proper democracy. How can we properly participate and show face in these countries if this Bill becomes an Act? It is just outrageous.

I know the Minister has an impossible task. Those of us who have been in the House of Commons know the kind of debates that take place there. Regrettably, the House of Commons these days is not taking the time—it does not have the time—to examine 171 pages and all these amendments in detail, let alone their implications for our democracy. We are dealing here just with the Electoral Commission but there is a whole range of other issues, such as identification, which will make the opportunity for ordinary people to vote much more difficult.

As I say, the House of Commons has not given this legislation the kind of scrutiny that its Members ought to have done. They understand elections more than we do; they take part in them year by year, so they understand the implications of the Bill. We have a responsibility to go through the Bill line by line, but there is no way we can do that in the next couple of months. I hope that at some point—even if not now, it is inevitable that this is going to happen—the Minister will throw in the towel and say, "This is just not going to proceed". If not, I warn him that we on this side of the House—and I think the Liberal Democrats are filled with the same kind of enthusiasm and determination, as are the Greens and, I suspect, a huge number of Cross-Benchers—will do everything we can to undermine and thwart the Bill and make sure that this abortion—no, that is not the right word.

Lord Blunkett (Lab): Abomination.

Lord Foulkes of Cumnock (Lab Co-op): Thank you; I am grateful that I have some friends around here who are far more literate than I am. We will do everything we can to make sure that this abomination of a Bill never becomes an Act.

12.15 pm

Lord Cormack (Con): My Lords, I apologise that I cannot be here for the whole of today. When I spoke at Second Reading, I made my reservations about the Bill quite clear. There are certain aspects that I support, such as tidying up postal voting, but all that that needs is a short Bill.

It is grotesque that we have this Bill before us while people are literally dying for democracy. The best, most seemly and most honourable thing that we can do is to delete these clauses completely from the Bill. They have no place in a Bill of this nature in a country that prides itself on being the mother of Parliaments—it is not the institution, by the way; Bright's quotation was that the country was the mother of Parliaments, and that is what we are. It is a heritage that we should do everything we can to cherish and preserve. We are exceptionally fortunate in the democracy that we have, warts and all. While people are being mown down in Ukraine and while brave people in Russia, in St Petersburg, Moscow and other cities, are going out on to the streets to protest, knowing that if they are arrested then they might face 15 years in jail—we heard earlier in our deliberations today of that poor man or woman who was in jail in Belarus in a tiny cell with 15 others, all of whom were smokers—we have an absolute duty to cherish and preserve our democracy.

A democracy needs to have a monitoring body. I spoke for the Conservative Party from the Front Bench in the other place when the Electoral Commission came into being. As we said at Second Reading—my noble friend Lord Hayward made this point—it is certainly entirely appropriate to review its operations after two decades, but to shackle it in such a way that the Government are in a position to dictate what it does is utterly and completely wrong.

There is no point in my noble friend, for whom I have considerable affection and regard, pretending that this Government do not mean any ill. I am perfectly prepared to accept that they do not mean any ill, but what if Mr Corbyn had had charge of this? Would we on our side of the House have thought it appropriate that a Corbyn Government should have the power to dictate to an Electoral Commission? One only has to state the words to underline their absurdity. I hope my noble friend will not see that we have protracted debate on this but will say that these clauses should go, and that we do not have to debate them further.

Lord Foulkes of Cumnock (Lab Co-op): When I listed the people and groups who were going to oppose the Bill, I should have included the noble Lord, Lord Cormack, and some of his Back-Bench colleagues. I apologise for leaving him out.

Lord Cormack (Con): It is a touching gesture. Anybody who considers himself or herself a parliamentarian should be opposed to this particular part of this

particular Bill. I hope that message will be received by my noble friend and that he will realise that it should not be his mission to undermine, however indirectly, our parliamentary and electoral democracy because, of course, this applies to elections as well and not just to Parliament.

We are much in the debt of the noble Baroness, Lady Meacher, for tabling these amendments. She introduced them with remarkable brevity. Let us have done with this.

Lord Hayward (Con): May I ask my noble friend before he sits down just to clarify his comments about the amendments from the noble Baroness, Lady Meacher? Will there also, as I see it, be an opportunity to comment in more detail when we debate the clause standing part? That may be the occasion when I comment on his generous comments about me, for which I thank him.

Lord Cormack (Con): Yes, that is fine. I think there is even a case for deleting these clauses in Committee.

Baroness Fox of Buckley (Non-Afl): My Lords, I was not intending to speak on this part but I feel very queasy about the way a number of noble Lords are using the situation in Ukraine to have a go at this part of the Bill. People are indeed dying for democracy, but they are not dying to defend an Electoral Commission—an unelected quango in the UK. I think it is rather unbecoming to use that.

The Electoral Commission is relatively new to the UK's democratic life and democracy thrived when it did not exist. At the very least, we should stop aggrandising the Electoral Commission as though the electorate depend on it. There are problems with it and there are problems with the way the Government are trying to deal with it. I am not necessarily defending the Government's way of solving the problem of the Electoral Commission—

Lord Foulkes of Cumnock (Lab Co-op): Will the noble Baroness give way?

Lord Blunkett (Lab): Go on, defend it. The noble Baroness used to be in the Communist Party.

Baroness Fox of Buckley (Non-Afl): Very good, well done everyone, carry on.

Lord Foulkes of Cumnock (Lab Co-op): The noble Baroness said that we had a functioning electoral system before we had the Electoral Commission. The commission was a move to improve it, just as votes for women was a very great step forward. I am sure she would not want to go back to the time before that.

Baroness Fox of Buckley (Non-Afl): I appreciate that I am surrounded by Labour noble Lords who object to what I am saying. One of the great advantages of votes for women was that occasionally we get to say the odd thing that does not go with the grain.

I am raising the problem that the Electoral Commission is not necessarily all good. I want to say this about it. There was a great deal of dissatisfaction about the Electoral Commission's lack of independence in its response to the 2016 referendum, which I referred to in my Second Reading speech. Such were the concerns about the bias of the Electoral Commission in that period that it had to apologise for the bias of many of its members. This is not me saying it—I am quoting the Electoral Commission, which we are all told we have to listen to.

The bias led to many voters feeling that the Electoral Commission was not fit for purpose and was in fact biased against their wishes as an electorate in that referendum. Many of those people were not Tory cronies but Labour voters—Labour voters who may no longer be Labour voters because they became disillusioned by the fact that the Labour Party told them they had got it wrong, they were duped and they needed to think again. While the Labour Benches are very keen on democracy, they were less keen on the democratic decisions of many of their voters in 2016 and subsequently.

At the very least, therefore, it is important that we look at the role of the Electoral Commission critically and seriously. I do not think the way the Government have gone about reforming it will clarify or help things. I will make those points another time. But to say, as has just been said by a number of noble Lords, that we have a responsibility to take the Bill and thwart it, scupper it, throw it out and all the rest of it, seems to me rather to fly in the face of democracy. A little humility is maybe needed to remember that the plans for the Elections Bill were in the Conservative Party manifesto—which noble Lords will be delighted to know I did not vote for, before they all start.

Nevertheless, I clocked that they were there. We in this House are unelected legislators and need to take at least a smidgen of note of what the electorate might consider priorities. Not everything is a Conservative Party plot but one reason many people voted for the Conservative Party in 2019 was that they felt abandoned by the opposition parties.

Baroness D'Souza (CB): My Lords, I wonder whether noble Lords are fully aware that this is Committee and not Second Reading.

Lord Beith (LD): My Lords, I want to make a Committee point, if I may. Even though I agree with the general statements that have been made about the deep undesirability of Clauses 14 and 15, and the danger they represent to the reputation of this country as a guardian of democracy, my noble friend made quite clear that we would want to see those clauses removed but also indicated his support for the noble Baroness's amendments, which would ameliorate those clauses slightly if the Bill were to retain them. I am very keen that the Bill does not retain them.

The amelioration has its limits and, in that context, I want to remind the Committee of the report of the Constitution Committee on the Bill in this respect. Paragraph 39 says:

> "We are concerned about the desirability of introducing a Government-initiated strategy and policy statement for the Electoral Commission. The proposal will open up to risk the independence of the Commission … it would be dangerous if the perception were to emerge that the Commission is beholden to the Government for its operation and delivery."

The weakness of the noble Baroness's amendment, which I know is well intentioned, is that the statutory status of the statement remains and she creates a

[LORD BEITH]
rather interesting situation, which I had not seen in legislative form before, in which the commission can carry out what the Government suggest if it already agrees with them, which would be a new kind of statutory position. The fact is that there would still be a statement that had some degree of statutory authority behind it.

Governments and governing parties can always criticise what the Electoral Commission says and does and have shown little hesitation about doing so over the years. There has never been a limit on the ability of the Conservative Party to say what it disagrees with in the Electoral Commission's work. But to create a statutory process, even with the consultation involved, and produce from that a statement which explicitly or implicitly appears to bind the Electoral Commission is highly dangerous. I see that statement as addressing priorities of the commission. Is the commission spending too much time on political finance and donations? Is it spending too much time trying to register groups of people in this country? Should it spend more time trying to find more overseas voters? Such issues are not things on which we want to see the Electoral Commission steered by a statement that has any authority from statute. Let parties both in government and outside it continue to express their views and, indeed, their criticisms, but do not build into our statutory system that kind of statement.

Lord Butler of Brockwell (CB): My Lords, I put my name to the amendment in the name of the noble Lord, Lord Wallace of Saltaire, which my noble and learned friend Lord Judge will move this afternoon. As I may not be able—depending on the progress of business—to speak then, it may be for the convenience of the Committee if I make a very short intervention now.

I spent last night reading the illustrative example of a strategy and policy document issued by the Government in September. This document is no doubt designed to reassure but we are left with the question of how much further this clause gives an opportunity to a Government to go in regulating the activities of the commission. That is the subject that should worry us.

12.30 pm

The question that I have upmost in my mind is: why have the Government felt it necessary to take this power? The answer may be the one that the noble Baroness, Lady Fox, gave; they feel that the Electoral Commission did not behave properly on the Brexit debate. It will be interesting if the Minister explains that that is the reason. But even if the Electoral Commission fell short of what was expected of it at that time, the right way to deal with that is not by the Government taking powers to direct it. That is why these clauses are very worrying and I hope they will be omitted from the Bill.

Baroness Bennett of Manor Castle (GP): My Lords, the processes of your Lordships' House are enclosed in layers of impenetrable language, punctuated by archaic ritual and layered in complex paperwork that can confuse even the veterans among us. For International Women's Day I have been exhorting the young people of Britain, particularly young girls, to watch the House of Lords—with some trepidation because it is not easy to understand if you just switch on Lords TV.

Many noble Lords will have noticed, in the great increase in our piles of letters and emails in our inboxes, that the House of Lords is—this is responding particularly to the comment of the noble Baroness, Lady Fox—a place where democracy is being defended. Several noble Lords have said, "Oh well, we don't have to worry about this Government having the power of control over the Electoral Commission; it's some other putative Government we are concerned about." However, when I look at the police Bill, the judicial review Bill, the Nationality and Borders Bill and many others, and I look at my postbag of people saying they are concerned, I know that the public are asking us to represent them, and we have to worry about this Government as well as any potential future Government.

As a further piece of evidence, noble Lords may have seen, a week or so back, the Democracy Defence Coalition's giant van and billboard parked—deliberately—outside Millbank House, where many of us have offices. That organisation represents hundreds of thousands of people who are concerned about this Bill. The top line in their list was concern about the independence of the Electoral Commission, which is what these amendments seek to address—particularly Amendment 4A.

Coming to the detail of this, I entirely understand the impulse from the noble Baroness, Lady Meacher, to try to put some controls and limits in. But the only way forward is to get these clauses out of the Bill. More than that, I agree with the noble Lord, Lord Foulkes, and others, that this Bill is an absolute mess. As others have said, the number of government amendments makes that very clear. We must not be proceeding with this Bill as an absolute minimum at the moment.

Lord Scriven (LD): My Lords, I thank the noble Baroness, Lady Meacher, for tabling these amendments and setting an example for all of us in Committee to present our amendments with such brevity in such a concise nature. I declare my interests in the register which are relevant to this Bill.

The noble Baroness's amendments do their utmost—if these two clauses are to remain part of the Bill—to keep the Electoral Commission as independent as possible from government interference. It might be worth looking at a dictionary definition of independence. It is: the ability to go about one's business without being helped, hindered or influenced by others. The Minister may say that this is trying to help the Electoral Commission. Independence means that you stay out of the function of that commission.

In response to the noble Baronesses, Lady Noakes and Lady Fox, we have to be very clear what the amendments are trying to omit. The role of the Electoral Commission is not to carry out the priorities of the Government. Yet we see in new Section 4A(2)(b):

"The statement is a statement prepared by the Secretary of State"—

a Cabinet Minister—

"that sets out … the role and responsibilities of the Commission in enabling Her Majesty's government to meet those priorities."

The role of the Electoral Commission is not to meet the priorities of Her Majesty's Government, it is to ensure free and fair elections for all parties—not at the behest of one political party. That is why these amendments, if the clauses stand part of the Bill, are important.

At Second Reading I said to the Minister that when the noble Lord, Lord Cormack, and I are together, there must be fundamental flaws in the Bill. With what the noble Lord, Lord Cormack, has just said, I feel like calling him my noble friend on this particular issue. His powerful words—as upsetting as they are to some noble Lords—are absolutely correct. At this time, when people are fighting for the basics of freedom and democracy, it is wrong that we are having to debate a Bill which tries to put the Electoral Commission's strategy and priorities in alignment with those of Her Majesty's Government—a political party. Those are not the free and fair elections which are the basis of a strong, functioning democracy.

It is for those reasons that if at a later stage your Lordships decide to see Clauses 14 and 15 stand part of the Bill, these amendments at least try to bring back a semblance of independence and take away the role of government. That is why these Benches support the noble Baroness's amendments as drafted.

Baroness Hayman of Ullock (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Scriven, and we agree with everything he has just said. This is the beginning of our debates on the Elections Bill, so I start by thanking the Minister and his officials for taking the time to meet me and my colleagues to go through some of our concerns.

I turn to the amendments in the name of the noble Baroness, Lady Meacher—again, it is unusual to find such brevity in an introduction—which draw attention to the link between the Electoral Commission and the Government. The noble Lord, Lord Stunell, gave a very clear overview of how the Electoral Commission came into being. He also talked about some of the comments from the Committee on Standards in Public Life.

Our concern is with Part 3 of the Bill, and Clause 14 in particular. We believe it represents a deeply worrying step for our democracy. The Minister and his Government might like to think that it is their party in government today, but legislation is for future Governments. This could be for other parties, including parties not represented in this Chamber. It is not for any Government to dictate the priorities of an independent watchdog, yet these proposals, as we have heard, allow the Government of the day to set the agenda of the Electoral Commission.

The Electoral Commission regulates the elections in which Governments are elected. It is very important that the Electoral Commission has independence from the Government of the day. The existence of an independent regulator is fundamental to maintaining confidence in our electoral systems and, therefore, in our democracy.

That is particularly important when the laws that govern elections are made by a small subset of the parties that stand in elections. Many parties that stand in elections in our country do not have Members of Parliament, and much of the legislation here will be done as secondary legislation, so the commission's independence needs to be clear for voters and campaigners to see. It must be viewed as fair and impartial. As we have heard, no organisation has given these proposals its full support.

The noble Lord, Lord Stunell, referred to the consultation around the statement, but I have to say that consultation on these proposals so far does not exactly fill me with confidence. If the Committee will bear with me, I will just refer to the Government's response to PACAC's fifth report around consultation. In the report, the committee

"urges the Government to provide guidance, as a matter of urgency, on the proposed consultation mechanisms, which should be agreed with the list of statutory consultees in advance of publication."

The Government's response says:

"The consultation mechanism for the designation of the Strategy and Policy Statement is already outlined in detail in new sections … Those statutory consultees are: the Electoral Commission, the Speaker's Committee on the Electoral Commission, and the Public Administration and Constitutional Affairs Committee."

But parliamentary consequences of the recent machinery of government changes, whereby ministerial responsibilities for elections now sit with the Department for Levelling Up, Housing and Communities, will mean that the Public Administration and Constitutional Affairs Committee may need to be replaced with the Levelling Up, Housing and Communities Committee as a statutory consultee on the statement. Considering that PACAC was one of the organisations most critical of the Bill in its response, I find it very concerning that it is being threatened with removal. I would be very interested to hear the Minister's justifications for that.

Furthermore, in the response:

"The Government notes the Committee's suggestion to set minimum timeframes for consultation but considers it would be disproportionate and unnecessarily burdensome."

Again, I ask the Minister why. Consultation used to be my profession; I was an associate at the Consultation Institute. We lay out best practice for consultation and that is not best practice.

The Minister has previously said that it is important that we have independent regulation so that the public can have confidence in our elections. But the implication of this is that we do not currently have independent or impartial regulation of elections. It implies that somehow the Electoral Commission, as currently constituted, is fundamentally flawed and failing in its duty. That is a substantial claim, and I have seen no evidence for it.

My noble friend Lord Foulkes talked about the importance of good governance and how the proposals in this Bill completely undermine that. He also talked about how we monitor elections in other countries and how on earth we will continue to be taken seriously in the future if we have basically kneecapped our own Electoral Commission and are bringing in many of the other measures in this Bill.

The Electoral Commission is already accountable to the House through the Speaker's Committee. There are regular questions in the Chamber of the other place precisely to provide some of that accountability. The members of that committee scrutinise the operation of the commission, and there are also procedures at Holyrood and at the Senedd in Cymru to ensure the Electoral Commission self-accounts for its operations

[Baroness Hayman of Ullock]
in those parts of the United Kingdom. These proposals threaten to end the commission's independence and put control of how elections are run in the hands of those who have won them, which cannot be right. These look like the actions of a Government who fear scrutiny, and I suggest we have seen that in other legislation in recent times. I ask the Minister: under the current proposals in the Bill, will Parliament be able to amend the statement?

12.45 pm

The government response to the PACAC report says:

"Further, to support parliamentary scrutiny during those debates, the Government also provided an illustrative example of the Strategy and Policy Statement which parliamentarians will be able to use to supplement their views."

We have heard what that looks like from other Members so, again, I ask the Minister exactly how that is supposed to replace the current system and provide sufficient scrutiny going forward.

Elected representatives have an active and vested interest in the regulation of elections, even more so for a Government who have been elected and want to remain in power. It is not right that such a Government can direct the body that oversees what is supposed to be an impartial process. A country where the Electoral Commission is told what to do by the Executive is not a country with free or fair elections. The regulator has to be independent and impartial and must not be subject to political control. I say to the Minister that that message has come across from the majority of noble Lords who have spoken so far today.

We completely understand the aims of the amendments from the noble Baroness, Lady Meacher, and why she is trying to make an appalling situation better and, as the noble Lord, Lord Stunell, said, "pull it back from the brink." But we agree very strongly with the noble Lord, Lord Cormack, that it is grotesque while people are dying for democracy and that the most honourable thing to do is to delete these clauses from the Bill. Our position is that they should not stand part of the Bill and should be removed. I look forward to the debate on this, which we will come to later today.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I thank the noble Baroness opposite for her kind remarks at the outset, and make clear that I have been privileged by and welcomed the discussions I have had with her and other noble Lords in the passage of this legislation so far. I give an assurance to the House that I will always be open for those discussions. We may not agree, but I am concerned to hear the opinions and seek to address the concerns of noble Lords on all sides. I may not be able to succeed, the Government may not be able to succeed, but that is the spirit in which we should go forward.

I hope the one thing we might agree on is our revulsion and scorn—and hatred, actually, which is a word I do not use often—for the activities of the Russian Government and army in Ukraine. But I beg that the enormity of what is happening there should not be adduced as an argument in questions of judgment about the degree of our regulation of electoral amendments, which this amendment before the Committee is about. I do not believe it is comparing like with like. I thank the noble Baroness, Lady Meacher. She seemed a little surprised, but I thank her for putting these amendments before the Committee.

I noted that the noble Lord, Lord Stunell, was in his place and rose swiftly to read a 13-minute speech on these amendments to the House. Perhaps, he was not as surprised as the noble Baroness, Lady Meacher, by the events which occurred.

I did not intervene in the debate because the glory of this House is that it is a free House; it is the master of its own procedures and its own way of going forward. The group of amendments we have just discussed has nothing to do with excising Clauses 14 and 15. There is no amendment to Clause 14, and the noble Baroness suggests leaving out two lines and adding a couple of points to Clause 14. On the Order Paper, we have a clause stand part on Clauses 14 and 15. The appropriate procedure, I venture to suggest, with the greatest respect to your Lordships' House—protecting and arguing for your right and freedom of procedure, which I, as a Member of this House, regard as one of its glories—is that we should address in Committee points that are before the House in Committee.

Baroness Hayman of Ullock (Lab): I apologise. Did the Minister just say that the amendments have nothing to do with Clause 14? They are amendments to Clause 14.

Lord True (Con): No, I said that what was before the House was not a clause stand part debate. I will address the amendment before the House. The proposal to excise Clauses 14 and 15 comes later today, in the sixth group, in your Lordships' House. The noble Lord, Lord Butler of Brockwell, actually said—

Lord Lipsey (Lab): My Lords, I am doing my best, on the basis of only 20 years' experience in this House, to follow the Minister. Is he saying that he is going to try to improve a clause in Committee, when later we are going to have an opportunity to choose whether to reject the clause as a whole? Of course, we must do both. I hope that it is rejected eventually but in the meantime, the amendment of the noble Baroness, Lady Meacher, goes some way to mitigating its worst features.

Lord True (Con): No, I am not saying that in the slightest. I will address the amendments of the noble Baroness, Lady Meacher, because that is the proper thing to do in Committee. All I respectfully submit to your Lordships is that, if there is a clause stand part amendment—the noble Lord, Lord Butler of Brockwell, made a clause stand part speech because, as he explained, he is not going to be here later—then the appropriate place for it is probably within that debate. The noble Lord—

Lord Foulkes of Cumnock (Lab Co-op): Following on from my noble friend, I have only been in this House for 16 years, so I am a relative newcomer compared with some Members, but I have sat through lots of Committee stages. I say this with great respect to the noble Baroness, Lady D'Souza, as she is a former Speaker: in the first debate in a Committee, I have often seen Members take the opportunity to

speak more widely than the specific amendment. I do not think that either Back-Benchers or, particularly, the Front Bench should object to that.

Lord True (Con): No, and the noble Lord, for whom I have the greatest affection, is never slow in coming forward in such debates. Indeed, he used the amendment to say that the whole Bill should be thrown out, not just these two clauses. I assume that he includes in that tackling postal vote fraud, clarifying law on digital campaigning, protecting voters against intimidation and various other things in this legislation. Do I infer that the noble Lord, as he said in his speech, would like to throw the whole Bill out?

Lord Foulkes of Cumnock (Lab Co-op): I look forward to the evidence being put forward about postal vote fraud. I have certainly not seen a lot of it around where I vote; I have not seen any intimidation at all. Anyway, these things could be dealt with in different ways.

Lord True (Con): Okay, I take that as a yes: that the noble Lord would like to reject the whole Bill. I will be interested to see in Committee if that is the position of the Labour Party.

As I said, I make no objection to the free procedures of the House—

Lord Collins of Highbury (Lab): I slightly object to that, because the Minister is extending a response to one point to a general point. He was able to read the Second Reading speeches of all noble Lords, including mine and that of my noble friend, which made our position on postal votes and on intimidation absolutely clear. For the record, I hope that he will understand what the Labour Party's position is.

Lord True (Con): I am grateful for that, and I do know that that is the Labour Party position. I was pointing out that the noble Lord sat at the back might not actually have the support of the Labour Party on his proposition to throw the whole Bill out.

Lord Foulkes of Cumnock (Lab Co-op): I agree completely with what my noble friend has just said. I was saying that there are different ways of dealing with this, rather than in this huge omnibus Bill which deals with so many things and does not allow us to scrutinise matters such as postal votes, fraud and intimidation. These should be dealt with properly, and given the time needed to consider them properly, rather than in this mammoth compendium of a Bill.

Lord True (Con): I anticipate that we will discuss all those things. I intend, if nature allows, to be present for every hour of Committee on this Bill and every hour on Report, and to give full attention and respect to everything your Lordships say. Perhaps I could get on with the amendments before the House—

Lord Scriven (LD): I point out to the Minister that he has just spent 10 minutes doing exactly what he has told noble Lords not to do. Now that we are in Committee, will he come to the substance of these amendments?

Lord True (Con): I would have done so slightly quicker if the noble Lord had not intervened.

The suggestion before the House, which I will deal with later, is that the Government are attempting to interfere with the operational independence of the Electoral Commission. We contend that that is a mischaracterisation, and I will deal with that at the appropriate time. Reference has been made in the debate to the illustrative statement the Government have published for the Election Commission, which we will discuss later. I hope that all noble Lords will have a look at it. It states:

> "This Statement does not seek to interfere with the governance of the Commission, nor does it seek to direct specific investigative or enforcement decisions of the Electoral Commission. This Statement does not affect the ability of the Commission to undertake enforcement activity as they see fit".

The Government are not seeking to direct, as has been submitted, the Electoral Commission. Amendment 4A seeks to amend Clause 14 so that the commission only has to consider following the guidance in the strategy and policy statement if the commission considers that the guidance aligns with its own objectives. As I have set out, the duty on the commission to have regard to the statement on the discharge of its functions contained in Clause 15 is not a directive; it simply asks the commission to consider the guidance. This protects the operational independence of the commission and means that the amendment is unnecessary.

Amendment A1 would remove the provision for the strategy and policy statement to be able to set out the role and responsibilities of the commission in enabling Her Majesty's Government to meet their priorities in relation to elections, referendums and other matters in respect of which the commission has functions. First, on a technical note, this amendment would not limit the scope of the strategy and policy statement, as intended, as the clause would still provide for the statement to set out guidance relating to particular matters in respect of which the commission has functions. Secondly—and we will debate this later—it is entirely right that the Government should include within the statement the role and responsibilities of the commission in enabling the Government to meet their priorities in relation to elections.

For any Member who has not already seen the illustrative strategy, I say again that I hope noble Lords will review the document, and that many will find it to some degree reassuring—to the use the phrase of the noble Lord, Lord Butler—and hard to disagree with the content. However, I will listen to the comments on that, as on anything else. The statement sets out the Government's expectation that the commission should tackle voter fraud, improve accessibility of elections and increase participation. I hope we can all agree that these are important aims that it would be wholly appropriate for an electoral regulator to support. For these reasons, I hope that the noble Baroness will withdraw her amendment.

Baroness Hayman of Ullock (Lab): The Minister did not address my concerns around consultation on the document. Will he come back on that, please?

Lord True (Con): My Lords, we will come to that document later. The specific recommendations taken up in these proposals were those of the Pickles committee in 2015.

1 pm

Baroness Meacher (CB): My Lords, I thank the Minister for his response to this excellent debate. I did table these amendments but did not ask for them to be degrouped. It never occurred to me that they might be degrouped, hence I was a little ill-prepared this morning: I was expecting to deal with them in about six hours' time. I am incredibly grateful to the noble Lord, Lord Stunell, for picking up the pieces of my confusion and making an outstanding contribution. The clerk has said I could make a few comments at this point—a very few—but I have barely recovered from the incredible response of the Committee to my confusion. Noble Lords have been courteous, amusing, gentle and kind, and I am enormously grateful, I really am.

Let me just explain why I tabled these amendments, despite the fact I feel passionately that Clauses 14 and 15 should not stand part of the Bill and be removed. I worked in Russia at the beginning of the 1990s; I watched President Yeltsin trying to create democracy in Russia and have watched it disappearing. We need to treasure our democracy and these clauses, in my view, will drive a wedge between democracy and a bit of reality in our political process. I completely agree that Clauses 14 and 15 should not stand part of the Bill, but I tabled these amendments to make the point that it is crucial that the Electoral Commission is free and independent to do what it believes is right and proper for it to do.

The suggestion was made from the Conservative Benches that, "Oh, no, it's fine; these amendments are completely unnecessary because all the commission has to do is to 'have regard to' the will, the policy and the strategy of the Government." But I have worked in these public bodies and am very aware of people asking, "Do we have to have regard to the Government or not?" This is vital, because if these clauses go through and these amendments do not pass, then the chair and the CEO of the Electoral Commission will be very anxious—believe me, having been there—to comply with the will, policy and strategy of the Government. That is the whole point: the commission must be independent, feel independent and act independently. These amendments are necessary unless the ideal situation emerges where the clauses are removed from the Bill. With all that said, I beg leave to withdraw the amendment.

Amendment A1 withdrawn.

Amendment 1

Moved by ***Lord True***

1: Clause 14, page 21, line 13, at end insert—

"(3A) The statement must not include provision in relation to elections, referendums and other matters so far as the provision would relate to the Commission's devolved Scottish functions or the Commission's devolved Welsh functions."

Member's explanatory statement

This amendment provides that a statement under the inserted section 4A of the Political Parties, Elections and Referendums Act 2000 ("PPERA") must not include provision about matters so far as relating to the Electoral Commission's devolved Scottish or Welsh functions.

Lord True (Con): My Lords, I apologise to the Committee at the outset for the large number of amendments in this group. They are technical amendments, in the main, and the overwhelming number of those I speak to—Amendments 1 and 2, 21 to 24, 26 to 30, 33 and 34, 36 to 38, 40, 43, 46 to 51, 106 to 108, 110 to 118, 124 to 133, 157 to 160, 162 to 167, 169, 173 and 174—are related to the discussions the United Kingdom Government have had with the devolved Administrations in preparing the policy and drafting the legislation. We undertook extensive engagement with them.

For a number of measures that are within devolved competence, the United Kingdom Government considered that a co-ordinated UK-wide approach would have been beneficial, ensuring consistency and operability for electoral administrators and those regulated by electoral law while strengthening protection for electors and relevant political actors. It is therefore regrettable that while the Government sought legislative consent for these measures, the Scottish Parliament has not granted such consent and the Welsh Government have recommended that the Senedd does not so. In respect to those positions, we have therefore tabled these necessary amendments to ensure that measures in the Bill apply to reserved matters only. In addition, an amendment has been tabled to the digital imprint provisions, which already apply UK wide, to ensure they will continue to function correctly once other parts of the Bill concerning devolved matters are amended.

We welcome the indication from the Scottish and Welsh Administrations, however, that they are considering legislating comparably in a number of areas covered by the Bill. The United Kingdom Government remain committed to working closely with the Scottish and Welsh Administrations to support consistency in electoral law and ensure clarity and coherence are achieved across the United Kingdom for voters, the electoral sector and those regulated by electoral law.

Additionally, this group contains technical amendments in my name that are necessary for the measures to be fit for purpose and operate as intended. I will give a brief description of each and the reasoning behind them.

Amendment 82 relates to voter identification and clarifies the information to be displayed on both the poll card and the large notice in polling stations. These will tell electors which forms of identification will be accepted. Amendments 74 to 77 and 123 to 133 are minor clarificatory drafting changes to Schedule 1 and Schedule 6 to reflect that Northern Ireland-registered voters and GB-registered proxies are not mutually exclusive categories, with a further change to make sure that dates of birth for GB-registered temporary proxies can be checked at Northern Ireland Assembly elections, in line with the intended policy. Amendments 157 to 160 are minor amendments to the European Union voting and candidacy rights provisions in Part 2, to remove an unnecessary reference to Northern Irish local councillors in the transitional provisions for officeholders.

In addition, Amendments 5, 6, 10, 11, 15 and 16 are government amendments relating to the Electoral Commission measures in Part 3. This partly answers the noble Baroness's questions. I was going to answer

them later but, since they have come up now, they relate to the change in the committee which is responsible and reflect the parliamentary consequences of the recent machinery of government change, where ministerial responsibility for elections was transferred from the Cabinet Office to the Department for Levelling Up, Housing and Communities.

As a result, the amendments replace PACAC as the statutory consultee on the strategy and policy statement with the Levelling Up, Housing and Communities Committee which will have responsibility henceforth for looking at electoral matters, in line with the machinery of government. This would also align the consultation requirements with the recent change to the membership of the Speaker's Committee on the Electoral Commission, where the Levelling Up, Housing and Communities Committee chair has replaced the PACAC chair. The noble Baroness and the Committee will know that the chair of that committee is Mr Clive Betts, who is, I say with all sincerity, a very distinguished and experienced Member of the other place. The amendments are technical in nature, as is the move, and does not result in any other changes to the statutory consultation requirements and process.

Amendments 181 to 196, the final government amendments, are to the digital imprint provisions in Part 6. Once again, these are all technical in nature and aimed at ensuring that the provisions deliver the policy as intended. I urge noble Lords to support these technical and necessary amendments—I apologise if I have missed citing any in my speech—and I beg to move.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, on this occasion, I have a lot of sympathy with the Minister. As I understand it, these amendments have been tabled because of the consultation that has taken place since the original drafting of the Bill. I commend the Government for the process—I will come to substance of it—and I have sympathy with him.

However, in dealing with this, the Minister has the support of an excellent team—I see the Bill Committee officials here—whereas my noble friends on the opposition Front Bench have, in comparison, a very limited group of people helping them; they are limited in number—I had better make that clear—but able in every way. That makes it difficult to deal with such a complex Bill. However, I ask the Minister to think of the problems of Back-Bench Members, who have no help whatsoever. We have a huge volume of legislation to consider at the moment, not only this Bill, which is big enough in itself, but so many others, and this does create problems for us.

I would have liked to have spent more time discussing these amendments, particularly as they relate to Scotland and Wales. I was a great advocate of devolution in Scotland—and subsequently in Wales—and strongly supported giving more power to the Scottish Parliament. I served as a Member of the Scottish Parliament for four years, so I know the kind of work that is done there. Some of it was very effective, although it is less effective now under the SNP—much less effective than it used to be in the joint Labour-Liberal Democrat Administration. I wonder if all the differences that are now demanded by the current Administration in Edinburgh are genuinely sensible or just for the sake of being different in Scotland. I sometimes think that they just want to be different for the sake of it. I would like the Minister to reassure us that this is not the case in any of these amendments, because what difference is there?

In relation to voting at elections in Scotland and England, people move quite a lot from Scotland to England, so in one year they may vote in Edinburgh and the next year they may vote in London. Therefore, some degree of consistency has an advantage. The only difference that I know of at the moment is the voting age in Scotland, which is 16 for Scottish Parliament elections, but apart from that I think that the procedures are fairly similar. Can the Minister assure us that each of these amendments—as I say, I have not had the time, opportunity and support to be able to go through them one by one—is a genuine, excepted difference? Or has the Minister had his arm twisted and, wanting to keep the SNP Administration quiet, has he just agreed to do what they suggest?

Baroness Humphreys (LD): My Lords, I wish to speak to those amendments in this group which deal with the consequences of the Welsh Government's refusal to grant legislative consent to this Bill—primarily, Amendments 1 and 2, and others. The Welsh Government's refusal results, of course, in the removal from the Bill of all aspects which relate to devolved elections. I am pleased to welcome these amendments, but I must say that the pleasure is tempered by the sympathy that I feel for my English colleagues, who will have to contend with some aspects of this Bill which they, and I, find very difficult to accept, and which go against the principles which govern free and fair elections in the UK.

At Second Reading, I spoke against the moves to neuter or control the Electoral Commission by the introduction of a strategy and policy statement, which your Lordships' Committee has just dealt with. I also spoke of the deep disappointment felt in the Senedd at the way in which the UK Government was prepared to overlook or ignore the role of the Llywydd's Committee, and its role in holding the Electoral Commission to account on behalf of the Senedd itself.

The refusal of the Welsh Government to give legislative consent to this Bill has resulted in Amendment 1, which excludes the Electoral Commission's devolved Scottish and Welsh functions from inclusion in a statement, and Amendment 2, which defines the elections to which the functions relate, thereby securing the status quo for the commission in Wales. The refusal also has the effect that, in devolved Welsh elections, there will be no need for voter ID, no new constraints on postal or proxy voting and no extension of the overseas franchise.

1.15 pm

Our Senedd will continue to be elected by the d'Hondt system—not a perfect system, I would agree, but it introduces a good element of PR and results in a balanced Senedd, where the seats allocated to political parties reflect the number of votes cast. Of course, in the devolved elections for the Senedd and for local government elections, our 16 year-olds will continue

[Baroness Humphreys]
to be able to vote—not that this right, or our more proportional voting system, is under threat from the UK Government in this Bill, but I mention both merely to emphasise how much our systems have already diverged. Dealing with even more divergence will become the new normal, as voters and officials cope with different systems for devolved and reserved elections.

I thank the Minister for his letter to Members, in particular for the section dealing with the disapplication of the devolved provisions. I am grateful for his decision to respect the wishes of the devolved Administrations by the tabling of these amendments. I understand the Minister's disappointment and his concerns about the exclusion of what he terms the "protective measures" in the Bill—modernising the offence of undue influence and the regulation of political finance, for example—but these are issues that can be determined by the Senedd, and it is the Senedd's right to do so. The Senedd's Counsel General has already indicated his desire to introduce an elections Bill in the Senedd and, as the Minister himself says in his letter,

"the Welsh Government has expressed support in principle for a number of areas in the Bill".

The challenge for the Welsh Government will be to take noble Lords' concerns on board in their new Bill, once they have undergone the due process of scrutiny and consultation.

Although I believe that the rights and responsibilities regarding devolved elections in Wales lie with the Welsh Government, I cannot resist the temptation to add a further challenge or gentle nudge—and that is for the Welsh Government and the whole Senedd to finally come to a decision about the size of the Senedd and an even more proportional system of voting for our Senedd. I know that this is already a work in progress, but we have been waiting in anticipation since the Richard commission reported in 2004.

Lord Hayward (Con): My Lords, I have one question of clarification to ask my noble friend. During his introduction, he referred to the change of structure of government and therefore the change of structure of committees in the other place, and their responsibilities for dealing with electoral matters. Given that the Government have a habit of restructuring virtually everything virtually every year, whichever party is in power, can I seek clarification that these amendments are future-proofed—in other words, that we are not writing into the Bill the name of a committee that may not exist in one or two or three years' time?

Lord Lipsey (Lab): My Lords, I will briefly make a point about these proceedings. As I understood it, when we debated the amendments in the name of the noble Baroness, Lady Meacher, the Minister said, "We should not have these general arguments; we should be focusing on the specific amendments." In a corner, as he was, I can see that that was the best sort of argument available to him. Now we have nearly 100 amendments which change the law of this nation, and how much time did the Minister devote to each of them? It was six seconds. This is not a detailed examination of a Bill; it is a Minister who thinks that whatever he happens to want—I am sure that most of these amendments are completely acceptable—should go through without proper debate, consideration and deliberation by this House.

I say that both as a protest and as something that I hope the House will carry forward in its future deliberations on the Bill. It cannot be done at the kind of speed whereby 100 amendments are considered in one grouping. It will not be done, and we will stop it being done.

Lord Stunell (LD): My Lords, I will speak very briefly to this amendment. I seem to have used my time allocation earlier—I apologise to the Minister for wasting his time. However, as the noble Lord, Lord Lipsey, and my noble friend just pointed out—the Minister probably cannot hear me with my mask on, so I am sorry about that as well—it is six seconds per amendment against 13 per amendment on my part. I apologise for that.

I will pick up on a couple of things. The Minister expressed regret that Scotland and Wales had opted out of the application of Clause 14 in those two nations. He will understand that I think they have shown the utmost common sense in doing so, and I do not think it is a cause for regret at all. I certainly support what my noble friend Lady Humphreys had to say about that.

I will bring the Minister back to the fig leaf of consultation in new Section 4A in Clause 14. I said before that of the five bodies, four were completely hostile and one other was captured by the Cabinet. There is now a proposal here which means that one of those—PACAC—is captured by the Select Committee for the Department of Levelling Up Housing and Communities, and that Secretary of State will be making the strategy statement: that is something else that has got worse as a consequence of that.

I put back into play the point I made before, that if Scotland and Wales are not going to be part of new Section 4A and if PACAC is going to be neutered and transformed, it might be time to add the CSPL as one of those bodies which should be statutorily consulted as the creator and, up till now, the recommender of progress and developments on that Electoral Commission body. I would have thought that some voice for local government in that consultation should be statutory there, of course only for England, because Scotland and Wales have sensibly opted out.

We shall not oppose these amendments but we believe that the direction of travel on this suggests even more reasons for reforming the application of Clause 14 when we get to that debate.

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for his introduction. Clearly, these amendments are technical and we agree with noble Lords that they are required.

I agree with my noble friends Lord Lipsey and Lord Foulkes that this enormous number of amendments was chucked at us in one go, with very little time to look at the detail, not just of what they say but of what the implications are. Noble Lords made an extremely important point about that. That has happened with

other Bills as well. In debates on the Building Safety Bill, which I have also been working on, an enormous number—38 pages—of amendments were given to us with a very short time to assess them. Can the Minister take that away and think about it for future legislation? It is difficult for noble Lords to assess such amendments in a reasonable fashion.

We need to look at why the amendments are necessary. Clearly, as noble Lords have explained, it is to do with the devolved Administrations. When the Bill was originally proposed, it was for legislating on a UK-wide basis, and that included some areas where the devolved Parliaments in Scotland and Wales could legislate in respect of their own local and devolved elections. Clearly, the Government had to seek legislative consent Motions from the devolved Parliaments. Unfortunately for the UK Government, the Governments of Scotland and Wales both declined to lay consent Motions and requested that all aspects which relate to devolved matters be removed from the Bill, hence the large number of amendments.

I will just draw the attention of the Committee to the fact that, out of more than 350 legislative consent Motions, consent has been denied just 13 times, according to the Institute for Government. UK Bills have been redrafted previously when devolved Administration consent has been withheld under the Sewel convention. Can the Minister say why that option was not considered? Perhaps it was considered and we do not know about that, but it was rejected.

The Government have said that they were disappointed by the move—the Minister used the word "regrettable"—but said that they would respect this request by preparing the necessary amendments to the Bill, which is why we have so many before us in this group. I thank the Minister for apologising for this to the Committee—I appreciate that, as I am sure other noble Lords do.

I want to look at why the Welsh and Scottish Governments did not agree with the Bill. As the Government did not redraft it following the concerns raised but instead decided to plough on regardless, it is important to draw this to the attention of the Committee to fully understand the implications of many of its proposals.

In the Welsh Government, the Elections Bill was scrutinised by two Senedd committees: the Legislation, Justice and Constitution Committee, and the Local Government and Housing Committee. I commend the noble Baroness, Lady Humphreys, on her excellent speech about disappointment in Wales over the Government's behaviour around the Bill, particularly because they completely refused to listen to the findings of the Llywydd's Committee.

The Local Government and Housing Committee report agreed with the Welsh Government's memorandum that consent should not be granted, saying:

"The majority of the Committee believe any proposals to legislate on these devolved matters should be brought forward by the Welsh Government and subject to full scrutiny by the Senedd."

The Legislation, Justice and Constitution Committee also expressed concern at the lack of engagement between the UK Government and the Welsh Government. Can the Minister say why there was a lack of engagement —what went wrong with that process?

In addition, the committee agreed with the Welsh Government that some of the reserved measures would have a considerable impact on electoral administrators in Wales, particularly around voter ID. The same will happen in England. It highlighted the potential for voter and candidate confusion and complexity for electoral administrators if devolved elections happen close together or on the same day as a reserved election, as happened in May 2021. This could lead to a situation where postal and proxy voting rules were different and voter ID requirements in polling stations were different for polls happening together. My noble friend Lord Foulkes talked about the importance of consistency. Diversion will only cause confusion.

On voter ID, the committee also cited Electoral Reform Society Cymru concerns about poll clerks becoming

"bouncers at the ballot box"

and being required to turn away

"potentially thousands of would-be voters each election."

Concerns have also been raised by Jess Blair, director of the Electoral Reform Society Cymru, who said that the Elections Bill makes

"sweeping changes to our democracy."

She said that

"it looks like UK ministers have barely engaged with Wales or Scotland so far. This bill is being swiftly rammed through with little consultation".

That echoes the concerns expressed already in your Lordships' House. She continued:

"Moreover, the changes to the Electoral Commission represent a UK government power grab, with ministers given new controls over our elections watchdog. This is a dangerous and unprecedented move that the Welsh Government is right to oppose. This Elections Bill could lead to a 'two tier franchise' in Wales, with some elections banning those without ID, and others remaining open and free. Both the Welsh Parliament and Holyrood should use their powers to pause this power-grab bill, and secure changes to protect the right to vote."

So they have done.

1.30 pm

The Scottish Government also recommended that the Scottish Parliament should not give consent to the Bill and would not lodge a legislative consent Motion. The lead committee of the Scottish Parliament tasked with scrutinising the Bill was the Standards, Procedures and Public Appointments Committee. The majority of that committee agreed with the Scottish Government that consent should not be granted.

The committee also noted that the Elections Bill requires Scottish Ministers to be consulted on a draft of the strategy and policy statement for the Electoral Commission. The Scottish Elections (Reform) Act 2020 transferred financial responsibility for funding the Electoral Commission in relation to Scottish elections from Scottish Ministers to the Scottish Parliamentary Corporate Body. The committee considered that the SPCB should be added as a statutory consultee to the statement. Can the Minister confirm whether that will be the case?

On voter ID, the committee noted that changes to reserved elections in the Bill had a potential impact on Scottish elections. It raised concerns about the administrative burdens placed on elections staff by the

[Baroness Hayman of Ullock]
various new measures; in particular, the administration of voter ID in polling stations and registration staff determining applications for overseas voters and absent voting requests. These concerns for England remain within the Bill, and we will come to them as we move through Committee.

The committee in Scotland heard evidence from the Electoral Management Board for Scotland that voter ID requirements are

"out of proportion to the problem they attempt to address".

The EMB voiced concern over the effect on polling station staff of having to implement voter ID provisions, saying that polling staff would no longer be able to help citizens in elections, but, instead, officials would be checking voters' identity papers. It is concerned that it will be a less attractive job given the likely associated conflict and bureaucracy.

On the digital imprint measures in the Bill, the Scottish Government and the UK Government disagreed on whether or not the measures are fully reserved. The UK Government believe that the measures are wholly reserved under the "internet services" reservation in the Scotland Act 1998, but the Scottish Government disagree. Their view is that only the measures requiring removal of electronic material that would breach the new measures are reserved. They view the rest of the measures on digital imprints as devolved and consider that the provisions in the Elections Bill would override measures already in place.

The Scottish Government do not recommend legislative consent in this area. Their initial position is that the existing Scottish regime should remain in place, with any necessary adjustments made to accommodate the reserved aspects of the Bill in relation to the "takedown" of material on the internet. I note that the Minister talked about amendments in the area of digital reform. As I have said, we have not had time to go through the detail of all the amendments. I would be grateful if he could comment on what exactly the amendments and the Bill still mean for Scottish powers in this area.

I want to look briefly at some specific government amendments. Those relating to Clause 14 would remove matters relating to the Electoral Commission's devolved Scottish or Welsh functions from the scope of the proposed strategy and policy statement. They would remove the requirement for the Secretary of State to consult Scottish and Welsh Ministers on a draft statement. In addition to the UK Parliament, the commission is accountable to and funded by the Scottish Parliament and the Senedd. While devolved matters may be removed from the strategy and policy statement, it remains likely to affect how the commission delivers some devolved functions; for example, in terms of resourcing. It will also affect the commission's core functions, which benefit voters, parties, campaigners and electoral administrators in Wales and Scotland. Does the Minister agree that it therefore remains important that, if the proposed strategy and policy document is brought into law, the processes for development, consultation and approval should reflect those shared accountability relationships with the Scottish Parliament and the Senedd?

Amendments to Clauses 18 to 27 would ensure that provisions in Part 4 of the Bill did not apply to devolved elections in Scotland and Wales. The Government should set out clearly how the amended clauses on notional expenditure and third-party campaigning will apply when there is a combined regulated period covering both reserved and devolved elections.

I return to the Minister's comments on PACAC being removed as a consultee. This is a backward step in transparency, and it is of concern.

To sum up, the Government have had to table all these amendments relating to the devolved Administrations because they would not give consent. The reasons for withholding consent are due to concerns that should deeply worry us all; in particular, that the Bill risks disenfranchising voters and threatens the independence of the Electoral Commission. It is a great shame that the UK Government did not heed the concerns of the devolved Administrations and go back to the drawing board.

Lord True (Con): My Lords, I thank all those who have spoken in the debate. Perhaps I am allowed occasionally to speak as an individual from the Dispatch Box as well as a Minister, and I have not changed a view that I held as Back-Bencher, which is that the minimum number of amendments is desirable and that all Governments should seek to get Bills into the best possible condition before they come before your Lordships' House. That is desirable, and I made an apology at the outset.

As the noble Baroness, Lady Humphreys, and others pointed out, a significant number of the amendments arise from our decision to respect the recommendations of the Senedd and the decision of the Scottish Government. We believe that some of the issues concerned are important and that we should proceed to legislate, but, as I said in my opening remarks, we intend to continue discussions with the Scottish and Welsh Governments and would be interested to see how they proceed. We have welcomed the indication that they are considering legislating comparably in a number of areas covered.

The noble Lord, Lord Foulkes, asked whether there were areas where we were deferring to the Scottish nationalists. I would not put it that way. Some of the areas were where there was a disagreement. Your Lordships have already indicated that you might also disagree with Her Majesty's Government—let us say, on the elements relating to the proposed strategy and policy document, and that is one area covered by these amendments, as the noble Baroness opposite said.

However, one consequence of the withholding of the consent Motion will be that the modernised undue influence offence will apply only to reserved and excepted elections. The Government's view is that a UK-wide application of the measure would have delivered greater levels of integrity by upholding what we submit in this Bill should be a basic principle: that those guilty of an intimidation offence should not be allowed to stand at any election in the United Kingdom. That is why we sought legislative consent from the Scottish Parliament on those measures. Following these amendments, which we have introduced for the reasons that I have given, and if your Lordships give assent to the legislation,

offenders will still face a five-year ban from standing for all elected offices in the UK save for the Scottish Parliament or Scottish local government. In respect of devolution, it will be for the Scottish Government to make the necessary changes themselves to disqualify individuals who are disqualified for such offences in other parts of the UK. Other areas of undue influence, sanctions against intimidation, measures on notional expenditure—referred to by the noble Baroness—and third-party campaigning will apply only to reserved and combined regulated electoral periods.

There will be divergence, and in some cases there is already divergence. There is already some minor divergence, for example, between the current version of the undue influence offence in the 1983 Act and the situation in Scotland. That has not so far caused any confusion, and we do not expect this to be any different. We would expect ambiguities to be straightforward for the courts to resolve.

Obviously, we will continue to watch events. I am not anticipating that the Scottish Government would not wish to legislate in this area, or indeed, as the noble Baroness said, that the Welsh Senedd might not. But we are submitting to Parliament the idea that Parliament should act in respect of things such as undue influence, intimidation and the measures on notional expenditure. We have taken the judgment to proceed—showing respect to the devolved Administrations not by waiting, but by excising and allowing them to make their own decisions and proposals.

The noble Baroness, Lady Hayman, asked me a specific question on a specific matter, which I undertake to write to her about, and to place the letter in the House in the normal way. My noble friend Lord Hayward asked about the designation of the new committee. This is in the legislation, because the effect of one of the amendments before the House is to remove PACAC and put in the other House of Commons committee. Ultimately, if this Bill is not thrown out—as was impishly suggested at the start of our proceedings—it will go back to the other place for it to determine. I shall give way to my noble friend Lord Hayward in a moment.

It surely is the case that if a government department is responsible for an important subject such as elections, the scrutiny should be conducted by the committee of the other place that is responsible for scrutinising that department. As I said, that will be the committee that is being substituted, under the chairmanship of Mr Betts. I give way to my noble friend.

Lord Hayward (Con): I am sorry if I did not make this clear, but I was asking a question about the future structure of committees, beyond the next change. I think I used the term future-proofing, as it takes into consideration Governments' habit of changing structures. Is there a part of the Bill that will future-proof structural change, so that when we move on from one select committee having responsibility for overviewing elections matters to another committee having that responsibility, it will not require a change to primary legislation?

Lord True (Con): My Lords, I have not had advice from the Box on this, and that is always a dangerous place for a Minister to be. However, I try to read carefully what I put before your Lordships' House, and I think it is provided in proposed new section 4C(8) that,

> "If the functions of the Public Administration and Constitutional Affairs Committee at the passing of this Act with respect to electoral matters … become functions of a different committee of the House of Commons, the reference … to that Committee is to be read as a reference to the committee which for the time being has those functions".

Maybe I am parsing that wrongly. If I am, I will apologise to my noble friend and to the Committee and come back with a better explanation—but sometimes a Minister just has to try his best at the Dispatch Box. Does the noble Lord, Lord Lipsey, want to intervene?

Lord Lipsey (Lab): My Lords, I am sorry to come back to something the Minister said just before the intervention of the noble Lord, Lord Hayward, but I think the record will show that the Minister said that, when we have passed such amendments as we do, we send them back to the other place for it to determine. I do not think that is the procedure. I thought they came back here, and then we decided whether we accepted them or not. Will the Minister please set the record straight on the procedure?

Lord True (Con): I think I did set the record straight on the procedure. According to the principle of amity—I have great amity and respect for the noble Lord—I was not going to pick up the fact that he took me to task for saying that someone had spoken for a long time. I did not say that; I said it was an interesting coincidence that a prepared speech was ready at very short notice. I did say to the Committee—I reiterate this, and the noble Lord can give me a few strictures if he sees my departing back—that I would sit through every hour that your Lordships require of me on this Bill.

1.45 pm

As for the procedural point that the noble Lord asked me about, if a change is made in this House, it is an amendment to the legislation. If it goes in, it will be a Lords amendment to a Bill that has been sent up here, so it will go back to the other place as a House of Lords amendment. If the other place does not like it, theoretically it can reject it, as it can reject any of your Lordships' amendments. That is the procedural position, and that is what I meant when I said that the other place would be able to determine matters. The noble Lord shakes his head; perhaps he will tell me what he disagrees with.

Lord Lipsey (Lab): I do not want to take up the Committee's time on this. Perhaps we could have an exchange of letters.

Lord Foulkes of Cumnock (Lab Co-op): May I take up the point that the noble Lord, Lord Lipsey, raised earlier? We are now about to agree—or otherwise—more than 100 amendments, after 42 minutes' debate. Those amendments are vital in Scotland and Wales, as well as in England, and will determine the future of a whole range of aspects of the electoral structure. This is not giving the matter proper consideration. Perhaps in an unguarded moment, the Minister said that he

[Lord Foulkes of Cumnock]
was prepared to spend all the hours necessary to consider such matters, and we need to consider this in more detail on Report. How can we do that, and look at all the aspects relating to elections in Scotland and Wales as well as in England, without just passing them through in well under an hour?

Lord True (Con): My Lords, the groupings put before your Lordships' House are agreed through the usual channels. I can only serve the House in the way that has been agreed through those channels. As for the concern expressed by the noble Lord, Lord Lipsey, I have nothing to add to my explanation. If the substitution of PACAC with the new appropriate House of Commons committee is agreed by your Lordships' House, it will become a Lords amendment to the Bill, and will go back to the House of Commons and be considered by it appropriately. I have nothing further to add.

Amendment 1 agreed.

Amendment 2

Moved by ***Lord True***

2: Clause 14, page 21, line 15, at end insert—

"(5) For the purposes of subsection (3A)—

(a) the Commission's "devolved Scottish functions" are the Commission's functions in relation to—

(i) Scottish Parliamentary general elections, elections held under section 9 of the Scotland Act 1998 (constituency vacancies), and local government elections in Scotland, so far as those functions do not relate to reserved matters within the meaning of the Scotland Act 1998, and

(ii) referendums held throughout Scotland in pursuance of provision made by or under an Act of the Scottish Parliament;

(b) the Commission's "devolved Welsh functions" are the Commission's functions in relation to—

(i) general elections of members of Senedd Cymru,

(ii) elections held under section 10 of the Government of Wales Act 2006 (elections for Senedd constituency vacancies),

(iii) local government elections in Wales, and

(iv) referendums held under Part 2 of the Local Government Act 2000 or Part 4 of the Local Government (Wales) Measure 2011 (referendums relating to local authority executive arrangements),

so far as those functions do not relate to reserved matters within the meaning of the Government of Wales Act 2006."

Member's explanatory statement

This amendment defines what is meant by the Commission's "devolved Scottish functions" and "devolved Welsh functions" for the purposes of the new subsection (3A) added to the inserted section 4A of PPERA.

Amendment 2 agreed.

The Earl of Courtown (Con): My Lords, I beg to move that the House do now resume, and in doing so, I suggest that we do not resume the Committee stage of this Bill until 2.45 pm.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, we have only done two of these amendments.

The Earl of Courtown (Con): As my noble friend the Minister quietly reminds me, the amendments will be moved in their place on the Marshalled List.

House resumed. Committee to begin again not before 2.45 pm.

Ukraine Update

Statement

The following Statement was made in the House of Commons on Wednesday 9 March.

"With permission, Mr Speaker, I would like to update the House on the situation in Ukraine and Her Majesty's Government's support to the Government in Kyiv.

The situation on the ground is grave. As we can recall, on 24 February, forces of the Russian army, unprovoked, crossed into Ukraine's sovereign territory. Along three main axes, Russian armour has attempted to occupy Ukraine. Its plan was to reach and encircle Kyiv, encircle Ukrainian forces near the border and invade from the south to link up with its forces via Mariupol.

Russian high command committed 65% of its entire land forces, which are indisputably in possession of overwhelming firepower and armour. It is estimated that at the start of the invasion they had between 110 and 120 battalion tactical groups dedicated to the task, compared with approximately 65 in Ukraine. Their missile stocks gave them even greater strength to reach Ukraine at distance. However, what they did not and still do not possess is the moral component so often needed for victory.

After 14 days of the war, according to the Ukrainian general staff, at 6 March, Russian casualties were assessed to include 285 tanks, 985 armoured fighting vehicles, 109 artillery systems, 50 multiple launch rocket systems, 44 aircraft, 48 helicopters and 11,000 soldiers, who have lost their lives needlessly. There are numerous reports of surrenders and desertions by the ever-growingly disillusioned Russian army. To be clear, those are Ukrainian figures; I have to caution the House that we have not verified them by defence intelligence or other means.

I can announce to the House our assessment that, of the initial Russian objectives, only one has been successfully achieved. While Russian forces are in control of Kherson, Melitopol and Berdyansk in southern Ukraine, they currently encircle the cities of Chernihiv, Sumy, Kharkiv and Mariupol but are not in control of them. In addition, their first day objective of targeting Ukrainian air defence has failed, preventing total air dominance. The Ukrainian armed forces have put up a strong defence while mobilising the whole population. President Putin's arrogant assumption that he would be welcomed as a liberator has deservedly crumbled as fast as his troops' morale.

For our part, the United Kingdom continues to play a leading role in supporting Ukraine. On 17 January, I announced to the House the Government's intention to supply military aid to the Ukrainian armed forces. The aid took the form of body armour, helmets,

boots, ear defenders, ration packs, rangefinders and communication equipment, and for the first time it also included weapons systems. The initial supply was to be 2,000 new light anti-tank weapons, small arms and ammunition.

In response to further acts of aggression by Russia, we have now increased that supply. I can update the House that, as of today, we have delivered 3,615 NLAWs and continue to deliver more. We will shortly be starting the delivery of a small consignment of anti-tank javelin missiles as well. I want to assure the House that everything we do is bound by the decision to supply defensive systems and is calibrated not to escalate to a strategic level.

Britain was the first European country to supply lethal aid. I was pleased that not long after a military aid donor conference I held on 25 February, many more countries decided to do the same. From right across Europe, the donations came. In particular, I want to highlight the Netherlands, Sweden, Finland, Denmark, Poland, Romania, the Baltic states, Belgium and Slovenia for their leadership, and we should not ignore the significance of the German Government joining us, in a change of stance, and donating such aid.

Donations are not enough; the delivery of aid to the front line is just as important. Here, again, Britain is leading, because alongside Canada, the United States and Sweden, we have invested in building Ukrainian military capacity since 2015, and we find ourselves able to co-ordinate the delivery alongside our partners.

As the conflict intensifies, the Russians are changing their tactics, so the Ukrainians need to, too. We can all see the horrific devastation inflicted on civilian areas by Russian artillery and airstrikes, which have been indiscriminate and murderous. It is therefore vital that Ukraine maintains its ability to fly and to suppress Russian air attack. To date, the international community has donated more than 900 man-portable air defence missiles and thousands of anti-tank guided weapons of varying types, as well as various small arms. However, the capability needs strengthening, so in response to Ukrainian requests the Government have taken the decision to explore the donation of Starstreak high-velocity, man-portable anti-aircraft missiles. We believe that this system will remain within the definition of defensive weapons, but will allow the Ukrainian forces to better defend their skies. We shall also be increasing supplies of rations, medical equipment, and other non-lethal military aid.

As with any war, the civilian population is suffering horrendous hardships. According to the Ukrainian Minister of Education, 211 schools have been damaged or destroyed, and media footage shows Russian strikes hitting kindergartens. The Chernihiv regional administration reported that the Russian air force was employing FAB-500 unguided bombs against targets in the city, and according to Human Rights Watch, civilians in Mariupol have now been without water and power for almost a week. President Zelensky talked of children dying of thirst. Today the estimated number of Ukrainian civilians killed or injured stands at more than 1,000, but the true figure is expected to be much higher, and I am afraid that worse is likely to come. It is for that reason that the UK will increase its funding for Ukraine to £220 million, which includes £120 million of humanitarian aid. That will make the United Kingdom the single biggest bilateral humanitarian donor to Ukraine. We are also supporting humanitarian work with the Polish and Romanian Governments on the borders.

As I said in my last Statement, we still believe that it is worth trying to build diplomatic pressure on Russia. This week, my good friend the Prime Minister met the Prime Ministers of Canada, the Netherlands and Poland. He also spoke to the leaders of France, Germany and the United States, and the Prime Ministers of Hungary, Slovakia and the Czech Republic. The Foreign Secretary is in Washington at the G7, and also attended the NATO Foreign Ministers meeting earlier this month. I myself met the Ukrainian Ambassador just this morning. President Putin should be and can be in no doubt that the international community is united against his actions. It remains strong, and will not back down.

As well as giving direct military support to Ukraine, we continue to bolster our contribution towards NATO's collective security. NATO Defence Ministers will gather next week in Brussels to discuss the next steps. The UK is doing its bit in giving military support and reassurance to its allies. We are currently supplying significant air power to NATO, including increased air patrols, with both Typhoons and F35s for NATO air policing. We have also deployed four additional Typhoons to Cyprus to patrol NATO's eastern border, and have sent an additional 800 troops to Estonia. Over the last week, Apache and Chinook helicopters were involved in exercises in Estonia. Meanwhile, HMS 'Diamond' has sailed to the eastern Mediterranean, HMS 'Northumberland' is taking part in a northern deployment, and HMS 'Grimsby' is in the Norwegian Sea supporting NATO mine countermeasures.

On Monday HMS 'Prince of Wales', RFA 'Tidesurge' and HMS 'Defender' joined HMS 'Albion' and RFA 'Mounts Bay' for Exercise Cold Response, a multinational exercise off the coast of Norway, and HMS 'Richmond' will be exercising with our Joint Expeditionary Force. We have put over 1,000 more British troops on readiness to support humanitarian responses in the bordering countries. Britain's contribution to NATO is significant and enduring. It is important at this time that, in order to maximise our reassurance and resilience effect, we co-ordinate through NATO and the Supreme Allied Commander Europe.

Few of us will not have been moved by President Zelensky's speech yesterday. His people are fighting for their very survival. His country is united against this aggression, and it is indeed his country's darkest hour. Yesterday I saw footage of a Russian armoured train, bristling with guns, heading towards Mariupol. A single brave Ukrainian woman ran to the train and shouted 'Slava Ukraini'—unmoved, unintimidated by the guns. That woman's bravery should inspire us all.

I know that many of our constituents, and our colleagues, are fearful of what will happen next. President Putin and the Kremlin continue to threaten countries that offer help to Ukraine. Their military campaign will, I am afraid, become more brutal and more indiscriminate, but it is my firm belief that our strength to stand up to such bullying comes from our alliances. As long as we stand united, both as a House and as the international community, the Kremlin's threats cannot

hurt us. We should take strength from the peoples right across Europe who are standing shoulder to shoulder to protect our values—our freedom, our tolerance, our democracy and our free press. That is our shield."

1.50 pm

Lord Coaker (Lab): My Lords, first, I state again the full support of Her Majesty's Opposition for the position the Government have taken on Ukraine. We welcome the military support the Government have given to Ukraine and our NATO allies. It is important to start this debate with a restatement of that fact.

The reports of the barbaric bombing of a children's hospital and a maternity ward in Mariupol are just the latest horrors to emerge from Ukraine. Goodness knows how many men, women and children have been killed, let alone soldiers. Now we learn that ever-more devastating weapons have been used, such as the thermobaric vacuum bomb, with awful photos and videos emerging of the dead and injured—civilians, not combatants. In light of this update, can the Minister tell the House what the Government's assessment is of the current situation in Ukraine? Can she also update the House on the progress of the additional military support being provided for Ukraine, including, as we read in our papers today, the Starstreak anti-aircraft missiles? If NATO planes cannot enforce the no-fly zone, we must surely enable the Ukrainians to do so themselves.

Chillingly, we also learned today that western analysts believe that Russia is contemplating the use of chemical weapons. Can the Minister tell us any more about this assessment and what our response would be in the event that they were, shockingly, to be used? What work is going on with the International Criminal Court regarding any future action that may take place as a result?

There is also growing alarm at the prospect of the danger the war poses to nuclear plants at Chernobyl and elsewhere. Can the Minister say anything about what assessment has been made of that threat to us all, and what can be done?

There are also heart-breaking pictures of people desperate to leave, fleeing the country in terror. Can the Minister report any progress on the establishment of humanitarian corridors to enable people to leave, even in the midst of the military conflict?

I very much agree with the Defence Secretary who, in his Statement to the other place yesterday, spoke of the fear of many people here about what will happen next, as President Putin threatens countries that offer help to Ukraine. What do the Government expect to happen? These fears have been expressed to me and, I am sure, to many other noble Lords. I am sure that we would want to do all we can to reassure the people of our country.

In light of all this, is not the Defence Secretary right to have said the following yesterday in the other place? I very much agree with this and am sure everyone will. In talking about this fear, he said:

"We should take strength from the peoples right across Europe who are standing shoulder to shoulder to protect our values—our freedom, our tolerance, our democracy and our free press. That is our shield."—[*Official Report*, Commons, 9/3/22; col. 327.]

I could not have put it better myself. I think the Defence Secretary spoke for all of us when he said that yesterday. Is not our unity of purpose and belief our greatest strength, even in these dark days? That unity exists here in this Chamber, as well as across the country. I assure the Minister of our full support on everything the Government are doing.

Lord Campbell of Pittenweem (LD): In an expression with which the Minister will be familiar, brevitatis causa, I adopt the questions put by the noble Lord who spoke on behalf of the Opposition.

Two matters arise, though, on which I would be grateful for the Minister's comments. The supply of the laser-guided Starstreak missiles is referred to in the Statement, and there is an element of doubt about whether it can reasonably be described as defensive. Might she expand a little on the Government's thinking on that?

Turning to another element which I heartily support, there is an obligation or undertaking to make a substantial contribution to humanitarian aid, more of which will inevitably be needed. Many countries bordering Ukraine are taking its refugees, which must constitute a substantial economic burden for them. Will any of the sums referred to in the Statement be made available, in turn, to any of these countries?

This Statement is extraordinary because, on the one hand, it describes unmitigated barbarism and, on the other, breathtaking bravery. The targeting of civilians, their homes and refuges is certainly barbaric, but the bravery is shown in the extraordinary fact that this nation, against all odds, has mobilised to face an enemy described in the Statement as one with "overwhelming firepower". This enemy targets the elderly, the vulnerable and the young. I ask, not in the hope of getting an answer: what sort of people attack a maternity hospital? Whether done by design or carelessness, by a bomb or, as has been suggested, artillery, it is still a war crime. There should be no doubt about that.

Now we have the use of thermobaric vacuum bombs, a particularly lethal form of attack. That has not emerged as some kind of intelligence information; it has been boasted about publicly on a Russian television network. There is too, as has already been mentioned, the threat of the use of chemical weapons. Indeed, that threat referred not only to chemical but possibly biological weapons. This undoubtedly raises significant matters for consideration perhaps in this country, but most certainly in Ukraine itself.

In spite of all this, the spirit of the citizens of Ukraine has not yet been broken. Russians claim that the people of Ukraine are their brothers and sisters. It is a very curious affection which relies on cruise missiles, helicopter gunships and artillery shells.

My concern is this: as Russian and perhaps Kremlin desperation increases, and as Mr Putin's schedule is more and more incomplete, other considerations may arise in his mind. He has mentioned nuclear weapons on several occasions. Are we ready for that topic to be mentioned again? I draw to the Minister's attention, although I suspect she does not need me to, the fact that Russian generals include the notion of nuclear war-fighting as part of their doctrine. It is an issue upon which the Government would be well advised to start consideration now.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, I thank the noble Lords, Lord Coaker and Lord Campbell, for their helpful, constructive and encouraging remarks. We are all clear—and were particularly so when we had the privilege of listening to President Zelensky—on the absolute unity of purpose to which the noble Lord, Lord Coaker, referred.

I think we all felt that tangible unity of purpose, not just across the political spectrum within the Parliaments but across the United Kingdom and with our allies and partners. I entirely agree that the unity of purpose is cement-like in bonding us all together in our determination to see off this tyrant, this tyranny and this completely unjustifiable and illegal war in Ukraine. Both noble Lords referred to some of the recent footage. By launching this unprovoked attack on Ukraine, President Putin has chosen this path of bloodshed and destruction, barbarism and butchery. That is what must be resisted. We cannot allow that evil to remain unchallenged and unaddressed. I am very grateful to noble Lords for articulating these sentiments.

I will try to deal with some of the specific points raised. The noble Lord, Lord Coaker, asked for an assessment of where things are in Ukraine. It was clear from the Statement what a very significant catalogue of help has been given, so I will not rehearse that. I have some up-to-date information on where things may be. There is an estimate from the US that between 5,000 and 6,000 Russian troops have died in Ukraine. That is a matter of huge sorrow for the families of these soldiers, which we regret—they are deaths we consider to have been pointless and unnecessary. This folly, this evil excursion, should never have been embarked on.

Russian forces have once again made only minimal progress over the last 24 hours. The logistical issues that have hampered the Russian advance persist, as does the strong Ukrainian resistance. Ukrainian forces around Kyiv and Mykolaiv continue to frustrate Russian attempts to encircle the cities, but we must be realistic. Russian is likely seeking to reset and reposition its forces for renewed offensive activity in the coming days, including operations against the capital, Kyiv. It remains highly unlikely that Russia has successfully achieved its planned objectives according to its assessed pre-invasion plans, but we all know the carnage that has been wrought as it has pursued this completely unjustified and illegal incursion.

The noble Lord, Lord Coaker, also asked about chemical weapons. Yesterday, the White House warned that Russia could use chemical weapons in Ukraine or manufacture a false-flag attack, which we would find utterly reprehensible and condemn. We must be alert and constantly assessing our intelligence and reports of information coming out of Ukraine about what is happening.

That leads me on to the other issue, raised by the noble Lords, Lord Coaker and Lord Campbell, the matter of war crimes. The International Criminal Court of course has a locus in this. We agree that it is vital that perpetrators of war crimes are held to account. I know that all noble Lords will hold that view. It is worth reflecting on the fact that 38 countries, co-ordinated by the United Kingdom, led the largest ever referral to the International Criminal Court, to ensure that Putin will be held to account for his war crimes. We are constantly reviewing that situation closely.

The noble Lord, Lord Coaker, raised the attack on Chernobyl, the former nuclear power-generation site. This is a matter of grave concern, as is the attention paid to the other nuclear site. We were extremely concerned about the reports about Chernobyl, but we understand that no radiation has been released and that this is not likely given the presence of emergency back-up power. What is regrettable is that it has been difficult for the Ukrainian authorities to access the plans and our call is that Russian must allow that access, to undertake essential maintenance work to ensure that power can be restored as best it can.

The noble Lords, Lord Coaker and Lord Campbell, raised Putin's rhetoric. We are now familiar with that rhetoric, most of it intended to frighten, to intimidate, to destabilise and to cause anxiety. The view of the United Kingdom is that we, along with our partners and allies, are dealing with an extremely serious situation. We are focused on that. Your Lordships will agree, as I have inferred from the helpful comments from both noble Lords, that the UK is seen to be absolutely taking its share of heavy lifting in responding to this. That is our primary obligation. That is what we are doing to the best of our ability, effectively, with our partners and allies.

Humanitarian aid and safe corridors would, as a concept, be admirable and commendable, but delivery in practice, given what we have seen on the ground, is much more problematic. The best that we can do is to work with Ukraine and the neighbouring countries to ensure that with our humanitarian support, we give the best assistance that we can to those who are seeking to leave can do so safely.

The noble Lord, Lord Campbell, asked about Starstreak, the new initiative announced by the Secretary of State yesterday. I am no technical expert, and some of your Lordships will know this much better than me, but Starstreak is a high-velocity, man portable anti-air missile. We believe that this system will remain within the definition of weapons and will allow the armed forces of Ukraine to better defend their skies. I commend my right honourable friend the Secretary of State for Defence, who has shown a penetrating insight on these matters and a very welcome practical reaction to what is happening. This is an important help to the Ukrainian forces.

The noble Lord, Lord Coaker, referred to my right honourable friend the Secretary of State's words "standing shoulder to shoulder". I thank the noble Lord for his kind remarks, which reflect the very welcome unanimity that we are seeing across the political spectrum. The noble Lord, Lord Campbell, rightly praised the bravery of Ukraine. We are all full of admiration for the quite extraordinary resilience that the people of Ukraine are showing. It is absolutely incredible, magnificent and inspires us all to do our best to support them.

I think I have answered the points raised, but if I have omitted anything, I will refer it to the noble Lords.

Lord Ashton of Hyde (Con): My Lords, we have 20 minutes for Back-Bench questions. If noble Lords can ask a short question and do not make speeches, it will allow everyone to get a chance to ask a question.

2.08 pm

Lord Jopling (Con): My Lords, have the Government given any attention to the close parallels between the situation in Ukraine and the one in Georgia? Both states have adjoining boundaries with Russia and in both cases Russia has already attained illegal footholds, in Georgia through South Ossetia and Abkhazia. We have been supplying very helpful defensive weapons to Ukraine. Are the Government giving any attention to supplying defensive weapons also to Georgia, if that is what it requires?

Baroness Goldie (Con): As my noble friend will be aware, and as I said earlier, the United Kingdom, both bilaterally with Ukraine and in concert with our NATO allies, has been concentrating on responding to the situation in Ukraine. That response has called for a specific commitment from the United Kingdom in relation to defence resource and defence equipment, and that is the focus of our thoughts at the moment.

Lord Lea of Crondall (Non-Afl): My Lords, I have given notice of my question to the noble Baroness. On the question of Chernobyl, what is the role of the International Atomic Energy Agency at present? I take it that the whole world system has not somehow broken down, but Moscow and Kyiv are covered by the arrangements for Chernobyl and similar RBMK reactors and so on. I helped organise it 30 years ago. Can we say that there is some role for the International Atomic Energy Agency rather than having a squabble, with Russian people appearing in a highly radioactive room and saying that they are now running it?

Baroness Goldie (Con): I probably have limited information to give the noble Lord, but as I said earlier, we have what we think is a reasonably reliable report on the current state of the site. The Government are in contact with the International Atomic Energy Agency, and we continue to support its impartial efforts—that is important; the agency is impartial—to ensure the safety and security of Ukrainian nuclear facilities. Of course, Chernobyl is one of them, but there are others. There is no more specific information I can give to the noble Lord at the moment, but I reassure your Lordships that we continue to monitor the situation closely.

Baroness Meyer (Con): My Lords, I hear that Lavrov is now accusing the Pentagon of developing biological weapons in Ukraine, which is clearly to justify what the Russians plan to do themselves. Does my noble friend the Minister agree that the Government should support the BBC as much as they can—BBC News Russian and the BBC World Service—to deny that fake news?

Baroness Goldie (Con): My noble friend makes a very important point. The extent of disinformation and misinformation pedalled by President Putin and his Government is a matter of huge frustration and one that causes anger. It is frustrating, but I reassure my noble friend that we are responding to that. We found that one of the best ways to respond is to release intelligence which we feel we can safely release. Therefore, to some extent, that effectively pre-empts what Russia may be minded to accuse people of doing.

Let me say in passing that I think we are all full of admiration for all the journalists who have been out in Ukraine and so bravely reporting back, not least for the BBC. I think all of us are watching our journalists and BBC correspondents broadcasting from Kyiv, and they seem to me to reflect the very best elements of journalistic courage and professionalism. I want to publicly commend that, but reassure my noble friend that we are doing everything we can to counter disinformation.

Baroness Boycott (CB): My Lords, Ukraine grows a fifth of the world's wheat, and the prime planting time is the first 10 days of March—that is, exactly now—but this is not happening. We already have bad harvests from the USA and Canada, and not only will Ukraine suffer massive food insecurity itself: it supplies 90% of Lebanon's wheat, about 50% of Egypt's, and all along the north African coast. Prices are expected to double from what they were in 2008, when they were one of the lead reasons for the Arab spring. I know we cannot do something about this from here, but what discussions are the Government having with the WHO and the FAO? This is a crisis we can see coming towards us really fast.

Baroness Goldie (Con): The noble Baroness makes a really important point and one that has registered with many people, not least Governments. It is somewhat wide of my area of departmental responsibility, but I hear what she says and will reflect that back to the department.

Lord Anderson of Swansea (Lab): My Lords, many serious analysts expected Kyiv to be taken via Belarus within two days or so. Clearly President Putin did not factor in the remarkable resistance of the people of Ukraine and their morale, in spite of the imbalance of forces. Quite rightly, we have decided to give sophisticated weaponry to Ukraine, but that surely needs very good training. Where will this training be done—outside the borders of Ukraine?

Baroness Goldie (Con): I can confirm the first part of the noble Lord's question: yes, there will be a degree of training required. He will understand that, for reasons of operational discretion, I am not going to be more explicit about that.

Lord Cormack (Con): My Lords, I am sure my noble friend will agree that that symbolic afternoon on Tuesday was one of the most remarkable in the history of Parliament. Symbolism does have its places. Could I suggest that Parliament—both Houses—should nominate President Zelensky for the Nobel Peace Prize? Could I also suggest that it would be another symbolic gesture to underline our unity if the leader of the Opposition were invited to Cabinet meetings when Ukraine is on the agenda?

Baroness Goldie (Con): My noble friend makes a number of interesting observations. I am sure that we are all conscious of the extraordinary attributes of President Zelensky, and everyone will be reflecting on how we best acknowledge that. As to matters of Cabinet protocol, my understanding is that the leader of the

Opposition is, in fact, briefed on Privy Council terms. I think my noble friend Lord Coaker would confirm that the Government have been as explicit as they can with intelligence and information, and I am not aware of any dissatisfaction with that.

The Lord Bishop of Leeds: Notwithstanding that last answer, have the Government made any assessment that could be made public about the possibility of red lines, particularly in relation to biological, chemical and nuclear weapons, and how that might be communicated to the western public if such weapons were used?

Baroness Goldie (Con): It is a matter of international law that chemical weapons are proscribed. That is one of the areas of concern; there was speculation on the part of the White House in the United States that Russia might be thinking of this. It is very difficult to talk of things like red lines. Nuclear deterrents exist, and they exist within international law. While some may disagree with that, they do exist; indeed, we are a country with one of these important deterrents. Our focus at the moment in this complicated and distressing situation, daily unfolding before us in Ukraine, is how we collectively do our best to respond to that by supporting the Ukrainians in defending themselves and in showing our solidarity—this unity of purpose to which reference has been made—with the President of Ukraine and his people.

Lord Campbell-Savours (Lab): My Lords, with thousands dead, millions displaced and little talk of settlement, why not push the case I have repeatedly suggested since 22 February, before the invasion: no NATO membership for Ukraine for 20 years, pending earlier agreement in the Normandy contact group; protectorate status within Ukraine for Donetsk and Luhansk, under international monitoring arrangements; and Azov-associated battalions, Donbass militia, associated paramilitaries and all Russian forces withdrawing from theatre and, where appropriate, disbanding? The only downside is Putin's possible survival under that scenario—we should remember, then, that our role is not regime change.

Baroness Goldie (Con): If I may commence my response to the noble Lord by picking up on that last point, our role is to support a sovereign country which has been the victim of a completely illegal attack in which war is being waged within its boundaries. It is for that sovereign country to come to its own decisions about how it wants to see the future. It knows that it has the unstinting support of the great majority of global powers, and that has been manifest in not just statements of support but activity, for example at the United Nations. I suggest that these matters have to rest with the Ukrainian Government; it is a sovereign state.

Lord Austin of Dudley (Non-Afl): My Lords, the Minister is completely right: it is not for Britain or anyone else to negotiate away parts of Ukraine. I applaud the military assistance provided by the Government to the people of Ukraine and ask what more we can do to meet the central request in that remarkable address by President Zelensky the other day, which is to keep Ukrainian skies safe. As I say, I very much welcome the assistance that has been provided and the new equipment that was discussed yesterday, but if the Americans are not prepared to facilitate the transfer of those Polish jets to the Ukrainians, what might we be able to do, with other countries, to assist the Poles in making those planes available to the Ukrainians?

Baroness Goldie (Con): The discussions to which the noble Lord refers have indeed been taking place between Poland and the US. We have been quite clear that it is for Poland to make its decision and that we will support whatever that decision is. So far as the United Kingdom response is concerned—as manifest in the recent announcement of the Starstreak anti-aircraft missile—we readily, frequently and robustly assess what is needed and what we are able to provide. That is the basis on which we will continue.

The noble Lord will be aware that when people talk about creating no-fly zones, we get into very difficult territory where a fine balance has to be observed between helping Ukraine and not escalating this conflict into a European or third world war. We are very mindful of that, as are all our NATO partners, and those members have had the fullest and most extensive discussions about that aspect.

To reassure the noble Lord, I said earlier that Russian planes and helicopters have been shot down, and that has been achieved with the existing anti-aircraft missiles available. This new missile is a very powerful piece of equipment, which again will allow the Ukrainians to preserve operational activity in their airspace but deal with enemy aircraft overhead.

Lord Bellingham (Con): My Lords, I warmly welcome today's announcement that Roman Abramovich, another Putin crony, is going to be sanctioned. However, I ask the Minister and HMG to look at a possible but counterintuitive idea: if some of these oligarchs are willing to attack Putin and the invasion, disavow the regime completely and help the Russian opposition from this country, then the sanctions on them could be lifted.

Baroness Goldie (Con): To be honest, I think it is premature even to be discussing that. The sanctions are part of a universal and, I think, very effective ligature around the Russian economy and Russian financial activity, and anyone would be very wary of dismantling any part of that composite edifice. At the end of the day, as we speak, this illegal invader, with his military, is in Ukraine wreaking carnage, and our duty is to do our level best to stop him and help the Ukrainians defend themselves.

Baroness Wheatcroft (CB): My Lords, Mariupol has been without water for five days now and children are dying of thirst. Can more be done to provide food and water to those who are trapped by this terrible war?

Baroness Goldie (Con): I understand the noble Baroness's concern, which I think is shared right across the Chamber. What we, as the United Kingdom Government, are doing, as she will be aware, is offering

[Baroness Goldie]
an extensive package of humanitarian aid. The total offer is £395 million, and that has been used in various ways. The important thing, as she identifies, is how to get aid into Ukraine. The funding that we are providing will help agencies to respond and, I hope, create a lifeline for Ukrainians, with access to basic necessities, particularly medical supplies such as medicines, syringes, dressings and wound care packs. Indeed, one important request from the Government of Ukraine has been in the area of medical supplies. We have provided £3.5 million to fund medical supplies to Ukraine, and medical items have been flown to the region. They came from the DHSC and from the NHS in Scotland.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, has it created any problems for the UK Government that Nicola Sturgeon, the First Minister of a Government who have no responsibilities whatever for foreign affairs or defence, has suggested that we should consider a no-fly zone?

Baroness Goldie (Con): As the noble Lord will be aware, the United Kingdom Government have been approaching this crisis at the global level with other NATO member states. We have been doing that to try to provide a concerted and properly thought-through response to this crisis. Member states, including the United Kingdom, have behaved responsibly and effectively, and have shown shrewdness in assessing what is possible and what is not. I commend their collective judgment on the matter.

Viscount Waverley (CB): My Lords, I am sure the Minister will correct me if I am wrong but I believe that issues relating to Ukraine being involved with NATO membership are actually contained in its constitution. That would need to be changed, and it cannot be changed until there is peace.

Grave situations require disconcerting questions. Red lines have been mentioned. Do HMG have red lines in the event of Russia using chemical weapons in Ukraine? What is HMG's assessment, analysis and response to reports that Russian mercenary groups are being deployed in Ukraine, including but not limited to Wagner Group and related organisational offshoots, including foreign fighters from Syria? When are we going to call enough as being enough? Finally, what can be done to cut through the fog of disinformation for the people of Russia so that they know what is being conducted by Russia in their name?

Baroness Goldie (Con): To pick up the point about disinformation, as I briefly alluded to in reply to my noble friend Lady Meyer, we are taking steps. We try to find channels of communication into Russia, whether through social media or whatever, to relay the facts of what is happening in Ukraine. We hope that some of that information is now getting into Russia and being disseminated.

As to what we do if the conflict escalates, we constantly —again, in conjunction with our NATO allies—appraise and assess what is happening and then, after discussion, conceive the appropriate response to it. That is what we have been doing and shall continue to do.

Lord Hamilton of Epsom (Con): Does my noble friend accept that it is rather unhelpful to describe lethal weapons being sent to the Ukraine as either offensive or defensive? Weapons can be used in either role; it just depends on how they are deployed.

Baroness Goldie (Con): From the outset, we gave Ukraine anti-tank missiles—and we were one of the first countries to do so—but we have been clear that these are bits of equipment that they use to defend themselves against attack; if there is no attack then there is no need to use them. We cannot leave Ukraine in a position where it is unable to defend itself while the rest of us sit back and shed tears. We are trying to put our money where our mouth is and give the Ukrainians what they need. I think we are managing to do that. The noble Lord, Lord Campbell, raised the issue of Starstreak and asked whether it fell within the broad definition of what we understood to be legitimate and reasonable in the circumstances. We construe it to be so.

Lord Bridges of Headley (Con): I do not wish to go into operational details but could my noble friend the Minister tell us what steps the Government might be taking or discussions they might be having with British business to ensure that our businesses are ready in the event of a possible Russian cyberattack?

Baroness Goldie (Con): As my noble friend will be aware, the United Kingdom has its National Cyber Security Centre, which is well placed to deal with and anticipate such attacks. It enjoys a close relationship not just across government departments but with those departments' client users. Obviously, we can never guarantee that cyberattacks will not happen, but we will certainly do our level best to anticipate them and, were that to happen, to swiftly manage and restore communication.

Baroness Symons of Vernham Dean (Lab): My Lords, I thank the Minister for answering the questions as fully as she has while skilfully not answering in such a way as to give away too much information at such a sensitive time. I think she has done brilliantly.

Baroness Bennett of Manor Castle (GP): My Lords—

Lord Butler of Brockwell (CB): My Lords—

The Deputy Speaker (Baroness Fookes) (Con): My Lords, the time has elapsed.

Noble Lords: There is time for one more question.

The Deputy Speaker (Baroness Fookes) (Con): But two noble Lords got up at the same time. We must proceed.

Home Office Visas for Ukrainians

Commons Urgent Question

2.29 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my right honourable friend the

Home Secretary to an Urgent Question in another place on refugees from Ukraine. The Statement is as follows:

"Mr Speaker, I am grateful for this opportunity to update the House on the Government's humanitarian response to Putin's depraved war on Ukraine. As the House knows, the UK's humanitarian support for Ukraine has been developed following close consultation with its Government. On 4 March, I launched the Ukraine family scheme. It applies to immediate and extended Ukrainian family members, and everyone eligible is granted three years' leave to enter or remain. Today, I want to set out further changes that I am making to make the process quicker and simpler.

I have two overarching obligations: to meet my first responsibility of keeping the British people safe and to meet their overwhelming demand that we do all we can to help Ukrainians. No Home Secretary can take these decisions lightly, and I am in daily contact with the intelligence and security services, which provide me with regular threat assessments. What happened in Salisbury showed what Putin is willing to do on our soil. It also demonstrated that a small number of people with evil intentions can wreak havoc on our streets.

This morning, I received assurances that enable me to announce changes to the Ukraine family scheme. Based on the new advice I have received, I am now in a position to announce that vital security checks will continue on all cases. However, I can announce that from Tuesday Ukrainians with passports will no longer need to go to a visa application centre to give their biometrics before they come to the UK. Instead, once their application has been considered and the appropriate checks completed, they will receive direct notification that they are eligible for the scheme and can come to the UK.

In short, Ukrainians with passports will be able to get permission to come to the UK fully online from wherever they are and will be able to give their biometrics once in the UK. That will mean that visa application centres across Europe can focus their efforts on helping Ukrainians without passports. We have increased the capacity at those centres to 13,000 appointments a week. That streamlined approach will be operational as of Tuesday, 15 March, in order to make the relevant IT changes.

I will, of course, update the House if the security picture changes and if it becomes necessary or feasible to make further changes to protect our domestic homeland security. Threat assessments are always changing and we will always keep our approach under review. In the meantime, I once again salute the heroism of the Ukrainian people."

2.32 pm

Lord Coaker (Lab): My Lords, I thank the Minister for that, but the Home Office's response so far to Ukrainians fleeing Russian bombardment has been shambolic. The Home Secretary seems to be making it up as she goes along. Desperate people—families with young children—have travelled hundreds of miles because the Home Office cannot get a grip on where its own visa centre is. Why are the changes announced today not being made for another five days? What do people do today, tomorrow or the next day? There are Army troops on standby to help: why have they not been brought in to staff emergency centres?

The Minister mentioned people with passports: what happens to those without passports or who fled bombs without grabbing their documents because they were being bombed? What about, for example, the Ukrainian nurse working in our hospitals? Can the Minister guarantee that her family would be welcome here? There are so many gaps and so many holes in it, notwithstanding the announcements that have been made today to deal with the human suffering that we see in Ukraine. The Government have to get a grip and get a grip now.

Baroness Williams of Trafford (Con): My Lords, as to why the changes will not come in until Tuesday, it will be necessary to get the IT systems up and running, and it will take until Tuesday to get that done. What that will do, however, is free up the system generally for those without passports to be helped at VACs, and the whole system will be speeded up that much more quickly. It might assist the noble Lord—and I have given updated figures every day that I have taken Questions this week—to know that, as I understand it, as of this morning, we have now granted 1,305 visas.

Lord Paddick (LD): My Lords, those seeking sanctuary in the UK crossing the channel in small boats, many of whom do not have passports, undergo biometrics and security checks in the UK. Why can Ukrainians, without family in the UK or passports, and nationals of other countries fleeing Putin's war, not do the same? In particular, women, children and the elderly are unlikely to present security threats to the UK, so what is stopping the Government lifting visa requirements, as EU states have done?

Baroness Williams of Trafford (Con): As I said to the noble Lord, Lord Coaker, yesterday, one thing that we will not do is dispense with security checks. But there will be a lot more capacity at VACs for those without passports, because those with passports can now come here and have their biometrics taken here.

Baroness Finlay of Llandaff (CB): Will the Minister please clarify whether the new opening-up of the scheme for those with visas applies to those who do not have family here, but are coming under a sponsorship scheme? Will she say how sponsors are being collated; whether it is correct that it is the Department for Levelling Up that is responsible for all of this, and how it is working with the Home Office; and whether the Government have recruited recently retired Border Force staff, who are expert at spotting problems, to come in and help man, so that we can bring in the thousands of people who otherwise risk dying of cold, apart from anything else?

Baroness Williams of Trafford (Con): As I said to the House yesterday, the humanitarian sponsorship pathway is going to be a DLUHC operation. Obviously, I will be working in close contact with DLUHC. In fact, I was speaking to Richard Harrington this morning,

[Baroness Williams of Trafford]
and we will be working closely together to ensure that this sponsorship pathway operates smoothly. On whether the biometrics will be dispensed with for those on that scheme, I cannot answer the noble Baroness, because I am not sure that that has even been decided yet, but I will certainly update her on that.

Lord Porter of Spalding (Con): My Lords, the changes are welcome, but they are far too late. We were arguing the case for people to be able to come in without visas last week. As the Minister has already mentioned Salisbury, I am not sure, but I seem to think that I saw pictures of the people who were allegedly guilty of those offences, and they did have passports and visas. The visas were, therefore, not the security system that we would have hoped they would be, so I do not see why we are still faffing about around the edges. It is too serious to have every move that we are making being dragged out too slowly. We need to get our finger out and get on with it.

Baroness Williams of Trafford (Con): I understand my noble friend's points, but we will continue to carry out security checks on anyone who comes in. The point is that Ukrainians with passports will be able to come straight here and have their biometrics taken. That will free up the system much more quickly.

The Lord Bishop of St Albans: My Lords, perhaps the Minister could help us a little. Ukrainians are arriving, some of them with leave to remain, but they have no recourse to public funds. For example, yesterday my chaplain at the airport in Luton was phoning me saying, "We have 12 people. They have been put up for a week in a hotel by Border Force, but that is going to come to an end on Monday." We are currently trying to raise money and funds, and to identify places for these 12 people. This is a really serious problem facing us immediately. We want to help, but there is a very real danger that, if we cannot get the legalities sorted out, there are going to be people—particularly single people—sleeping rough by next Monday. Will clear guidance be given to local authorities, and can we try to find a way through some of these problems, which need to be addressed now?

Baroness Williams of Trafford (Con): I am assuming that the right reverend Prelate is not referring to people coming in under the family scheme, because clearly they would have recourse to public funds. I am assuming that he is talking about Ukrainians seeking asylum here. Ukrainians coming here under the family scheme, by its very nature, will have family members here. I will take this offline and discuss it with the right reverend Prelate, because certain things in what he is saying do not seem to fit the scheme that we are talking about.

Lord Adonis (Lab): My Lords, do we have any evidence as to how many Ukrainians actually have a passport?

Baroness Williams of Trafford (Con): I do not know; I can find out for the noble Lord.

Baroness Meyer (Con): My Lords, when history books are written, the United Kingdom will be judged as much by its humanitarian response as by its supply of weapons to Ukraine. Can my noble friend the Minister assure the House that instructions on how to apply for visas are written in clear English, in Ukrainian and in Russian, and that the new online service will not crash as soon as it opens on Tuesday?

Baroness Williams of Trafford (Con): I can certainly undertake to do that for my noble friend.

Lord Dubs (Lab): My Lords, it is not as if we have not had weeks of notice that this was going to happen. What has been going on? Has the Minister looked at today's papers—not necessarily the *Guardian* but the Conservative-supporting papers? They are all appalled. British public opinion is appalled at what has been going on. If Ukrainians who do not have family connections wish to seek safety here, what is the pathway for them to do it? Will there be limits? Will they be able to come easily or will it be more difficult? This morning, I had a desperate email from somebody asking if we could take 80 orphans. What is the policy?

Baroness Williams of Trafford (Con): The noble Lord might recall me talking this week about the humanitarian sponsorship pathway, which is for Ukrainians without family in the UK who want to come here. There is no cap on the number of people who can come. All they need is a sponsor. As was mentioned previously, we have been inundated with offers. One thing that I discussed this morning with Richard Harrington was how we capture that generosity and ensure that the people who want to help can help.

Lord Cormack (Con): My Lords, we capture that generosity by being efficient. Will my noble friend tell me what is the status of Lille? On Monday, refugees were told to go to Calais and on Tuesday they were told to go to Lille. Where do these poor people go?

Baroness Williams of Trafford (Con): There will be a temporary facility at Lille, but I want to put in context for my noble friend and others in the House the number of people who went to Paris compared with those who went to VACs in Poland. The number in Rzeszów and Warsaw was 10 times the number going to Paris, for obvious reasons. People are far safer to go to the nearest VAC as they exit Ukraine.

Baroness Hamwee (LD): My Lords, the noble Baroness is very bold in giving assurances about the robustness of the IT, which I was going to ask about. As well as information being available in the correct language, will she explain more broadly how information will be disseminated and made available to all those at the border who must be very uncertain and have great difficulty in finding that information?

Baroness Williams of Trafford (Con): The noble Baroness raises a crucial question because those who are not well informed at the border could potentially find themselves at the mercy of traffickers. There is a

lot of activity and assistance at the border to ensure that people are signposted to the right place. Dispensing with the need for people with Ukrainian passports to go to a VAC will speed up their passage here.

2.43 pm

Sitting suspended.

Elections Bill

Committee (1st Day) (Continued)

2.45 pm

Amendment 3

Moved by ***Lord Collins of Highbury***

3: Clause 14, page 21, line 15, at end insert—

"(5) This section expires at the end of the period of 12 months beginning with the day on which the Elections Act 2022 is passed."

Member's explanatory statement

This amendment would prevent a strategy and policy statement more than 12 months after this Act is passed.

Lord Collins of Highbury (Lab): My Lords, on behalf of my noble friend Lady Hayman, I will speak to this amendment while she searches for her glasses.

These are classic Committee amendments in which we try to probe exactly what lies behind these clauses and in particular the clause that we do not agree with that we debated earlier. It is important to address the question that the noble Lord, Lord Butler, asked: what is the question to which this clause gives an answer? It is not clear, and I hope that we can address that with this amendment and the series in the following group to try to elicit some answers.

I was intrigued by the explanation of the noble Baroness, Lady Noakes, that the statement is about the political environment that the commission operates in. That can change rapidly, not least the closer we get to a general election. Now that we do not have fixed-term Parliaments—not that that really determined when a general election could be held—it is not clear what timetable would be involved in this requirement to produce a statement, which the commission "must" take cognisance of. Let us have some answers from the Minister.

I will repeat the question asked by the noble Lord, Lord Butler: what are we trying to solve here? What is the commission not doing that the Government think it should be doing at the moment? It is not clear. I have not heard a single criticism about the failure of the commission to carry out its statutory functions. I have heard political criticisms. The noble Baroness, Lady Fox, is fortunately not in her place so I will say what I want to say. I am prepared to accept that Parliament agreed to a referendum, and Parliament will abide by the result of that referendum and the Government do so, but I am not in favour of referendums. I am in favour of parliamentary democracy. I know who used referendums a lot: Hitler used referendums to store up his power, and so does Putin. It is important to understand what we are talking about here, which is a body that oversees statutory functions in the conduct of elections.

Therefore, with these probing amendments we are seeking to know—despite the detail of what the clause says—how frequently the Minister thinks these statements will be issued. When will the first be issued? Will it be six months before the next general election? Could it disrupt the way that people, political parties and civil society react to the general election? Let us hear it. How often does the Minister think this should be reviewed? The Bill says that this is something we should expect every five years and that it will fall into the cycle of elections, but our political environment is not as stable as that, so there may be other issues that prompt this. I would like some answers to those questions.

Also, what is the Minister's expectation for how long it will take to produce the statement and the requirement for consultation? What does he expect between the start of the process and its end? What does he think the implications will be not only for the Electoral Commission but for the political process itself and the way political parties operate? It is really important that we get some answers to those questions.

I turn back to the point the noble Baroness, Lady Noakes, raised. I have been intimately involved with the Electoral Commission, certainly for the three-year period I was general secretary of the Labour Party. One of the innovations I thought was really good was that the Electoral Commission has the experience of people with quite detailed knowledge of the electoral process. It has members who are aware of the way political parties operate. It is not working in isolation; it has that experience.

One of my roles was to nominate somebody to the commission. It has a Member of this House, the noble Lord, Lord Gilbert, who is a friend of mine. Even though we are in opposite parties, we have collaborated in better understanding the rules and regulations that operate on political parties. Sadly, the noble Lord, Lord Gilbert, cannot be here this afternoon but I think all members of the Electoral Commission, even though they are nominated—some of them by political parties—take their responsibilities and independence very seriously. I think if he were here the noble Lord, Lord Gilbert, would explain that that was why he did not sign the letter from the Electoral Commission; he is a Member of this House, and it would perhaps have been inappropriate. But that does not stop him taking his responsibilities on the Electoral Commission seriously.

I do not get it; I really do not get what this is all about. What are the Government trying to correct or do? There are mechanisms now, as we heard in the previous debate, about accountability, the Speaker's Conference and representations. Of course, just as importantly, political parties nominate to the commission—not just the Conservative Party or the Labour Party, but the Lib Dems and the Scottish nationalists have representation on that body. It is independent representation, but they take their statutory responsibilities seriously.

Let us get some answers if we can, not only to the question of the noble Lord, Lord Butler, but also to when the first statement will be produced. How long will it take? How close will it be to the next general election? What impact will such a statement have on the conduct of that general election? These are vital

[Lord Collins of Highbury]
questions, irrespective of a future debate on whether the clause stands part. We need answers to these questions because they will determine our attitude to whole aspects of this Bill. I beg to move.

Baroness Noakes (Con): My Lords, the noble Lord, Lord Collins of Highbury, has ranged rather more widely than the contents of the two amendments in this group, but I respect that Committee is an opportunity for probing detailed aspects. I want to speak only to the second amendment about the length of time you would normally expect a statement to exist.

We have to see these as strategic statements; they are about strategies and policies. Too short a timeframe simply would not work. The presumption in the Bill is five years, which is a reasonable medium-term timeframe for giving some stability, with the option for reviews earlier on various grounds listed in the Bill. I support the general concept of five years being a good starting point, recognising that there can be occasions when this has to be revised. But they should not be picked up and looked at every year or in the run-up to an election, because they should be dealing with issues that have a longer duration.

Lord Collins of Highbury (Lab): Can I just ask the noble Baroness a question? If she looks back over the last 20 years, or even over the period of the Electoral Commission's existence, what have the gaps between general elections been?

Baroness Noakes (Con): I do not think that is a relevant question because I do not believe the statement is going to be used to try to fine-tune what is done in relation to any particular election. It will be about more strategic things like getting more participation from certain groups in the democratic process and those sorts of issues.

Lord Collins of Highbury (Lab): I am sorry to interrupt but I think this is an important dialogue to have. We bandy around the words, "strategy" and "long-term strategy" but what we have not had from the Government—though the noble Baroness has attempted to give us an answer—is the answer to: what is behind this clause on this statement? Why do we need this statement?

I agree with the noble Baroness that one of the important things, and what this Bill should be about, is how we increase participation. The noble Lord, Lord Hodgson, is unfortunately not here, but this Bill should be about what we do to increase participation in our democratic process. How do we ensure that more people are able to participate and what do we do to take down the barriers that inhibit participation? If the noble Baroness is saying that this statement will be about that, why are those things not in the Bill?

Baroness Noakes (Con): I am going to let my noble friend the Minister answer all this in detail because I am not a government spokesman on this. I was merely offering my opinion on the timeframe. When we get to the stand part debate, I am going to offer some other opinions about why these statements are useful in the context of regulators.

My concern is to see that these statements are strategic in nature and that means not short term in nature. They should be seen in that context. The timeframe of five years is fine for that, but I am going to leave my noble friend the Minister to respond in more detail to the broader questions that the noble Lord has asked.

Lord Rennard (LD): My Lords, these amendments may lead to some mitigation of the effects of the Government taking control of the strategy and policy of the Electoral Commission if the Bill is passed in its present form. If Clauses 14 and 15 are not taken out of the Bill, as they should be, we can still limit some of the damage by preventing the party in power continually changing the statement in accordance with its own interests.

Amendment 3 would not allow a new statement 12 months after the Act is passed, while Amendment 13 tests how often the Government might seek to change such a statement. As the noble Lord, Lord Collins, pointed out, the amendments probe the Government's intention in relation to the timings and processes of the proposed strategy and policy statement to which the Electoral Commission will be subject. The governing party appears to want to emasculate the role of the independent watchdog.

3 pm

I look forward to a detailed explanation of when the Government intend issuing the first policy and strategy directive to the commission. We want to know how often these may be issued and what may be the basis of revising them. Is it possible that the Government will change the role and purpose of the commission prior to the next general election? If not, why is the plan for a statement, or what might be more properly called a directive, in the Bill in the first place? As my noble friend Lord Stunell asked, would noble Lords on the Government Benches be happy with such provisions if they were to find themselves on the Opposition Benches? That is a question to which we have yet to hear an answer.

In considering the policy and strategy statement to be written by the Secretary of State, telling the Electoral Commission what it may and may not do, will the Minister tell the Committee which political parties and which organisations have supported this principle and which have opposed it? As far as I can tell, support comes from only one party. All the independent organisations concerned with the health of our democracy have opposed there being such a statement.

Lord Butler of Brockwell (CB): My Lords, since the Minister will no doubt address the question that the noble Lord, Lord Collins, raised, perhaps I may just add a supplementary. In addition to asking what problem Clauses 14 and 15 address, why is a strategy and policy statement thought the necessary solution to it?

Lord Kerslake (CB): My Lords, may I add a further supplementary question? In the Written Ministerial Statement, the Minister in the other place, Chloe Smith, said:

"In recent years, some across the House have lost confidence in the work of the Commission".—[*Official Report*, Commons, 17/6/21; col. 11WS.]

Perhaps the Minister can tell us whether that is the view of some across the House of Commons or of the Government? Is this change about an issue of confidence or is it something different?

Lord Scriven (LD): My Lords, it is interesting to follow the comments of the noble Baroness, Lady Noakes, who says that this is a strategic statement that is there for five years and not for revision. If we look at page 24 of the Bill, new Section 4E says that there is a power to revise the statement and that the Secretary of State may revise the statement at any time. It goes on further to say that:

"The power under subsection (1) may be exercised … on the Secretary of State's own initiative".

If this is a strategic statement, it then goes on to say about revision on page 25 under new Section 4E(4):

"The Secretary of State may determine in a particular case that section 4C(2) (consultation requirements) does not apply in relation to the revised statement."

The view of the noble Baroness, Lady Noakes, is that this is a five-year strategy where the Secretary of State does not want to intervene because it is about the long-term view of the commission. But the Secretary of State can solely decide that not only are they going to revise but that no consultation is needed. May I ask the Minister under what circumstances and for what purpose would the Secretary of State wish to revise the strategy and policy statement? Under what circumstances would the Secretary of State deem it inappropriate to consult on the new statement, particularly if we follow the view of the noble Baroness, Lady Noakes, that this is a strategic view where the Secretary of State does not need to get involved on day-to-day issues because the strategic direction is set for five years? Why have the revision policy and, particularly, why can the Secretary of State determine alone to change the statement without consultation?

Baroness Noakes (Con): My Lords, if I may respond to that, I was careful to say that it a broad presumption of five years and that the Bill allows for other opportunities, which I am sure my noble friend the Minister will explain. The noble Lord failed to deal with the fact that the revision can be considered at the request of the commission as well—it is not just a one-way street—and that is provided for in new Section 4E.

Lord Scriven (LD): If noble Lords will allow me, the point I was raising was the basis on which the noble Baroness said that it was a strategic five-year statement and therefore the noble Lord, Lord Collins, had got the concept wrong. If it is a five-year statement that gives a long-term vision for the commission, the Secretary of State should not have sole power to revise without consultation. That is the point that I was making. It is in the Bill.

Baroness Hayman of Ullock (Lab): My Lords, on consultation, may I just come back to the Government's response to the committee's fifth report, which I read out earlier? They said that suggestions to set minimum timeframes for consultation were disproportionate and unnecessarily burdensome. This is just not good practice. We must have proper consultation when we are looking at anything that changes our governance procedures.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I am grateful to the noble Lord opposite for tabling these amendments. Let me say that it is entirely proper, legitimate and normal to table probing amendments. There is a limit to which probes will get answers because I am not going to be led into hypothetical sets of circumstances.

We all know that electoral law and practice evolves over time and things happen that are inconceivable at the time we may happen to legislate. Who would have conceived, for example, of the practices seen in Tower Hamlets in those local elections? We have collectively—I think there will be agreement across the House on this—moved to adapt the law and our practices and to respond to change. It is reasonable that there should be some flexibility. I do not wish to get into a detailed challenge—

Lord Collins of Highbury (Lab): I was intimately involved in Tower Hamlets. I was general secretary and suspended the mayor from membership of the party at the time. Can the Minister answer the specific question? The law at the time dealt with abuses in Tower Hamlets; in what way will this statement address any inadequacies? I am not even sure that there were inadequacies in the law because it was able to address the problems in Tower Hamlets.

Lord True (Con): My Lords, I hope the statement and some of the things that the Government suggest might be in it will be considered unexceptionable when we come to it. I hope people will examine it. I was venturing some response to the question of why anyone should consider that anything needed to be said to the Electoral Commission. I was about to preface it—before the noble Lord quite reasonably got up—by saying that I did not want to get into any kind of generalised criticism of the Electoral Commission because one respects its independence and its role.

Since I have mentioned Tower Hamlets, this was a case where the Electoral Commission did not act in a particularly appropriate way. It did not check that the Tower Hamlets First party even had a bank account. It did nothing to tackle the activities of the corrupt mayor. Election judge Mawrey noted in the Tower Hamlets case:

"It can be said that because the Commission rubber-stamped the application for registration it may be inferred that the Commission was satisfied. All one may say, with the greatest of respect for the Commission, that the enquiries into the structures of"—

Tower Hamlets First—

"cannot have been excessively rigorous."

The election judge was critical in that case.

I am sure that the Electoral Commission has learned lessons from that, and one would hope that this would be the case, and I do not make any imputation or reference to existing members of the Electoral Commission. The Committee on Standards in Public Life said in its report,

"In the course of gathering evidence"—

and this is not me or the Government, this is the committee—

"we heard some affecting personal stories of a small number of MPs and campaigners who have been regulated by the Electoral Commission. Their experiences were clearly extremely difficult

[LORD TRUE]
and stressful – both personally and professionally – and we think there are changes that can be made to improve the way the Electoral Commission approaches its role."

We may have differences about how we should proceed in a set of circumstances but, if I am asked if there is any evidence that in the past perhaps not everything was perfect in that world—well, I have just given two examples that are not from the Government. One is from a judge, and the other is from the Committee on Standards in Public Life.

Lord Collins of Highbury (Lab): May I interrupt again? The Minister jumps from the specific to the general and keeps saying that this statement is going to be innocuous. The noble Baroness, Lady Noakes, says it is going to be about five-year plans and longer-term strategies, and then the Minister talks about specific illegal acts and the failure to address some of them. We are jumping around. If there are problems—and this is why I jumped up before—particularly on postal votes, let us put in laws to address them. But we are not talking about new laws and new regulations; we are talking about how the Electoral Commission operates within its statutory functions, and the Government now want to interfere in that. This is the issue that concerns everyone. The Minister jumps from broad, innocuous strategy to specific regulation—very dangerous.

Lord Stunell (LD): I appreciate the Minister giving way. I hope that his response will include a little more about what the Committee on Standards in Public Life recommended as the solution to the problem that the Minister quite rightly drew to our attention, because the solution recommended by the committee to the Government is not included in the Bill, and the solution brought forward by the Government is condemned by the committee.

Lord True (Con): I was answering the question I was asked in Committee; I was asked in a supplementary question, and then in another, to give an example of where there has been a complaint about the Electoral Commission, so I tried to serve the Committee by giving two answers. Perhaps that was ill-advised, but I am happy for them to stand on the record. I did say that we would be discussing on this legislation what the appropriate response is. We think that the measures that the Government have put forward, and we will debate this shortly, are proportionate and reasonable, and they are not a direction. When we see what is contained therein, they neither constrain the role of the Electoral Commission, nor direct it.

The Government oppose these amendments. Amendment 3 proposes that the power to designate a statement expires after 12 months of the Act being passed. It is unclear if the intention is that the initial statement should be designated within 12 months or that no statement should be enforced after 12 months. If the limitation is intended to attach to the initial statement, the Government's view would be that it would add unnecessary pressure to the timetable and could curtail the amount of time afforded to the consultation.

I cannot anticipate the length for production—I was asked that, and I do not think I can respond in writing on this, because it is provisional, in a sense. Parliament has to agree the concept first, then the consultation has to proceed. It does say within the Bill that, in a subsequent review, the review period would be nine months; that is what is envisaged in the case of a review, but in saying that I am not making any commitment on progress, should Parliament agree to these procedures. I am not in a position to do so. If the statement, as drafted, prevents any further statement or revision beyond the initial 12-month period, we could not accept that, because we believe that it is important that, subsequent to any additional statement that Parliament may agree, the Government of the day and the Secretary of State should have the power to make changes and to review to ensure that it remains up to date with any emerging concerns.

3.15 pm

In relation to the amendment that proposes the requirement for a new strategy and policy statement every two years rather than at least every five years, it is our view that this is unnecessary. In any case, some of the contributions in this debate have expressed concern that there should be too regular a review. It is the Government's view that the requirement to review the statement at least every five years mirrors the Electoral Commission's statutory duty, which is to produce a five-year corporate plan, so it seems a logical congruence. In any event, as noble Lords have said, the Secretary of State is able to propose revisions more regularly if that is deemed necessary. As to why, it provides flexibility on the timeline for amending a statement should it be required, perhaps by unforeseen concerns, while providing a five-year minimum review threshold.

For the reasons I have set out above, I urge that the amendments be withdrawn.

Lord Collins of Highbury (Lab): Before the noble Lord sits down, I wish to say that one of the issues that I raised, and why these probing amendments are there, is to ask not only how quickly and regularly the report will be produced, but what the implications are of a report being produced very close to a general election. Does the Minister think that there are any implications to that, and that it may impact on the political process, particularly how political parties operate?

Lord True (Con): When one looks at the areas which are covered in the indicative proposals, I do not think that there are things that would seriously affect the conduct of elections. The Government submit that these are matters which, in the current circumstances, would be of ongoing importance—improving accessibility, increasing participation, combatting foreign interference in UK elections and improving transparency.

Lord Collins of Highbury (Lab): Just on that last point—I keep interrupting, but this is Committee and I think it is important that we get clear answers—if a strategy paper said it is okay to take money from Russian donors, would that not have an implication for a general election? Would it not impact on certain

political parties? Maybe even look at its reverse: perhaps certain money from trade unions should not be accepted. The funding of political parties is a critical issue and, if it is in this indicative statement, it will have huge implications for a general election.

Lord True (Con): The permissibility of donations is a matter of the law of the land, and we will be considering the law on political donations later. As the noble Lord will see, the issue is publishing clear and easily accessible information about spending and donations, which is a job done by the Electoral Commission, but it would probably be prudent to look at foreign interference at this time. I think that would be supported across the House. I give you that as an illustrative example.

Lord Scriven (LD): Before the Minister sits down, I must press him further to answer the two questions that I asked. First, this is a strategic document: what would a Minister require, on his or her own initiative, to change a strategy? Because a strategy is there for the long term. It is not about day-to-day issues. Regardless of what happens, you keep to your strategy—that is one of the key issues of leadership. Could the Minister give the Committee examples of something, rather than general "unforeseen circumstances", that might happen that would require a Minister to intervene to change a strategy?

Secondly, the Minister did not answer my question about why they would wish to do that under new Section 4E(4) without any consultation.

Lord True (Con): My Lords, the Government are setting out a structure in which there would be a regular review. As I outlined, I am not in a position to answer hypothetical questions about a future that might arise. I did say that things have arisen that require a response, and which I am hoping to persuade Parliament in the course of this Bill, following the Pickles report, that we should respond to. Such things might occur in the future, but the structure and timing the Government are setting out are those set out in the Bill. I am not going to be led into hypothetical consideration of what might or might not happen in the future.

Lord Scriven (LD): Could the noble Lord answer the second point: why, regardless of any change, would you wish to change something without any consultation? That is a key issue. What would stop consultation taking place on an issue that a Minister decided to change in a strategy?

Lord True (Con): My Lords, I am sure that any Government's preferred position would be to consult, but the Government believe there is a need for a contingent power here. If noble Lords object to that, no doubt they will lay down amendments.

Lord Collins of Highbury (Lab): My Lords, this has been an extremely useful exercise. Rather than answers, we have more questions, which I think we will pursue in later debates in terms of not only clause stand part, but some of the other elements of the Bill we need to address. Certainly, if we end up on Report with this clause still in place, we will need to come back with strict and clear amendments, particularly on the fundamental issue of consultation. Despite a very useful debate, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Lord Collins of Highbury***

4: Clause 14, page 21, line 15, at end insert—

"(5) A statement designated under this section must not be published until a draft statement has been approved by a resolution of each House of Parliament."

Member's explanatory statement

This probing amendment would mean that a draft strategy and policy statement must be approved by both Houses of Parliament.

Lord Collins of Highbury (Lab): It is me again. Here, we are trying to better understand what the Minister means when he repeats reassuring paragraphs, not least, "This is not the Government imposing on the Electoral Commission; this statement will be subject to Parliament, and there will be consultation"—although, there will be circumstances where there will not be consultation, which is even more worrying.

We are trying to probe exactly how engagement and approval of both Houses of Parliament will work. This is important, because in the other place the majority rules, which means there is sometimes a lack of scrutiny and attention to detail. The Government have a majority and the Executive, if they take an opinion, try to force their view through the House of Commons, naturally, by the function of the majority party. So, scrutiny gets squeezed. This was one of the interesting things about the scrutiny the Commons did on this Bill in Committee. It was done in two and half hours. There were some really important clauses on funding that got no consideration at all, which is why the role of this unelected House—again, the noble Baroness, Lady Fox, is not in her place—is so vital. Our job is to scrutinise, to ensure that when legislation is passed by the majority in the other place, it is fit for purpose, does what it is intended to do and does not have other implications.

These probing amendments try to push the Government into giving clearer answers about how Parliament is going to engage in the process of this statement. We are also seeking a clear position on the role of this House in scrutinising and ensuring that the majority party of the Executive is not able to force things through, which can have huge implications. I was going to say it can have huge implications for the Opposition parties, but of course, it may also do so for the majority of the votes cast in our democratic process.

I come back to the fundamental point that many noble Lords have mentioned. Changes to our electoral system should be made by consent and in a way that all political parties can accept—these are the rules, and we are all going to follow them and abide by them. As soon as an Executive start pushing things through that favour their party and cause damage to the other

[Lord Collins of Highbury]
parties, that is a very dangerous road to go down. We are trying to ensure through these amendments that changes in statements are not just written and approved by the Executive and forced through by the Whips of their party, but are subject to proper involvement, engagement, consultation and approval by Parliament, because we are a parliamentary democracy. I beg to move.

Baroness Noakes (Con): My Lords, I am going to start by banking an agreement with the noble Lord, Lord Collins of Highbury. I completely agree, as I think the whole House does, that the quality of scrutiny in the other place underlines the importance of what happens in your Lordships' House. Having banked that, I could not understand why these amendments have been tabled. Amendment 4 asks for the strategic and policy statement to be approved in draft by each House—but that is exactly what proposed new Section 4C calls for. It calls for the Secretary of State to lay a draft before Parliament that cannot be designated until it has been approved by each House of Parliament. These are standard procedures in each House, including, importantly, your Lordships' House. I understand why the noble Lord might want to seek a way of saying that we want more than the normal procedures that apply to secondary legislation, but these amendments do not get any closer to that. They simply duplicate in a different place what is already in the Bill, both for the initial statement and for the revised statements.

Lord Collins of Highbury (Lab): I accept the point the noble Baroness is making, but I think everyone in the House is always concerned about the way in which secondary legislation is implemented. Even though we have the opportunity to scrutinise it, it is extremely difficult ever to change it; and although we have certain powers in secondary legislation, it is not clear that they will apply to this statement. I am not very keen on using fatal motions, for example. Is that going to be an opportunity for this House? That is why we are asking these questions. These are probing amendments that do not simply say that this is the position we want to see. However, the principle of proper parliamentary engagement is one we want to ensure, and doing so might mitigate some of the aspects of this proposal.

Baroness Noakes (Con): I completely understand that point, but the noble Lord is raising something much broader, which goes beyond the existing procedures we have for handling secondary legislation. I agree with the noble Lord that we should have a full and proper debate about whether there should be alternatives to the nuclear option. However, that is not a debate for this Bill.

3.30 pm

Baroness Jones of Moulsecoomb (GP): My Lords, we can all agree that the Government are constantly overreaching themselves and trying to accrue more and more powers. It is perfectly acceptable to try to ensure that the Government do not do so in this case. The Electoral Commission must be independent of both the Government and Parliament. This is a way to avoid any sort of conflict of interest for all MPs and, at times, for us. While we normally support any efforts to subject decisions to parliamentary scrutiny, it would be a false solution in this case. The strategy and policy statement must be removed from the Bill absolutely and entirely, rather than simply adding Parliament's conflict of interest to that of the Government. We heard from noble Lords earlier who said, "Let's get rid of the Bill". Let us get rid of as much as we can on the way.

Lord Stunell (LD): My Lords, the merits of the amendment are secondary to the replies that the Minister gave on the previous group of amendments. I thought that he might like a second go when responding to this group. I sum up the Minister's defence of the strategy statement as standing on two legs. The first leg is that it is vital to the proper conduct of future elections that the Electoral Commission has a government-sponsored strategy statement in its toolbox. The second is that any strategy statement which this Government could devise would be so bland, inoffensive and harmless that it would make no practical difference to the way in which elections are conducted. That was a phrase the Minister used in his reply to the noble Lord, Lord Collins, in the previous group. Would the Minister like to have a go at seeing which of those two legs he wants to stand on when replying to this group?

Perhaps he could also scoop up the third argument he deployed: that flexibility is essential and speed may sometimes be needed, and this would justify missing out any consultation. He further said that every Government would want to see consultation take place. I can think of quite a few Governments who very much did not want consultation to take place. It is very commonly the job of Oppositions to remind Governments that consultation is a necessary preliminary to getting good legislation. I am delighted if, somehow, he has been taken in by the idea that every Government would want to see consultation. However, I would remind him that even during the coalition's time—when I saw behind the scenery slightly more than I was expecting—it was a constant fight within departments for my colleagues and I to persuade his colleagues that consulting properly before legislating would be a good step forward. I hope he will be able to reconcile his two conflicting arguments about why we need it, while tackling and giving a response to the circumstances in which avoiding consultation might be—at least in some way—justified, rather than simply for the convenience of a Government at the time.

Baroness Hayman of Ullock (Lab): My Lords, just on that point on consultation, I suggest that the Minister, when he responds, thinks of the expression "more haste, less speed". Rushing things through without proper consultation can lead only to difficulties and the issue being revisited at a later date.

Lord True (Con): My Lords, we had a debate on the previous group. Despite the beguiling invitation of the noble Lord, Lord Stunell, I am not going to rehash that debate. I am certainly not going to accept advice from those Benches on how many legs I should stand on at one particular time. They often seem to have about five or six legs, in my campaigning experience.

The Government oppose these amendments. I understand that they are probing, but I can reassure the noble Lord that we do not consider them necessary because, under the Bill as we propose it, the approval of Parliament—the whole of Parliament, both Houses—is required when a statement is created or whenever it might be revised. That is, as my noble friend Lady Noakes said, there in the Bill. That will ensure that the Government consider its views and then gives Parliament the final say over whether a statement takes effect.

This measure, in our judgment, will improve the accountability of the commission to the UK Parliament and ensure that Parliament, in the last resort, remains firmly in control of approving any statement. That is why the Government have proposed the affirmative procedure in the Bill for the approval of a new or revised statement and I can certainly confirm for the noble Lord that any statement must be approved by both Houses, including your Lordships' House, before it can be designated. Therefore, we think these amendments are unnecessary.

Lord Beith (LD): The Minister is relying so strongly on the case that Parliament would have final control over whether the statement was acceptable, he must be assuming that each House has the capacity to turn down and reject the statement. Can we take it that he will not, in those circumstances, say that it is somehow unconstitutional for this House to say that the statement is in defiance of the principles of democracy and damaging to our electoral system?

Lord True (Con) My Lords, again, I am not going to be led into a wide and potentially very interesting debate on how your Lordships would behave in regard to any legislation, including primary legislation. I draw attention to what is before the Committee, which is that your Lordships would have to pass an affirmative resolution, and that does give your Lordships a power in law.

Lord Collins of Highbury (Lab): The question has been asked better than I was trying to put it. The noble Baroness, Lady Noakes, acknowledged that in this House we are extremely reluctant to use the nuclear option, because we are not elected; the elected House has primacy. But we are not talking about legislation in the normal sense of the word—we are talking about a strategy statement that will influence the operation of a body that oversees the conduct of our elections, which could be issued quite close to a general election and might impede the operation of political parties. Constitutionally, I am always very reluctant for this unelected House to challenge the elected House on legislation, but I think we need to be clear and the Minister has to answer this question. This is very different and that is why we are so concerned about it: it concerns the way our general elections are conducted. If this House thinks that a statement is going to impinge on the way our political parties are able to operate, does the Minister agree that we should have the authority to reject it?

Lord True (Con): My Lords, the noble Lord confuses various things. The constitutional position is as I set out. With the greatest respect, I say to him that the precise proposition that he has put before the Committee in this amendment is that the House should have the opportunity to reject. I do not know about standing on various legs, but he is logically opposing his own amendment. For our part, we think—

Lord Collins of Highbury (Lab): Let us be clear about this. We have had the Leader of this House challenge this House when it has simply sent something back, let alone rejected it. Then we have a Prime Minister who says, "Well, we're going to put loads more Peers in the House." This is a separate issue. It is not a constitutional issue about the rights of the House of Commons; it is about a strategy statement for the Electoral Commission, which has statutory duties to be independent. I can see circumstances where a statement is produced, maybe even as close as four months prior to a general election, that could have severe implications for the conduct of political parties in that election. In those circumstances, even though I am in general against this House rejecting the democratic will of the House of Commons, this Bill imposes a duty on this House to consider whether it needs to operate the powers that it has.

Lord True (Con): I note what the noble Lord opposite says. I believe that I have set out the correct constitutional position. If he wishes to persuade your Lordships' House to act differently from the way it normally operates, it is up to him to make that argument and it is his privilege at the time, but that is not the argument before the Committee. I do not believe that the statement or the illustrative example of a statement justifies the kind of language which has been used about it today. We will have a debate on clause stand part shortly, but since the effect of the amendment is simply to replicate what is already in the Bill, I urge the noble Lord to withdraw it.

Lord Stunell (LD): On a straight point of information, if an emergency statement is produced without consultation, can the Minister give us an assurance that it will itself come before both Houses of Parliament or will it bypass that process as well?

Lord True (Con): My Lords, any statement has to be treated in the light in which Parliament enacts statements to be approved, and that is by affirmative resolution.

Lord Collins of Highbury (Lab): Once again, my Lords, the debate has generated more areas of concern than it has put at ease. Undoubtedly, we will need to think about coming back to some of these issues, whatever happens in the debate on whether the clause should stand part. At this stage, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 4A not moved.

Amendments 5 and 6

Moved by ***Lord True***

5: Clause 14, page 22, line 14, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

Member's explanatory statement

This amendment reflects a recent change in Select Committee arrangements in the House of Commons.

6: Clause 14, page 22, leave out lines 15 to 18

Member's explanatory statement

This amendment is consequential on the amendments in Lord True's name relating to the inserted section 4A of PPERA.

Amendments 5 and 6 agreed.

Amendment 7

Moved by ***Lord Collins of Highbury***

7: Clause 14, page 22, line 18, at end insert—

"(f) civil society groups."

Member's explanatory statement

This amendment would mean that the Secretary of State must consult civil society groups on the draft of the strategy and policy statement.

Lord Collins of Highbury (Lab): I want to preface my remarks about these amendments, because they relate to a fundamental ingredient of our democratic life and our democratic society. I have often spoken in my role as shadow Minister for Foreign Affairs about the importance of civil society. The noble Lord, Lord Ahmad, who has responsibility for human rights, frequently hears this and responds incredibly positively. There are many societies and countries where the guarantors of human rights are not Parliaments and parliamentarians but civil society, faith groups, women's groups and trade unions. They are the important ingredients of a thriving democratic society. If we take them away, we do not have such a society; we end up with a society where elections may be held every five years but with a president like President Putin. These are the things that we have to be concerned about.

3.45 pm

That is why these amendments are important with regard to consultation. On political parties, I am not just talking about the Labour Party, although obviously I can talk at length about it. As I said to the Bill team a couple of days ago, if you want a short, concise history, read the Collins report. I know it had consequences that we did not necessarily intend but it gives a good chronological history of the party, with regard to how it was established and the role of civil society, in particular why civil society thought it needed a party that should have political representation in our parliamentary democracy. Of course, it stemmed from that action at the beginning of the last century, when laws were imposed on civil society groups of working people that inhibited their right to organise and to demand better wages and conditions. That has been an important ingredient.

I am not being exclusive about trade unions here. This applies even at the most local of levels—I know the Electoral Commission would not necessarily be involved in these areas. On the idea that this statement should be about how we improve engagement, I am glad that the noble Lord, Lord Hodgson, is here. I have mentioned his name several times already in debates because I know that he understands the importance of civil society and education in how we improve engagement in our democratic system. Anything that acts as a barrier to that should be considered very carefully.

If we are going to talk about how we improve engagement with such a statement—I think the Minister said it himself about the indicative statement—it is vital that civil society is properly consulted. That comes back to this other issue that was raised about when you do or do not consult. Education about civil society starts at school. Even though I am a member of Humanists UK, I went to a church youth club and sang in the church choir from the ages of 10 to 12. In fact, strangely enough, my role in that church choir prompted me to set up a mini-trade union. Every time we had a wedding, the vicar of my church said to the choir, "They are friends of the church and we're not going to charge them, so you won't get your five shillings this week." I objected to that. I said, "How come the vicar can decide whether I get paid or not?" That prompted me to be quite active in organising. I quickly left the choir after that—I do not think the vicar was very keen on me. I am not saying that that made me into an atheist; other issues did that.

That takes me back to the point about why civil society should be consulted. We can say that these are strictly matters of electoral law but I come back to the point that the Minister made. He said that one of the things this statement will include is how we improve engagement in the electoral process. That is why it is so vital that we include civil society.

As I say, there are whole elements of our civil society that impact on our democratic life, and I am not being exclusive about trade unions. One of the things that struck me is that even the Women's Institute now has incredibly important debates about civil society. Even with the global crisis we face now, when we look for homes for refugees, faith groups, women's groups and the WI will respond. That will make our country a better place.

There is one criticism I do want to make. When the Minister started consulting civil society on elements of the Bill, I was extremely disappointed that, although the Bill is really important to the trade unions—we will come to the amendments relating to them later—they were an afterthought. They were not included in the first round of civil society consultation. That was very worrying. Admittedly, there were then consecutive meetings, and they were engaged, but it is disappointing that trade unions were considered an afterthought. Trade unions are engaged politically—some through the Labour Party, but not all of them. Some trade unions that have a political fund operate in different ways: they are not affiliated, but they support the democratic process, or campaigns to influence it. Those are important ingredients.

When we come to the other parts of the Bill relating to civil society, these amendments will reflect something important. The noble Lord, Lord Hodgson, in the Select Committee report on civic engagement, stressed the importance of not adopting policies that inhibit the voice of civil society. That would be very damaging. What we are trying to do here is to make sure that we prioritise—put higher up the list—the need not only to engage but to consult properly. We might then end up with an improved statement—even though I do not agree with the principle of a statement. I beg to move.

Baroness Barker (LD): My Lords, I have the great privilege of being a member of the Select Committee chaired by the noble Lord, Lord Hodgson of Astley Abbotts, which considered citizenship and civic engagement in 2018 and has recently reconvened to look at the matter again. Largely with that in mind, I support Amendment 7, in particular. Bad as this Bill is in many ways, we have to treat it from the standpoint that, somehow, it could be a mechanism to improve representation, participation and the understanding of the electoral process by wider society.

The reason why it is important that civil society organisations be evidently included is that they do something unique. They represent people who are not in Parliament—all sorts of diverse and minority communities: precisely the people who are not engaged, and consequently not represented. We have already begun to see the beneficial effects of the Government talking to civic society organisations in the preparation of the Bill. I would make a case similar to that which the noble Lord, Lord Collins, made for trade unions, and say that we should be unafraid of including those groups in the development of the statement for the Electoral Commission.

One group of civil society organisations that we might think about are those concerned with citizenship, such as Young Citizens or the Association for Citizenship Teaching, organisations which exist with the primary purpose of improving the knowledge of future generations and their engagement and involvement in the electoral process. That is a thoroughly commendable thing and by including it in this Bill, we would not be doing anything that would in any way inhibit the Secretary of State or damage the process. This would be a small but valuable addition to the Bill.

Lord True (Con): My Lords, I always have some empathy with the noble Lord opposite, who I greatly respect, when he speaks of Labour tradition, the tradition of working people and social traditions. My mother's grandfather and his family were brought up in Salford and teeming parts of Manchester, and the education they had that led them to improve their lives and secure some degree of prosperity came through the mechanics' institutes and institutions created by civil society with a good social instinct. So I understand what the noble Lord says and how he feels. I also understand how the noble Baroness, Lady Barker, feels when she speaks about civil society.

These amendments propose extending statutory consultation to specific groups, however defined. As the Bill stands, the consultation process provided in Clause 14 will already ensure that the statement will be subject, where applicable, to some statutory consultation with key stakeholders, including the Electoral Commission, the Speaker's Committee on the Electoral Commission and the Levelling Up, Housing and Communities Committee. If the amendments your Lordships agreed earlier and are about to agree are agreed by the House of Commons, those institutions and bodies would be involved before the draft statement is submitted for the approval of Parliament.

The Secretary of State and officials will hear what has been said, but of course, the Secretary of State is not limited to consulting with only those bodies in considering legislation. I am grateful for what the noble Baroness said about reaching out to civil society. Government Ministers regularly engage with relevant stakeholders across civil society—I am sure that will continue—and a wide range of views can be considered by the Secretary of State when preparing a draft statement. I remind the Committee that the Secretary of State concerned is the one who bears responsibility for local government. Obviously, there is a particular, constant and important engagement between their department and local government. I understand the meaning and sense of the amendment asking for local government to be consulted, but that is, if you like, a standing counterparty of that department.

In addition, both Houses of Parliament play an important role in allowing for the views of wider society; your Lordships' House is admirable in that. This already ensures that groups such as those noted in these amendments, including trade unions—which never lack a powerful voice in this House, notably from the noble Lord opposite—will be adequately represented through Parliament in scrutinising any draft statement. Additionally, the Speaker's Committee on the Electoral Commission, which is a statutory consultee, is a cross-party group of MPs and that will further allow for representation of the views of different parts of the electorate.

So, while understanding the spirit in which these amendments are advanced and certainly giving the assurance that the Government are not limited to consulting only those bodies listed in the Bill, I urge that the amendments be withdrawn or not moved.

Lord Stunell (LD): Could the Minister confirm that, when he referred to the Speaker's commission just now, he meant the Speaker's committee? He suggested that it had a wide remit to consult with society, whereas I am sure he will recall that it is substantially made up of Conservative Cabinet Ministers.

4 pm

Lord True (Con): My Lords, that was not a correct characterisation. I meant to say, "the Speaker's Committee on the Electoral Commission", which is a cross-party representation of MPs. If I misspoke, I apologise.

Lord Collins of Highbury (Lab): I thank the noble Lord for his response to this debate. Consultation will be an important part of how we proceed on this and an issue which we will keep emphasising and reiterating. However, in the light of the comments, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Amendments 8 and 9 not moved.

Amendments 10 to 12

Moved by ***Lord True***

10: Clause 14, page 22, line 34, leave out from beginning to end of line 16 on page 23

Member's explanatory statement

This amendment is consequential on the amendments in Lord True's name relating to the inserted section 4A of PPERA.

11: Clause 14, page 23, line 21, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

Member's explanatory statement

See the explanatory statement for the amendment in Lord True's name at page 22, line 14.

12: Clause 14, page 23, line 25, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

Member's explanatory statement

See the explanatory statement for the amendment in Lord True's name at page 22, line 14.

Amendments 10 to 12 agreed.

Amendments 13 and 14 not moved.

Amendments 15 and 16

Moved by ***Lord True***

15: Clause 14, page 25, line 16, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

Member's explanatory statement

See the explanatory statement for the amendment in Lord True's name at page 22, line 14.

16: Clause 14, page 25, leave out lines 17 to 22

Member's explanatory statement

This amendment is consequential on the amendments in Lord True's name relating to the inserted section 4A of PPERA.

Amendments 15 and 16 agreed.

Debate on whether Clause 14 should stand part of the Bill.

Lord Judge (CB): My Lords, the noble Lord, Lord Wallace, regrets that he cannot be here to introduce this stand part notice. He has asked me to do so in his place. The noble Lord, Lord Blunkett, was here and was very anxious to speak in this debate, but he has had to apologise because if he had spoken, he would not have been able to listen to the whole debate.

We started this debate rather a long time ago. In one sense, all the rhetoric has been played on both sides. I am not necessarily going to be unable to use a little bit of rhetoric, but in answer to this wonderful exchange between the noble Lord, Lord Butler, and the noble Lord, Lord Collins, about the problem and the answer, I suggest that the problem that is being faced, summarised in the way that the Minister put it, is a certain loss of confidence in the Electoral Commission's ability to exercise its responsibilities. That may be wrong, but if it is right and that is the problem, I respectfully suggest that Clauses 14 and 15 of this Bill are emphatically not the answer to that problem. Once again, I am sorry to trespass on something which I rabbit on about in the Chamber, but we are vesting power in the Executive, and that is always dangerous.

These are matters which should be outside party politics. I recognise the difficulties of making this utterly immaculate, but how our elections are conducted and handled should, as far as possible, be clear of party-political pressures or Executive pressures, influence, control, or power. If they are subjected to any of those, they damage public confidence in how the Electoral Commission will work.

I need to go back to the founding principle, which I found in the 1998 report:

"An Election Commission in a democracy like ours could not function properly, or indeed at all, unless it were scrupulously impartial and believed to be so by everyone seriously involved and by the public at large."

As a follow-up to that, the CSPL review of the Electoral Commission in 2007 said that

"any system … must … protect the Commission's independence and impartiality from the possibility of undue influence for partisan political or electoral advantage."

It is there that Clauses 14 and 15 fall down.

I shall go through the Bill to pick out one or two provisions. I suggest that every one of these provisions in Clauses 14 and 15 is dangerous in the sense that they increase the influence of the Government of the day over the Electoral Commission. It is no good just taking them as individual provisions; they need to be looked at as a package. Let us start with new Section 4A in Clause 14—if anyone is bothering to look, it is on page 20—dealing with the strategy and policy statement, which is a new idea. The clause says:

"The Secretary of State may designate a statement … prepared by the Secretary of State that sets out … strategic and policy priorities of Her Majesty's government"

in relation to elections. By definition, that highlights whose policies and priorities are going to be included. Then it sets out

"the role and responsibilities of the Commission in enabling Her Majesty's government to meet"

the Government's own strategic and policy priorities. You do not need to look much further to see where undue influence is likely to be increased.

Then the Electoral Commission, which everyone agrees should be independent of government—I think that at Second Reading everyone eventually agreed with that—is required by statute to enable the Government to achieve their priorities as they relate to elections. I told the cynic in me last night, "Don't say this", but we have been waiting an awfully long time so I am going to say it anyway: I thought the priority of most Governments was to win elections. Still, I will not repeat that; it is cynical of me.

Let us look further. The Secretary of State can use the statement to issue guidance relating to other matters for which the Electoral Commission already has, or may in future have, statutory functions, whether by primary or secondary legislation. The noble Lord, Lord Hodgson of Astley Abbotts, is in his place, and he is not going to let the Government forget about the significance of the misuse, as I would describe it, of guidance. Using guidance as a power rather suggests that it would be extremely difficult for the new Electoral Commission working under these new arrangements simply to ignore the obligation to follow the guidance; the guidance will be there and the commission will be obliged to look at it. How lawful that would be if it went to a matter of judicial review, I will leave to the noble Lord, Lord Hodgson. We really need to look at those two terms together.

The suspicion about these clauses, a suspicion that has been ventilated around the House—although not the whole House—is due to the total absence of any formal or public consultation on the issue. If this were happening in another country that we thought was a democratic one, true to the principles of democracy and the wide franchise, we would be very worried about what was happening to our democratic friend.

We have spent a long time looking at new Section 4B in Clause 14. What is the obligation of the commission? It says:

"The Commission must have regard to the statement when carrying out their functions"—

that is, the Government's prepared statement setting out their strategic and policy priorities. That is the only order that is made in the legislation. Sometimes we have legislation where the organisation or body, whatever it might be, is required to have regard to some statement or other or to some principle in the legislation, but it is rare—I do not say that it never happens because that is a word that I never use—for it to have no other responsibility. But this provision is all that the commission has to have regard to, in the express language of new Section 4B.

I underline that that provision is not one of a list of factors that the commission has to bear in mind. It does not identify any other factor to be taken into account. It does not provide a way out for the Electoral Commission to say, for example, "We're not obliged to follow the statement, and we will not, because that would influence us into making a decision that we think would be electorally unfair. It is motivated by political advantage." So that is a very stark responsibility. I rather enjoyed the observations by the noble Baroness, Lady Meacher, this morning about how the world really looks if you are in the position of someone who is "having regard to" government policy. The "must have regard to" is clear and unequivocal, and there is no room in the legislation for any other consideration being provided for. So we have "Her Majesty's government" instead of "Parliament", and no other consideration except the statement once it has been designated.

I now turn to one of the defences put up by the Minister: the consultation process. We heard a lot about the consultation process this afternoon. I will tell noble Lords what I think about it because there were times when I had to look at legislation that said the Lord Chief Justice will be consulted. It was completely valueless in terms of any action. The Secretary of State can consult. "Hello, my noble Lord, Lord Collins. What do you think of this Bill? You are very worried about it? I have taken a note of that, but I will now write it exactly the way I like it." That is consultation. It would count as consultation and pass any judicial review as a proper form of consultation.

To look a little further, as a controlling element therefore of shielding the Electoral Commission, which is after all what we are supposed to be doing, why does everybody think a fig leaf is elegant? It is not elegant; it is transparent, and the sight is not a golden one. The obligation is to consult. There is no requirement for concurrence or agreement. Obviously, everyone can make non-binding suggestions, but they provide absolutely no form of protection for the Electoral Commission.

The Secretary of State has to consult and then decide what he or she thinks is necessary. That is not a protection for the Electoral Commission. It is a nice idea. It looks good and polite and British, but in terms of power, which is what we are discussing, it has no impact. I cannot help reminding the Committee—I said this at Second Reading—what PACAC had to say about this issue:

"We recommend that the Bill be amended to provide that the Electoral Commission is able to depart from the guidance set out in the Statement if it has a statutory duty to do so"—

well obviously, but the committee adds—

"or if it reasonably believes it is justified in specific circumstances."

And here is the rub:

"This amendment is necessary to give effect to the Government's stated intention that the Statement will not amount to a power to direct the Electoral Commission, and to protect the Electoral Commission's independence."

Well, that is pretty stark. I wish I had thought of saying that myself but, as PACAC said it, I am very happy to adopt it as my own. We should note that it is ultimately a matter for the Secretary of State. That is new Section 4C.

We can omit new Section 4D, because that deals with the five-yearly review. New Section 4E, on which the noble Lord, Lord Scriven, has spent some time, is in many ways the most pernicious part of the whole Bill. It states:

"The Secretary of State may revise a statement designated".

He can do it on his own initiative and if the commission requests it. It is a dispensing power, because new Section 4E(4) states:

"The Secretary of State may determine … that section 4C(2) (consultation requirements) does not apply in relation to the revised statement."

In 1688, we kicked out the King. We got a new one, we got a new Queen, we got an Act of Settlement and Parliament was sovereign at last and nobody liked the disapplication or dispensing power.

But can we look a little further at this, at the Secretary of State's "own initiative" without notice? The Secretary of State is not obliged to consult anybody. He "must give notice"—that is, after he has made up his mind—of what he proposes to do, and

"must consider any representations made by the Speaker's Committee".

That is even less than consultation; he "must consider any representations". It is very strange, is it not?

4.15 pm

I would say that the Speaker's Committee is, in the House of Commons at any rate, the parliamentary body responsible for making sure that the electoral system is run fairly, properly and equally for all the political parties engaged in it. Yet the best it can do if there is a revised statement is to make representations which shall be considered. The committee can object—hurrah! If it objects, what then? At last, the Secretary of State has to give Parliament his reasons for determining what he has determined in his statement when he revises it. Do we think this is too much influence? Do we think this is clear and clean of any influence, any possibility of influence or any possibility of pressure? Of course we do not.

[LORD JUDGE]

Finally, coming to Clause 15 on the examination of the duty to have regard to the strategy and policy statement:

"The Speaker's Committee may examine the performance by the Commission of the Commission's duty"—

not how it is conducting its overall responsibilities, which would be fair enough, but how it is complying with its duty to have regard to the strategy and policy statement. That is rather serious, is it not?

We then turn to examine what the Speaker's Committee has to do once it examines it. Does it tell the Electoral Commission, "You haven't complied with paragraphs 9, 15 or 22", to which it might say, "Well, yes, we haven't, because we think that's politically advantageous to the Government", or to whoever it is. That will not do. Where in the Act of Parliament does it say that that is all right, acceptable and should be allowed? What we have instead is one of the safeguards for the independent commission in the consultation process disappearing when we come to the revision of the statement, which can take place at any time. I do not want to enter into a discussion—anybody else may—about whether it is five years, three years or nine months. Whenever it happens, this is the process. We have been assured—I have read assurances—that it will be done only for minor things of no real importance, but is that not the problem? Tomorrow it may be of no real importance, but five years down the line it may be of huge importance. We just do not know.

I have another problem, which I had not spotted when I got ready to speak at Second Reading, arising from what the Speaker's Committee is doing when it examines the way in which the Electoral Commission has been exercising its responsibilities. I am not entering into a discussion—I could, but we could go on too long—about whether the Government of the day have a majority on the committee. Until this proposal came before us, it did not seem to me to matter very much. The Speaker chooses five Members of the House of Commons plus, of course, himself, and then there are three more people. Of those three, two are Ministers. The Government at the moment is a Conservative one; even if we did not have a single Conservative Member of the Commons who was not a Minister on the Speaker's Committee—that would obviously not arise, but let us just assume it for a moment—two Conservative members of that committee would be there, examining the way in which the Electoral Commission had been carrying out government policy. The phrase "judge in their own cause" comes to mind, and that is not a healthy way for a democracy to work.

I respectfully suggest that these two clauses are potentially dangerous. On any view, they increase the influence of the Government of the day over the Electoral Commission and would damage the public confidence in the independence of the Electoral Commission. Both those considerations are vital, and so I beg to move.

Viscount Stansgate (Lab): My Lords, I think the whole House is grateful to the noble and learned Lord for the forensic way in which he has taken these clauses and demolished their legitimacy. I sat through the entire Second Reading debate, and this was identified as one of the major issues in the Bill. I put it to the Government that to introduce these provisions is a terrible mistake to make. I have no idea what type of discussions within government led to this being part of the Bill. I find myself wondering whether I am going to have to wait for the Minister's memoirs to discover that, privately and secretly, even he thought there were disadvantages to putting forward a proposal of this kind. Whatever you may think of it now, there will be different Governments in the future who may use this legislation in ways that we cannot predict and would not want.

It is rare for me, in the short time I have been here, to listen to a debate which could be encapsulated in a single speech, so I will sit down. I hope that the House realises what a mistake is being made and just thinks of the damage that will be done to our reputation as a democracy were these provisions to go through.

Lord Judge (CB): With the indulgence of the House, when I was explaining about the noble Lords, Lord Blunkett and Lord Wallace, I omitted a courtesy to the Minister for the meeting we had last week. I always appreciate those meetings and I am sorry I omitted that.

Lord Kerslake (CB): My Lords, it was a fantastic dissection of these clauses by the noble and learned Lord, Lord Judge. I lend my support to the argument and, had there been any spaces left, I would have added my name to those opposing the clauses. There is a right way of doing legislation relating to our democracy and a wrong way. The Bill, as I said at Second Reading, is definitively the wrong kind of approach. It should have been done with consensus, pre-legislative scrutiny and a much wider form of consultation than we saw.

I have real problems with these two clauses, both the way they have been brought forward and their content. I will deal first with the way in which they have been brought forward. We have heard a lot about the absence of wider consultation. What truly astonished me was what I heard from the Electoral Commission in its excellent briefing to Cross-Bench Peers yesterday. I asked the commission if it was consulted before the Government made their statement of including this in the Bill and the answer was "No". It was not. It is quite extraordinary to bring forward something of such significance to the commission and not consult it or even inform it of your intention beforehand. That says a lot about the Government's attitude towards the commission and how they will approach consultation in the future. It is an appalling lack of respect for a pivotal organisation in our democracy.

My second point is around the substance of this section of the Bill. The Government, to put it very directly, are substituting government control for parliamentary scrutiny. That is essentially what is happening with these two clauses. Of course, the Electoral Commission is not perfect. It will have made mistakes and will own up to having done so; it will make mistakes in the future, I am sure, but it is absolutely not resistant to being accountable. It will and does appear in front of Select Committees. As we have heard, it appears in front of the current committee that has been spoken about. The issue is not accountability—being able to

hold it to account for what it does and challenge it. That is already in the current arrangements and if it needed to be strengthened, it could be.

This is an issue about control. Is the Government's view the same as that held, apparently, by a number of Members of the House of Commons, who have lost confidence in the commission? If it is not that, what is it? What problem are we trying to solve here and why are we taking such significant control? The response from the Government is, "Look at the illustrative version of this: there is nothing to see here". I am afraid that is just not good enough. As the noble and learned Lord, Lord Judge, said, we need to look at what is on the face of the Bill. What does the Bill allow to happen in these circumstances? It is quite clear that, through the Bill, a much more difficult set of requirements could be put on the commission by way of its strategy and policy. We cannot take an illustrative version of this and be assured by it; it simply is not enough. We have to be sure that no version that would be difficult and problematic, and damaged its independence, could come forward under the legislation—and, quite clearly, it could.

We have had much debate about what is meant by "have regard to", so I looked up a common definition. It says,

"to take account of this guidance and carefully consider it … there would need to be a good reason to justify not complying with it."

That is what is in the dictionary for "have regard to", and it is pretty onerous. For anybody who has worked, as we heard earlier, for an arm's-length organisation, and I have been the chief executive of one, "have regard to" from a Government is a pretty strong expectation that you will follow and do as you are told. I have to be really blunt here: the only conclusion I can have about why this is coming forward is that it is to put the commission in its place and make it clear what the Government expect it to do and how they expect it to do it. That is a very serious and dangerous step forward.

Another defence that is put for these proposals is that we have this sort of provision for other regulators. That is a completely invalid argument. Other regulators are there to carry out the business of government, to execute and deliver government policy. It is perfectly in order that they have strategy and policy statements from the Government, because they are very clearly acting on behalf of the Government. They may have a certain independence but are there as agents of government. The Electoral Commission is not an agent of government—this is where I think the confusion has come in—but a body that acts on behalf of Parliament and our parliamentary democracy. That is the core difficulty I have with what is in the Bill.

If I had any doubts about the issue, if I thought I might be overreading it, I invite colleagues to read again the letter that came from the commissioners. I shall just read out one paragraph:

"It is our firm and shared view that the introduction of a Strategy and Policy statement—enabling the Government to guide the work of the Commission—is inconsistent with the role that an independent electoral commission plays in a healthy democracy. This independence is fundamental to maintaining confidence and legitimacy in our electoral system."

Those are extraordinary words from all bar one of the commissioners, and I suspect the one who did not sign it probably had very similar views—I do not know because I cannot ask him. The key point is that having a statement as strong as that from the Electoral Commission, the body we are looking to introduce this for, ought to settle the argument. We ought to say, "If that's how they feel about this, there must be a serious and real issue that needs to be addressed here". I do not think I have ever read, in my entire public life, something as strong as that from a body such as the Electoral Commission. For that reason alone, we need to throw out these clauses.

PACAC has said the same thing. Indeed, it said it had not had any representations in support of these clauses—nothing at all. There were plenty who were concerned about it, and I am sure every other noble Lord's mailbox is like mine, stuffed with correspondence from people who are really concerned about this. If we are serious about the concerns of maintaining the integrity of the democracy we have and the integrity of the Electoral Commission, we should support the proposal and throw out these two clauses.

4.30 pm

Baroness Noakes (Con): My Lords, I hesitate to rise to speak, given the entrenched views already expressed, both in this debate and in earlier debates this afternoon, but I think the reaction to Clause 14 has been disproportionate. Strategy and policy statements for regulators are not new. They are now an established part of the regulatory landscape, although it is still a relatively new concept and noble Lords may not have been following this development. As has been said, strategy and policy statements already exist for other regulators. There is absolutely no evidence that they have in any way impaired the independence of those regulators from government. If there had been a problem with them, it would be well known by now, as all regulators have multiple routes for making their views known. There is no significant difference between the functions of the Electoral Commission and the other regulators, as the noble Lord, Lord Kerslake, sought to say. There is no significant difference to make them exempt from what is a development in the regulatory practice in this country.

I was deputy chairman of Ofcom when the Government announced that they would legislate for a strategy and policy statement for Ofcom. That was eventually included in the Digital Economy Act 2017. Like all regulators, Ofcom was extremely protective, and somewhat precious, about its independence. It is fair to say that, within Ofcom, the reaction was of considerable suspicion of the Government's motives. I had left the board before the final statement was eventually published in 2019, so I have no insights into the final process. However, having read that statement, it is difficult to see that there is anything in it that would cause any concern about the independence of Ofcom. I have not heard of anything to that effect. In fact, the statement itself looks rather anodyne to me, as do the statements in relation to the other regulators. I have not had an opportunity to look at the draft statement for the Electoral Commission, but even the noble Lord, Lord Butler of Brockwell, found nothing disobliging to say about it when he spoke earlier.

Lord Beith (LD): I am sure that the noble Baroness believes firmly that the Government she so strongly supports would not issue a statement that would challenge the independence of the commission. However, there is absolutely nothing about the illustrative statement—or, indeed, in comparison with statements made for other regulators—that in any way circumscribes the ability of this Government or future Governments to go much further than that, unless they are restrained by things that we put into the legislation.

Baroness Noakes (Con): At the end of the day, there is a requirement for Parliament to agree. That is an important part of the framework. It is not something the Executive can do alone. It would need to become a parliamentary approved statement and, as we discussed earlier, it must be approved by both Houses of Parliament.

My second point is that we should be absolutely clear that strategy and policy statements are not directions. No power of direction exists for the Electoral Commission, and Clause 14 does not create one. Noble Lords would be rightly concerned if Clause 14 created a power of direction in relation to the Electoral Commission. I think that the Electoral Commission was just plain wrong, in its written briefing, to claim that it would be subject to government direction as a result of Clause 14.

I regret to say that the noble Lord, Lord Butler of Brockwell, for whom I have the highest regard, was also wrong, when he spoke on the first group of amendments, to assert that this statement amounts to a direction. It does not. Directions are very clear in what they can force public bodies to do. This does not force anything. The only requirement, as we have heard, is in new Section 4B for the Government to "have regard to" the statement. We discussed that in the first group of amendments, and the noble and learned Lord, Lord Judge, has made some comments on the ineffectiveness of that, because it does not refer to other things which it could "have regard to". It does not trump the commission's statutory objectives; it does not compel the commission to do anything at all, or to take account of anything else.

We must keep all this in proportion. It is an additional thing for the Electoral Commission to take into account; it does not replace all the existing law relating to the commission. This is the formulation used for all existing regulators, and I believe it is the right approach to protect regulatory independence. As I said, no concerns have been expressed to date about the independence of any of the regulators subject to statements.

The important thing is that the commission has to report on what it has done in consequence of the statement. In practice, as we will see from the way in which the statements tend to align with what the independent regulators are doing, statements generally reinforce what those bodies are doing, and relatively new information beyond what would be included in the annual report comes as a result of those statements.

However, it is important that the independent regulator explain any divergence from the Government's priorities as approved by Parliament. For example, if the Government said that their priority was to improve democratic participation, not just generally but for particular groups, we would want to know what the commission had done about that and whether it had had any impact. That really does not threaten independence.

I believe that transparency and accountability are what the strategic and policy statements are really all about, and why they are useful. One element is for the Government to be transparent about their policies and priorities, because they have to set them down, get them consulted on and then have them approved by both Houses of Parliament. The regulators then have to be transparent in reporting on what they have done in respect of those priorities—or whether they have done nothing at all. That allows them to be held to account by Parliament—in the case of the Electoral Commission, through the Speaker's Committee. I hope noble Lords will see that this legislation is not the monster they have created in their own minds. In fact, it can be seen as a very positive development for improving transparency and accountability. I hope we will allow these clauses to stand part of the Bill.

Lord Eatwell (Lab): My Lords, I regret that, like the noble Baroness, Lady Noakes, I was unable to attend the Second Reading debate. At the time I was on an aeroplane returning from work in the United States. However, I have read the full proceedings in *Hansard* with great care and I feel appropriately informed.

Moreover, some time spent in the United States has also given an added perspective on some of the measures in the Bill, for there is about it a definite odour of the Donald J Trump playbook. There is the whiff of voter suppression in the extra requirements being added for access to the franchise. There is a distinct stench of the politically partisan in the measures that undermine the independence of the Electoral Commission. But perhaps the strongest stink arises from changes in the franchise being imposed by the current majority party, without pre-legislative scrutiny or a Speaker's Conference. This strikes at the foundations of our constitution, written and unwritten.

I predict that in due course, much as the late Enoch Powell predicted, Mr Johnson will be defeated in an election—and then there will be a, perhaps minor but none the less significant, online campaign claiming that the election was stolen or rigged. While it would be unfair to claim that the noble Lord, Lord True, had planted the seeds of such a threat to our democracy, he will have added a little natural fertiliser. In his speech introducing the Bill at Second Reading, he made much of the precautionary principle, and of taking steps to protect the integrity of elections from potential, if as yet hypothetical, threats. He did not, however, extend his precautionary principle to the measures in Clauses 14 and 15 that, as the Public Administration and Constitutional Affairs Committee stated, risk undermining public confidence in electoral outcomes by diminishing the independence of the Electoral Commission, both in perception and in reality.

As the late Lord Hailsham famously observed, this country is governed by an elected dictatorship. A Government with a substantial majority in the other place can do virtually what they please. That is why this House, with its, let us say, peculiar composition, has a particular responsibility to protect the constitution, written and unwritten, against partisan proposals by

the governing party. Here, the discussion by the noble Baroness, Lady Noakes, of statements for regulators gives us a valuable insight, because, in this case, the statement is made by the regulated entity. It is as if one of the broadcasters could have a statement telling Ofcom to what it should have regard. The Secretary of State is a political figure. In the electoral arena, he is a regulated entity. He should not be in a position to provide advice of any sort to the regulator.

As the noble and learned Lord, Lord Judge, said at Second Reading,

"there is a constitutional necessity, in a system of democracy based on universal suffrage, that any electoral commission should be wholly and totally independent".—[*Official Report*, 23/2/22; col. 239.]

By rejecting these clauses and affirming the independence of the Electoral Commission, this House will make a vital commitment to free and fair elections.

Lord Rennard (LD): My Lords, in considering the Government's plans to take more direct control of the Electoral Commission, we should go back to considering the consensus that existed when it was established. In 1998, the Committee on Standards in Public Life, then chaired by the late Lord Neill of Bladen, proposed the creation of an

"independent … Election Commission with widespread executive and investigative powers".

Introducing the resulting legislation, the then Home Secretary, Jack Straw, explained how the commission would

"undertake its key role at the heart of our electoral arrangements".

He emphasised that

"the commission must be as independent of the Government of the day as our constitutional arrangements allow, and it must be answerable directly to Parliament and not to Ministers".

On behalf of the Conservative Opposition in the other place, Mr Robert Walter, then said:

"The Opposition have always made it clear that we support the recommendations of the Neill committee and that we shall support the legislation that implements the report".—[*Official Report*, Commons, 10/1/2000; cols. 42-109.]

In this House, the noble Lord, Lord Bassam, introduced the legislation. He said that

"the commission will need to be seen to be scrupulously independent both of the government of the day and of the political parties".

The consensus about the essential independence of the Electoral Commission was backed on that occasion by the late Lord Mackay of Ardbrecknish, a greatly respected Member on the Conservative Benches at the time. He said that

"there should be an electoral commission",

but:

"There must be no possibility of the commissioners being \ As currently drafted the provisions in Part 3 of the Bill are not consistent with the Electoral Commission; cols. 1088-95.]

This principle of the Electoral Commission's independence from the Government of the day survived five general elections. No previous Government before this one sought to change that principle. So I ask why, if we could not have "Tony's cronies" overseeing the work of the Electoral Commission, we should then have Michael Gove overseeing it? To have any government Minister of any political party setting the overall strategy and policy for the Electoral Commission effectively ends its independence.

Since the last general election, the Conservative Party has been subjecting the Electoral Commission to undue pressure. In August 2000, the then Conservative Party co-chair Amanda Milling wrote in the *Daily Telegraph* that, if the Electoral Commission failed to make changes,

"then the only option would be to abolish it."

That sounds pretty much like a threat to me. An independent election watchdog should not operate under such threats—not in a democracy.

4.45 pm

The problem with Bills such as this is that the Government cannot distinguish between the business of government and the business of the Conservative Party. Louis XIV is said to have proclaimed, "L'Etat, c'est moi"—"The state? I am the state." In his youth, Boris Johnson is supposed to have wanted to be "king of the world". However, the United Kingdom is a democracy, not the property of the party in power, and changing election rules in its favour is a serious abuse of power.

The hostility of the Conservative Party to the Electoral Commission followed from investigations as to how the party had targeted its very considerable resources in marginal seats at the 2015 general election. In that election it gained a majority in the House of Commons for the first time in 23 years. Only one court case followed all those investigations, and only one conviction. However, it was a serious one for a party official, and the jail sentence that resulted was suspended only due to very extenuating personal circumstances.

Instead of accepting that the law had been broken, the party subjected the Electoral Commission to attack for having sought to uphold the basic principles of election law that have applied since the 1880s to prevent the corrupt buying of seats in Parliament. Some months after the threat to abolish the Electoral Commission, its very effective and respected chair, Sir John Holmes, was told that his term of office would not be renewed.

Now we have the Bill. Clause 14 introduces a requirement for the Electoral Commission to follow a strategy and policy statement written by the Secretary of State. Section 15 gives extraordinary powers of control over the commission to a committee which now has a majority of Conservative MPs. The Speaker's Committee controls the financing of the Electoral Commission and it will police the way in which it works. It will examine the way in which the Commission must have regard to the statement of strategy and policy when carrying out its functions. As the Best for Britain organisation says,

"The requirement for the Electoral Commission to act according to guidance made in the Secretary of State's statement (and to also produce a report detailing how the Electoral Commission has aligned its activities with that statement), is a direct challenge to the Electoral Commission's neutrality and independence."

There will be consultation, but ultimate power will lie with the Secretary of State.

The Electoral Commission itself says that, as currently drafted, the provisions in Part 3 of the Bill are not consistent with the Electoral Commission operating as an independent regulator. As we heard, the House of Commons Public Administration and Constitutional

[Lord Rennard]
Affairs Select Committee, which also has a majority of Conservative MPs and a Conservative chair, concluded in its recent report on the Bill that

"the Government has not provided sufficient evidence to justify why the proposed measures are both necessary and proportionate"

and recommended that these clauses should be removed

"pending a formal … consultation on the proposed measures."

That is why they should not stand part of the Bill.

Baroness Wheatcroft (CB): My Lords, the noble Baroness, Lady Noakes, drew a parallel between the Electoral Commission and Ofcom. However, Ofcom has a huge and evolving remit; inevitably, it has to respond to changes in government policy in areas as diverse as regulating the spectrum and the quality of broadcasting. The Electoral Commission is a very different beast, with a very straightforward role: to oversee elections and regulate political finance to ensure that we have a free and fair election system.

It describes its job as working

"to promote public confidence in the democratic process and ensure its integrity".

What could a Government want to do to change that? It is simple, straightforward and easily understood. I cannot understand what the policy statement enshrined in Clauses 14 and 15 would add to that quite straightforward purpose. Nothing I have heard today has helped me in that direction, and I hope the Minister might be able to answer the question that others have asked: what is the purpose of this?

That there is room for improvement in the way the commission operates is true, but the proposed policy statement is simply not the way to accomplish that. In my experience, when it comes to elections, political parties have one overriding objective: to win as many votes as possible. Indeed, in the 2015 general election, the Conservative Party was so keen to win votes in South Thanet that it drove a coach and horses—and, indeed, a battle bus—through the rules. So egregious were the breaches that in 2019, Mr Justice Edis, presiding over the subsequent court case, was highly critical of what he termed Conservative Central Office's

"culture of convenient self-deception and lack of clarity about what was permissible in law and what was not."

The senior central office employee who was instrumental in this electoral fraud was sentenced to nine months in prison on each of two counts. It was only because of her personal circumstances that the sentences were suspended. There is no doubt that Conservative Central Office is not the only political headquarters to have played fast and loose with the rules if it thought it could. That is why we do not want political parties anywhere near the Electoral Commission.

Those who drafted Clause 14 may have done so with the most honourable intentions in mind but, as has been said, these clauses could have a truly malevolent effect on our electoral system. There is an unpleasant whiff about them, and it could evolve into a foul stink. The positive case for these clauses has simply not been made, and I therefore support the removal of these clauses from the Bill.

Lord Hayward (Con): My Lords, I am somewhat conflicted in this debate, to the extent that I, unlike a number of noble Lords who have spoken previously, do not view the Electoral Commission through rose-tinted spectacles. I shall refer to one or two problems that I and others have had with it recently. I have, however, had the opportunity to meet and deal with Mr John Pullinger, its new chairman; I wish him well and believe—partly because of what he has done in relation to some of the issues that I have had—that he will actually change the culture in the Electoral Commission.

I was fascinated by the contribution just now from the noble Baroness, Lady Wheatcroft. I must declare an interest, because the person to whom she and the noble Lord, Lord Rennard, referred is a close personal friend of mine, but I will not deal with the case as such. The noble Baroness aired the view that, although CCHQ had been found guilty of an offence, it was almost certain that the other parties did the same. That is actually the problem—

Baroness Wheatcroft (CB): My Lords, I was not insinuating that other political parties had played fast and loose in that particular election. I merely meant that, had they felt able to in some elections, they might have done.

Lord Hayward (Con): I am sorry; I did not make myself clear. I was referring not specifically to that election but to elections in general, which is what I took to be the comment of the noble Baroness.

I will first cover the Electoral Commission and then come on to this particular clause. As the noble Lord, Lord Scriven, said first and others have said later, the Electoral Commission is required to produce an independent, free and fair set of elections. It is not required to start intruding in terms of developing or interpreting legislation. I was brought up to believe that these two Houses and the judges—the judiciary—decided how our laws operated. But, unfortunately, the Electoral Commission has moved into that field. I say that with reference to the debate in this Chamber on 6 January on the progress of regulatory bodies into fields and issuing edicts that they are saying are law.

I refer here not to the case that I just raised but to the availability of electoral rolls. They are key if you are going to investigate corruption in Tower Hamlets, but access to them is being denied by the Electoral Commission. In an email, it said that, unfortunately, "the law is silent" on this matter. It then went on to develop policy on it, effectively saying that it is law. It has issued instructions to EROs on a certain basis.

Later in the Bill, I shall cover the fascinating development of the law of secrecy when it comes to a polling booth, a practice that we have had for 150 years. The Electoral Commission is now changing the processes—it is changing the law—which is why I have tabled an amendment to stop it doing what it appears to be doing.

The noble Lords, Lord Rennard, Lord Wallace and Lord Kennedy, are all aware of the difficulties that I have had with it since early August on accredited observers—people who can be allowed into a polling station. The Minister wanted to go into a polling station in a by-election in Tower Hamlets and was told that she could not because she was political. She, or her office, was making those arrangements with the chief executive of Tower Hamlets. Nothing in law says

that an accredited observer cannot be a political individual. I would have been quite happy if the Labour or Lib Dem spokesmen in the Commons or the Lords had gone to witness the problems there, but, suddenly, the Electoral Commission said, "You cannot do that". Nothing in law says that.

What makes it worse—this is where I disagree with the noble Lord, Lord Kerslake—is that the Electoral Commission does not admit its failings. As I say, I made correspondence available to other parties throughout, contemporaneously, and came to the conclusion that, in the way it has operated, the Electoral Commission is institutionally arrogant. It will not admit its failings, to the extent that, despite representations, detailed letters and failures to reply, when challenged about the refusal to allow the Minister into a polling station—it had been involved in conversations some 10 or 15 days before the by-election—it said immediately afterwards that it was not aware of a Minister being prevented from entering a polling station. This is despite the fact that, two and a half months later, it admitted that it had had conversations with the Cabinet Office and the Minister's office, not to mention one with me in a polling station and with a local councillor, all of whom the Electoral Commission officials are saying it stopped, in one form or another.

What was fascinating was that, when confronted with all these different things, Electoral Commission kept saying, "We didn't say it." The Cabinet Office officials thought it did, as did the Ministers and the staff at Tower Hamlets. I believe it did. It is not a body which has previously been willing to admit its failures. As I say, it failed to do so when—

5 pm

Lord Butler of Brockwell (CB): My Lords, I am very grateful to the noble Lord for giving way. His complaints against the Electoral Commission may be justified, but can he explain how a strategy and policy statement from the Government would put the matter right?

Lord Hayward (Con): The noble Lord intervenes at a highly apposite time. I said at the start of my contribution that I was conflicted. All I wanted to do was set the record straight in relation to the Electoral Commission as I and others have experienced it. A number of noble Lords have said that these clauses do not solve the problems that might arise from any behaviour of the Electoral Commission. That is why I am conflicted. I do not believe these clauses solve the problem. I believe there are problems with the Electoral Commission and that Mr Pullinger and his new organisation will tackle them, but I do not believe that these clauses solve the problem.

The noble and learned Lord, Lord Judge, regularly reminds us of Henry VIII clauses. I regard this as a Henry II clause: "Who will rid me of this troublesome priest?"—or, in this case, this troublesome regulatory body. I am sorry, but I cannot read those clauses without thinking that in some malevolent hands they will be misinterpreted by some Government or another.

I was an electoral observer in 2018 in a country I know well because I completed the whole of my university career there—Zimbabwe. I met the Zimbabwe Electoral Commission and challenged it on the way it operated that election. I would like to be in a position to suggest that it use and operate our law. Could I honestly do that with these two clauses as they stand?

I come back to the position on which I opened. I am conflicted. I would like to see what the noble Lord, Lord Scriven, identified: the clear operation of an electoral commission that produces independent, fair, free elections. That I could commend to the Zimbabwe Electoral Commission. I hope that, when it comes back, this legislation will be something that I could recommend. As it stands, with these clauses, I could not.

Lord Collins of Highbury (Lab): Just for the record, I am not Lord Kennedy.

Lord Hayward (Con): I am very conscious of that. I did not necessarily say that the Lords to whom I was referring were present in the Chamber; I gesticulated towards the Bench opposite. I hope I did not offend the noble Lord in saying that.

Lord Beith (LD): My Lords, I am very glad to follow the noble Lord. He has delivered a message to people in his party that you can be severely critical of the Electoral Commission and consider that it has shortcomings and has not always owned up to things it has got wrong, but it does not follow that it makes sense to remove a body which is, in many respects, a guarantee of the democracy of our system. His illustration from Zimbabwe is telling. Who among us has not talked to people from various countries with very shaky regimes about the need to have a fair and reliable electoral system? Many have taken part as election observers, as he has, and seen a lack of independence in the electoral process that is fatal and damaging. The fact that the existing members of the commission believe that the provisions of these two clauses would inhibit their ability to behave independently tells its own story. It is on that and one other point that I want briefly to contribute.

The noble Lord, Lord Kerslake, quoted from the letter that all but one of the members of the commission sent to Ministers. However, he did not go on to take a further quote from it, which says:

> "If made law, these provisions will enable a government in the future to influence the Commission's operational functions and decision-making. This includes its oversight and enforcement of the political finance regime, but also the advice and guidance it provides to electoral administrators, parties and campaigners, and its work on voter registration."

It goes on to say that the "have regard" duty would

> "provide a mechanism, driven by the then governing party, enabling that party's ministers to shape how electoral law is applied to them and their political competitors."

That is pretty clear, and anyone who took up a position on the Electoral Commission with this law governing how they conducted themselves would be likely to be severely inhibited by it. That raises a question of who will be willing to serve on the Electoral Commission with this kind of statutory statement as something to which they are obliged to have regard.

The other point I want to make is to reinforce something I said by way of an intervention. It really is no use the Government relying on the fact that they have produced an illustrative or indicative statement. That statement may be regarded by some as motherhood

[LORD BEITH]
and apple pie; it might be regarded by others as offering a few hints of things that might be unsatisfactory in future statements. It is not the law. It does not inhibit or guide even this Government, let alone future ones, as to what kind of statements they will seek to get through the process.

Remember that the process is effectively one of statutory instruments—affirmative procedure, the same as statutory instruments—which, for various other reasons, many noble Lords are reluctant to use in this House to the extent of actually defeating a statement. Indeed, the Labour Party has often taken a public position that it is not appropriate for this House to take such an action, but the noble Lord on the Front Bench pointed out that we are dealing with a different matter here. We are dealing not with a general policy issue but with protection of the integrity of the election process and the body required to regulate it, and the independence that body needs to be able to do those things.

I end with the hope that the contribution from the noble Lord, Lord Hayward, will be read by quite a lot of other members of his party, who might then feel free to join those of no party, my party and the Labour Party in saying that this matters. This is a threat to the independence and perceived independence of the body that regulates elections. However many of its decisions we disagree with or which may have been discomforting to our own individual party or cause, we must maintain its independence. That requires the removal of these clauses.

Lord Scriven (LD): My Lords, I will follow on from the points made very powerfully by the noble Lord, Lord Eatwell. In effect, these clauses will empower the regulated over the regulator. I listened very carefully to the point from noble Baroness, Lady Noakes, that statements of policy over regulators are not new. Let us take the logic of what these clauses actually do and of who is writing the statement to its conclusion. Would we allow the dominant electricity and gas company to write the strategy and policy statement for the energy regulator? Would the Government be happy for the largest water company in the country to write the strategy and policy statement for the water regulator? Would the Government legislate for the largest telecommunications company to write the strategy and policy statement for the telecoms regulator? I ask those questions directly to the Minister. If not, why not? We know as well as those outside this House do that that would empower the regulated over the regulator. We have independent regulators so that those who are regulated have no power whatever over the regulator.

Therefore, why is it that the Government seek in this Bill to allow the largest political party—that is, the Government—to write the strategy and policy statement for the regulator of elections and electoral policy? There is no logical reason to do that in order to keep that regulator independent. It completely puts the regulator at the behest of the Government in power, and it sets direction.

I want to follow what the noble and learned Lord, Lord Judge, says, because it is important that we look at what is in these clauses. A number of times, both the Minister and the noble Baroness, Lady Noakes, have kind of given us warm tea and soothed us: "Don't worry, have your cup of tea, sit down, and everything will be fine. It is a statement purely of strategy. This strategy won't get into the operation. The Government won't be directing what the commission does." But let us look at new Section 4A(3)(b) introduced by Clause 14. The Secretary of State will be given the power to put in the statement

"any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate"—

any other information. It basically gives the Secretary of State carte blanche to direct the regulator of elections and the electoral system to do whatever the Secretary of State decides. It is such a wide power. It is not a strategy power; it is a power that could get right into who the Electoral Commission employs, what the role of that person is and the kinds of powers that person has.

I ask the Minister: what powers would be excluded from new Section 4A(3)(b)? The Bill says

"any other information … the Secretary of State considers appropriate."

Is that a catch-all? If not, what would be excluded on the face of the Bill? I cannot see anything on the face of the Bill that says what the strategy and policy statement would exclude. I see that the statement could include any information the Secretary of State sees fit.

Furthermore, the Secretary of State, as we have already discussed, could do this of their own volition and without any consultation. The noble and learned Lord, Lord Judge, was absolutely clear. "Consultation" does not necessarily mean anything. I am a former council leader. We consulted. You do not necessarily have to change what you have decided based on consultation. Some of the most powerful and important considerations we have to make in this clause are that those who have worked in and led arm's-length bodies have said very clearly that when a Government say something is on the face of the Bill and you have to have regard to it, it is a direction and an instruction. It is not just something bland; it is a clear instruction that those people within those organisations and the Electoral Commission will see as something they have to take forward. It is very clear that the powers in this clause are much greater than a kind of "It'll be all right, you don't have to do it". New Section 4B(2) says that the commission "must"—not "may"—

"have regard to the statement when carrying out their functions."

New subsection (4)(b) says that the commission must report after the end of

"every subsequent 12-month period, on what they have done—"

not on what they have not done—

"in consequence of the statement."

Remember: the statement is about the priorities of the Government.

I believe that these clauses, which are so widely written, give the Government such powers over the regulator that they completely and totally take away the basis of a regulator that free and fair elections can be built on and undermine the very basis of our democracy. It is for those reasons that these clauses should not stand part of the Bill.

5.15 pm

Lord Russell of Liverpool (CB): My Lords, I rise very briefly to draw three points to the Government's attention. The first is prompted by the noble Lord, Lord Hayward, who talked about a culture of what appears to him to be institutional arrogance in the Electoral Commission. We live at a time of airborne viruses, with which we are all too familiar, and it occurs to me that perhaps they have infected Her Majesty's Government to some degree, since I detect occasional traits of institutional arrogance in some of their statements and demeanour from time to time. I hope this debate is not going to be an example of that.

Secondly, I advise the Minister to listen extremely carefully to the forensic way in which the noble and learned Lord, Lord Judge, laid out his argument. We have to think about what we hope is the unlikely event that something to do with the Electoral Commission and what it has done goes to judicial review or something similar. The noble and learned Lord demonstrated the way in which justice will look at the words of this law, and how they will be interpreted. So I say to the Government that, if they find themselves up against individuals such as the noble and learned Lord, they are likely to come out on the wrong side of the argument.

Thirdly, I belong to the Council of Europe, and in that capacity I have monitored three different elections. The Council of Europe exists partly to help those countries that do not have a history and tradition of western democracy as we know it to move towards a state where that becomes normalised. In the course of the three elections that I have monitored, one thing that we have always done early on is go and meet the electoral commission of the country. All that I can say from my experience of doing that is that, if we were interrogating an electoral commission and we discovered in the course of that interrogation that the commission was subject to what the Government are suggesting in these two clauses, it would start some red lights flashing. So I suggest to the Minister that the Council of Europe has a well-developed set of criteria for advising countries on how to set up their electoral commissions and how to make sure that they are fair and do what it says on the label, and I would be very happy to make an introduction to the people in Strasbourg who could give the Government access to that.

I appeal to the Minister to think very carefully about what he is trying to persuade us is the right way to proceed, because the mood of the House is very clearly that we have great concerns about it. So please let us all be careful.

Baroness Hayman of Ullock (Lab): My Lords, this has certainly been a very interesting debate. I thank the noble Lord, Lord Wallace, for tabling these amendments, and I wish him well as I understand the reasons why he is not with us today. I also thank the noble and learned Lord, Lord Judge, for his incredibly thorough and forensic introduction in the noble Lord's absence. I cannot think of anyone who could have better gone through these clauses and explained the concerns around them.

We know that the Electoral Commission was established by the Political Parties, Elections and Referendums Act 2000 in order to oversee elections and regulate political finance in the UK independently of government. The 1998 report from the Committee on Standards in Public Life emphasised the fundamental importance of independence for the proposed commission. It said:

> "Those who have advocated the establishment of an Election Commission have been emphatic that it should be independent both of the government of the day and of the political parties … An Election Commission in a democracy like ours could not function properly, or indeed at all, unless it were scrupulously impartial and believed to be so by everyone seriously involved and by the public at large."

In its 2007 review of the Electoral Commission, the CSPL highlighted the dual requirements of independence and accountability, saying that

> "any system of accountability must also protect the Commission's independence and impartiality from the possibility of undue influence for partisan political or electoral advantage".

In 2009, party-nominated commissioners were introduced to bring knowledge and experience of political parties and the workings of elections from those perspectives. This is now well represented and understood by the commission.

Part 3 of the Bill would make significant changes to the way in which the Electoral Commission is accountable to Parliament, giving new powers to the UK Government to designate a strategy and policy statement, about which many noble Lords have expressed concerns. It would require, as other noble Lords have said, the commission to "have regard to" this statement when carrying out its functions. It was really important that the noble and learned Lord, Lord Judge, went carefully through the Bill on the implications of what this would mean.

The introduction of a strategy and policy statement which enables the Government to set the strategic direction for the work of the Electoral Commission is inconsistent with the role that an independent commission plays in a healthy democratic system. This independence is fundamental to maintaining confidence in our electoral system. The commission's independent role must be clear for voters and campaigners to see, and it must be preserved in electoral law. This underpins fairness and trust in our electoral system and provides cross-party confidence in the commission. The noble and learned Lord, Lord Judge, explained why he thinks that public confidence could be lost if complete independence of the Electoral Commission is lost.

The commission's accountability is currently directly to the UK's Parliaments and should remain so, rather than being subjected to government direction. As we have heard, the Electoral Commission itself took the unprecedented step of writing to the Secretary of State and the Minister in the other place. The noble Lords, Lord Kerslake and Lord Beith, quoted from this letter and I would like to do the same. In it, the Electoral Commissioners

> "urge the Government to reconsider those measures which seek to change the oversight arrangements of the Electoral Commission."

I find it quite extraordinary that it felt the need to ask the Government to reconsider because it was so concerned.

Independence from the Government of the day is important because it prevents an incumbent changing laws or practices to suit their political interests. It can also strengthen public trust in the political process. Just as the judiciary should be independent, electoral

[Baroness Hayman of Ullock]
officials should be non-partisan. As my noble friend Lord Eatwell said, the Secretary of State is both regulator and regulated.

The problem with the Bill is that, in contrast with keeping electoral officials non-partisan, it proposes to weaken the commission's independence as well as to give the Government greater power by allowing them to designate the strategy and policy statement. It gives Parliament—but in practice, a Government, if they have a majority—the power to examine the Electoral Commission's compliance with this. The Electoral Integrity Project describes this as

"a direct violation of international best practices and would constitute democratic backsliding because it is giving the government and future governments greater control over the conduct of elections—the process through which citizens are enabled to hold government to account".

As we have heard from the noble and learned Lord, Lord Judge, new Section 4A of PPERA, as inserted by Clause 14, empowers the Secretary of State to designate this strategy and policy statement. This would set the strategic and policy priorities of the Government relating to electoral and similar matters, and the role and responsibilities of the commission in enabling the Government to meet those priorities. The statement may also give guidance in relation to particular functions of the commission and may provide additional information. The noble Lord, Lord Scriven, mentioned "any other business". If that is the case, can the Minister tell us where the checks and balances are as to what this could include?

Evidence given to the Public Administration and Constitutional Affairs Committee included, its report said,

"strong criticisms from academics and a range of stakeholders that the measures lack justification and were characterised as a 'retrograde step' 'an extremely dangerous thing to do' and 'would constitute democratic backsliding'

In his evidence, it continued, Professor Fisher pointed to

"surveys of election agents since 2005 which 'have seen that confidence in the [Electoral Commission] has grown over this period ... there is no particular problem with those that the [Electoral Commission] regulates'".

Far from requiring additional oversight, the commission already delivers good work in ensuring high levels of satisfaction in the integrity of the electoral process among those who are most knowledgeable and closely involved. A survey of electoral agents at the 2019 general election showed that 78% agreed that the rules in respect of election spending and donations were clear; 72% viewed the Electoral Commission as a useful source of advice; 75% thought that electoral guidance for candidates and agents was clear and easy to use; and 75% thought that the Electoral Commission's written information on the verification and count was clear and easy to use.

In its response to the Public Administration and Constitutional Affairs Committee, whose report raised these concerns, the Government said:

"It is not uncommon for the Government to set a broad policy framework, as approved by Parliament, which independent regulators should consider"

giving as examples the relationship that Ministers hold with regulators such as Ofcom and Ofwat.

The noble Baroness, Lady Noakes, referred to other regulators, mentioning her experience with Ofcom in particular. I too have spent many years working in regulated industries, in my case energy and water. I would instead agree with the noble Baroness, Lady Wheatcroft, and the CSPL, which considers this to be a completely false analogy, since these are not regulators implementing government policy. The Electoral Commission regulates the people and parties that make up the Government and Parliament. The noble Lord, Lord Scriven, gave an example as to why the situation with regulators such as Ofcom and Ofwat is so very different, so I do not accept that analogy. When giving evidence on this, Professor Alan Renwick stressed that

"ministers and parliamentarians should recognise their own potential conflict of interest."

Does the Minister recognise that there is a potential conflict of interest here?

Clauses 14 and 15 are not just about increasing the accountability of the commission to a Committee in the House of Commons, to which it already reports. Clause 14 subjects the commission to strategic and policy control, including guidance on specific cases, not by Parliament, but by Ministers. It is pretty difficult to express just how appalling this is but the noble and learned, Lord Judge, did an excellent job. Policy control and even guidance on individual cases might be appropriate for other public bodies—for example, those making decisions about infrastructure or planning permission—but it can never be right for the governing party to be able to give instructions to a body whose role requires it to make decisions that might well go against the interests of that party.

Under Clause 14, Ministers could guide the commission to interpret its powers in ways that would favour the ruling party and its friends. The courts might provide a backstop in the most extreme cases, such as where guidance tries to permit illegal activities, but judicial intervention is unlikely in more strategic interventions, such as Ministers telling the commission to restrict or halt its work on voter registration, which targets mainly young people, minorities and renters living in house-shares.

5.30 pm

Restricting the independence of the Electoral Commission is contrary to international norms. As the noble and learned Lord, Lord Judge, said, we would be concerned if what is being proposed here was being proposed in another country. The Organization for Security and Co-operation in Europe recently criticised Poland for proposals that would have transferred powers from its national election commission to Ministers. Likewise, the European Commission for Democracy through Law insists that electoral commissions must be independent and politically balanced. Its investigations have expressed concern on several occasions about transfers of responsibilities from a fully-fledged, multi-party electoral commission to an institute subordinate to the Executive. We on this side of the House are deeply concerned about these clauses.

To pick up some other aspects of the debate, the noble and learned Lord, Lord Judge, referred again to concerns about how consultation is being carried

out—a theme we have been coming back to all day. Proper consultation listens to respondents and then demonstrates meaningfully in its response what actions and decisions have been taken following the process so that it properly takes account of the concerns that people have raised. This does not seem to be happening at all with the Government at the moment. We have consultation that is no more than a tick-box exercise. Even worse, as the noble and learned Lord, Lord Judge, said, the Secretary of State is not even obliged to consult anybody. They have only to consider representations.

The noble and learned Lord also referred to the problems around the majority on the Speaker's Committee, with two members examining the way in which the Electoral Commission has been carrying out government policy. As the noble and learned Lord said, this is undue influence.

My noble friend Lord Stansgate asked the House to consider the damage to our democracy if these clauses were to go through. The noble Lord, Lord Kerslake, made the important point that there should be pre-legislative scrutiny. Again, this comes back to the lack of scrutiny and consultation. He made the really important point that the Electoral Commission was asked if it had been consulted, to which it said no. This Government seem to have a real problem with consultation and scrutiny, and we should all be concerned about that. My noble friend Lord Eatwell also referred to this and to the fact that serious changes to our electoral law are being proposed with no pre-legislative scrutiny.

My noble friend also referred to the fact that at Second Reading, the Minister did not extend the precautionary principle he discussed in relation to other parts of the Bill to Clauses 14 and 15. It is important that your Lordships' House is able to protect our democracy against any imposition of legislation that can be considered partisan.

As the noble Lord, Lord Rennard, said, independence has survived five general elections, so I ask the Minister—as the noble Lord, Lord Rennard, did—why these changes are required now. Despite what the Government say and the reassurances they have given us, these proposals do undermine independence.

I now come to the points made by the noble Lord, Lord Hayward. I listened carefully to him, but I do not think that we are all looking at the Electoral Commission through rose-tinted spectacles. He raised some important points, but what we are discussing today is, and the concerns that we have are, about the removal of the commission's independence. That is what is so important. As the noble Lord, Lord Beith, said, you can be critical of the Electoral Commission but still believe that its independence matters, and that these clauses need to go.

I finish by referring to the noble Lord, Lord Russell of Liverpool, and echo his request: will the Minister please listen carefully to the arguments of the noble and learned Lord, Lord Judge, and to the concerns of the House?

Lord True (Con): My Lords, of course I listen carefully. Having listened carefully, I infer that your Lordships view these clauses with somewhat modified rapture. Even if I were as eloquent as Pericles, which I am not, I might not be able to change your Lordships' minds over the next five to 10 minutes. However, I hope that, as we engage on this Bill—which I hope we will continue doing—these clauses will remain in as we go forward to Report. We should always consider modes of improvement, as well as modes of rejection. I will certainly undertake to have further conversations.

I welcome the noble Lord, Lord Eatwell, on his return from the United States. I understand that he was not at Second Reading, but I will correct the record by saying that I made no reference to the precautionary principle in that debate. It is not my habit to do so. If he finds in *Hansard* that I did, then I will gladly apologise to him.

I will address the amendments proposed to Clauses 14 and 15, and the excision of these clauses from the Bill. All noble Lords will agree—as I do—that it is vital that we have an independent regulator which commands trust across the political spectrum. This is the view of Her Majesty's Government. The public rightly expect efficient and independent regulation of the electoral system. We must reflect at all times on the current structures charged with this important responsibility and, where there is a need for change, be prepared to make it. The one thing that will not change is that the Electoral Commission is independent and will remain so.

We believe that the Government's proposals represent a proportionate approach to reforming the accountability of the Electoral Commission, while respecting its operational independence. I listened very carefully to the noble and learned Lord, Lord Judge, and will examine the *Hansard* record of his analysis of the clauses. There is no direction in the clause for the Electoral Commission to act in any particular way. There is the requirement to "have regard to" the strategy document —to which I will return later.

Clause 14 seeks to make provisions for the introduction of a strategy and policy statement which will set out guidance which the Electoral Commission "must have regard to" in the discharge of its functions. It is not a direction, as my noble friend Lady Noakes said, in what, under the circumstances, was a somewhat courageous speech and one with which I agreed. She set this out clearly.

It has been claimed that the "duty to have regard" to the statement introduced by the provisions will weaken the independence of the commission. I understand that noble Lords should be concerned about that. It is a perfectly legitimate concern. If that were the case, I would understand where noble Lords were coming from. We do not believe that the duty weakens the independence. It is also argued that the Government are given too much influence. Indeed, it was said that the duty gave "control" over the Electoral Commission's affairs. Again, in our submission, that is wrong. We strongly reject that characterisation of the measure. This is guidance, not a directive, and, as such, the Electoral Commission will remain operationally independent as a result of this measure. It will be required to "have regard" to the statement in the exercise of its functions. This legal duty does not replace or undermine the commission's other statutory duties. They will remain.

[LORD TRUE]

It is entirely appropriate for the Government and Parliament to provide a steer on electoral policy and ensure that their reforms on electoral law are properly implemented. It is not about meddling with operational enforcement decisions on individual cases or any change in the commission's statutory duties. By increasing policy emphasis on electoral integrity, however, inter alia the Government are seeking to prevent interference in our democracy from fraud, foreign money and hostile state actors.

At present, the Electoral Commission is not fully held to account by anyone. My noble friend Lord Hayward referred to the issues of family voting in Tower Hamlets, on which I recently read an article by that courageous campaigner for honesty in elections, Councillor Peter Golds, who documents his difficulties in getting the commission to address fully and seriously, as he sees it, the problems presented by this issue. The proposed illustrative document that has been given to noble Lords, for example, asks the Electoral Commission to look into the dangers of fraud and such issues that emerge from family voting. It is reasonable to ask the body tasked with preventing fraud to address the bullying of female voters and to give priority to that.

The statement has a democratic check by being ratified by Parliament, as we discussed on an earlier amendment. Your Lordships have the power to accept or reject these proposals on the statement when it comes forward. The duty to have regard that we are introducing means simply that when carrying out its functions the commission will be required to consider the statement and weigh it up against any other relevant considerations. I do not accept the contention of the noble Lord, Lord Kerslake, and others that a statement is not appropriate for a public body. I agree with my noble friend Lady Noakes in her response to that.

Lord Kerslake (CB): Perhaps I might clarify this point for the Minister. I did not say it applied to any public body. I said it related to the Electoral Commission. There is a critical difference here in its role, its standing and the nature of its accountability. The situation is quite different for other regulatory bodies.

Lord True (Con): I respectfully disagree with the noble Lord on that. The Electoral Commission is a public body and many other such bodies have important duties and activities that impinge on the public and public well-being. I stand by my statement and agree with my noble friend Lady Noakes on that.

The propositions that we are putting forward work in similar ways to other existing statutory duties that require public bodies to have regard to specific considerations in carrying out their functions; for example, the requirement for public bodies to have regard to matters of equality when exercising their functions. The statement will not allow the Government to direct the commission's decision-making. They—any Government—will not be able to do so. My noble friend Lady Noakes is, again, right.

Lord Scriven (LD): I must challenge this. The Minister keeps saying that there is not a power. Can he explain new Section 4A(3)(b) in Clause 14, which states specifically that the statement may also set out

"any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate"?

That is such a wide power, that the Secretary of State can determine anything that the commission does.

5.45 pm

Lord True (Con): Yes, my Lords, new Section 4A(3)(b) allows the statement to contain—I am repeating what the noble Lord has just read out for the Committee; I am trying to help the Committee by doing so—any information considered appropriate, such as information

"about the roles and responsibilities of other persons."

This could include other bodies with which the EC has relations, for example. The commission cannot be held responsible for the functions of other bodies which might be mentioned. New Section 4B(2) is disallowed from the commission's duty to

"have regard to the statement when carrying out their function."

New Section 4B(3) says:

"Subsection (2) does not apply to information contained in the statement by virtue of section 4A(3)(b)."

It is therefore intended specifically, for the reasons that the noble Lord puts forward, for that provision in the Bill.

The Government are clear in their submission that a statement will not undermine the commission's other statutory duties. It could be used to provide guidance in areas where the commission is exercising the significant amount of discretion it is afforded, and will continue to be afforded, in terms of activity, priorities and approach.

More generally, statutory consultation in applicable circumstances, and the required approval of the UK Parliament when a statement is created or revised, will ensure that the Government consider the UK Parliament's views and will give Parliament, including your Lordships' House, the final say over whether the statement takes effect. This measure will improve the commission's accountability to this Parliament and ensure that Parliament remains firmly in control of approving any statement.

I turn to the amendment relating to Clause 15. The purpose of Clause 15 is to expand the remit of the Speaker's Committee on the Electoral Commission, a statutory committee which is chaired impartially by the Speaker of the other place. Its existing remit is limited to overseeing the commission's finances, its five-year plan and the appointment of Electoral Commissioners. In expanding the committee's remit, so that it may examine the commission's performance of its duties to have regard to the statement, the Government are seeking to extend Parliamentary accountability of the commission to the Speaker's Committee. This will enable the committee to perform a scrutiny function similar to that of Parliamentary Select Committees, allowing it to retrospectively scrutinise the commission's activities in light of its duty to have regard to the statement. This power will sit alongside the committee's existing statutory duties, which we are not amending in any way.

For clarity, Clause 15 will not enable the committee, any more than the Government, to direct the commission's decision-making. The commission will remain operationally independent and continue to be governed by the commissioners. For completeness, this clause also gives the Speaker's Committee powers to request relevant information from the commission

"in such form as the Committee may reasonably require",

while ensuring that the commission is not required to disclose information that

"might adversely affect any current investigation"

or that

"would contravene the data protection legislation."

This is important in protecting the commission's ability to investigate, and also the interests of those who may be under investigation. For the reasons that I have set out, we contend that this clause will actually improve the commission's accountability to Parliament, while respecting the regulator's operational independence.

Those are the reasons why the Government think that these clauses are proportionate and reasonable, and I urge that your Lordships do not seek to remove these clauses from the Bill.

Lord Eatwell (Lab): My Lords, the Minister suggested that he did not use the precautionary principle in his speeches at Second Reading. At col. 314, he drew a direct analogy between the need for photographic evidence to vote and locking a door to prevent burglars. Is not that the precautionary principle?

Lord True (Con): No, it was a humorous remark for the Committee. The precautionary principle is one that the European Union applies in considering legislative activity; it is not a principle that I espouse and not one that I endorsed in the speech.

Viscount Stansgate (Lab): Can the Minister at least address another point made by my noble friend, on the effect that these clauses will have on the perception that our electoral process is as proper as it should be? Given the comparison that he drew with what we have seen across the Atlantic, and the damage that could be done if any electoral process suffers from a growing sense that it is in some way unfair, or has been interfered with, it is simply not worth having these clauses, to prevent the type of damage that we have seen across the Atlantic.

Lord True (Con): I accept what the noble Lord said on that point—and, indeed, what the noble Viscount has said. What I would say is, first, that a Minister at the Dispatch Box should not criticise either a former or a present President of the United States, or any members of the parties that support them. We all make and contribute to the perceptions that people have, and one problem is with the risk of importing the rhetoric of the USA about voter suppression, fair voting or whatever, when actually every opinion poll in the United States, including among African Americans, supports the principle of voter identification. If we import that rhetoric into our public affairs, we ourselves potentially contribute to the very kind of perception that I wish to avoid, and I know that the noble Viscount also does—although he has not been in this House that long, I know that his integrity is resounding. All of us who want to avoid that ought to watch our own language in this respect. That is the only thing that I would say in response. We will debate this later, but the Government are seeking to suppress nobody's vote. We wish to maximise participation in elections.

Lord Collins of Highbury (Lab): I hope that the Minister can answer the direct point from the noble Lord, Lord Hayward. Although the noble Lord criticised the operation of the Electoral Commission and spoke about how it might improve, he referenced something fundamental. He spoke about his experience in a country where an electoral commission operated under the direction of a Government who hindered and harmed the opposition. Does the Minister not think that, when we complain to that Government about that electoral commission, today's action and his speech today will inhibit our ability to criticise that Government?

Lord True (Con): Absolutely not—and I very much hope not. I come to your Lordships' House to listen to your Lordships' House, and I hope every government Minister does just the same. The direct answer to the noble Lord opposite is the one that I gave in my speech—that this Government do not seek to direct the Electoral Commission, and nothing in the Bill contains a power of direction.

Lord Judge (CB): I am very grateful to everybody who has taken part in this debate. It has been a very interesting debate, with aspects of the issue to which my eyes have certainly been opened.

Noble Lords will not want me to try to address every point made by the Minister, but I shall draw attention to a couple. First, if there are problems with how the Electoral Commission is doing its job, or problems with the extent of its job and the ambit of its responsibilities, what we should do is reform the Electoral Commission. We do that in primary legislation before both Houses, not by a ministerial statement.

Secondly, the Minister said that there was nothing in here that used a direction, because "must have regard to" is not a direction. It is not a direction—but the issue is not merely power but influence, and undue influence. However much one tries to avoid the fact, if the Electoral Commission must have regard to whatever the Minister says, the perception of undue influence is obvious, the fact of undue influence is, I suggest, inevitable, and the truth of the matter is that over the years the Electoral Commission will become more and more dependent on what the Secretary of State's statement asserts.

Finally, the point I sought to make was that the Speaker's Committee was fine and good when we had the Electoral Commission exercising the responsibilities it currently has, without the introduction of the new Secretary of State's statement. But what alarms me—and, I suspect, alarms the House—is simply this: there will be two government Ministers examining the work of the Electoral Commission and checking whether it has complied with, or responded to, the Secretary of State's statement. Fine: they will be seeing whether their ministerial colleague's directions, invitation and suggestions have been obeyed. In other words, the Electoral

[Lord Judge]
Commission will be judged by somebody in the same Cabinet, or the same party. That is a serious change in the way in which the commission works.

I am sorry to say this but, having listened to the Minister, I am in the same position as PACAC was. Incidentally, PACAC is one of the bodies that the Secretary of State is supposed to consult, but its recommendation has been totally ignored. The Minister has not demonstrated that the proposed measures that we are considering are both necessary and proportionate. Nor has he demonstrated that the risk of

"undermining public confidence in the effective and independent regulation of the electoral system"

has been avoided. For those reasons, among many put forward, although for today's purposes I shall not press the matter, we shall have to return to this on Report.

Clause 14 agreed.

Clauses 15 and 16 agreed.

Clause 17: Criminal proceedings

Amendment 17

Moved by ***Baroness Hayman of Ullock***

17: Clause 17, page 27, line 33, after "money" insert "greater than a peppercorn"

Member's explanatory statement

This amendment would probe the provisions which prevent the Commission from borrowing money.

Baroness Hayman of Ullock (Lab): My Lords, I imagine that, compared with the previous debate, this one will be a lot shorter and sweeter. I tabled the amendment to Clause 17, which, as I am sure noble Lords are aware, deals with criminal proceedings. I am aware that there are other amendments relating to this area that will probe much more deeply the provisions for the police and the institution of criminal proceedings, so I will be brief.

My amendment would make a very small addition to proposed new sub-paragraph (2)(a), and add the phrase "greater than a peppercorn" after the word "money". It is a probing amendment, which we decided to put forward for discussion because, although we would not disagree with the concept that the Electoral Commission should not borrow money, that is not the issue at all. I wanted to bring this forward, and ask the Minister some questions, to find out why this provision was placed in Clause 17.

The Minister may tell me I am wrong, but my understanding is that the Electoral Commission is already unable to borrow money, so this does not seem to me to be a new policy. Can he clarify that, in case I have got hold of the wrong end of the stick here and there is a particular reason why this clause has been included? I would appreciate some detail on the reasoning behind it. There is legislation that governs other bodies. The one that comes to mind is the Office for Students, which also is prevented from borrowing money. Is the idea behind this that the Government are trying to bring more consistency across legislation, looking at other bodies? Perhaps it needed tidying up. I would be very grateful to know.

On that point, I also ask the Minister whether there are any public bodies that are now in a position to borrow money. I have got a bit confused. If some are able to borrow money, what is the justification for that and for others not being able to do the same? I just want to get a better understanding of this part of the clause.

6 pm

As I said, Clause 17 amends Schedule 1(2) to PPERA to expressly remove the potential for the commission to bring criminal prosecutions in England, Wales and Northern Ireland—obviously, it does not apply in Scotland, where there is already the single prosecuting authority. I will not go into detail on that because, clearly, the next group of amendments in the name of the Lord, Lord Wallace, will probe much further into Clause 17 and the criminal procedures that it refers to, about which others have already expressed concerns, including in evidence given to different committees. I will not go into that, as we are about to debate it; this is a simple probing amendment to find out exactly what the thinking is and how it fits with other, similar organisations.

Lord Stunell (LD): My Lords, I support the amendment, probing as it is, from the noble Baroness. As she quite rightly said, this in large measure prefigures the next debate we are going to have. I await with interest the answers that we will hear. Particularly in the case of the borrowing power, it seems somewhat otiose to put in a power that has never been exercised in any way at all.

Viscount Younger of Leckie (Con): My Lords, it seems that it is time for a change of horse—although it is fair to say that the highway that this one is on is broadly the same. On this amendment from the noble Baroness, Lady Hayman of Ullock, I respect her wish to explore the issue; I understand that it is a probing amendment on the question of whether the Electoral Commission can borrow money. I will try my best to answer the questions that have been raised. It is our view, at the outset, that we do not think that this is necessary, but it is of course incumbent on me to explain why.

It is important to note that the Electoral Commission is funded through Parliament each year, following scrutiny by the Speaker's Committee on the Electoral Commission. The commission submits a main estimate, outlining its required funding for the financial year ahead for approval by that committee, with the estimate then laid before the House of Commons. Should the commission require any further funding for the year, it is able to submit supplementary estimates throughout the year to the Speaker's Committee on the Electoral Commission as necessary. This could be where project costs have risen for unforeseeable circumstances or for unscheduled electoral events. Given this annual funding through Parliament, and with the ability to seek further funding if required for unforeseen projects or events, it is the view of the Government that the commission therefore does not need to borrow money. I think that is probably what the noble Baroness was seeking confirmation of, and I can confirm it. It is further noted that this restriction has been in place since the establishment of the commission.

On the noble Baroness's specific question as to why it therefore needs to be in the Bill, I am seeking that answer. It may just be that it is confirmatory and needs to be put in but, if there is anything further to say on that, I will most certainly write to the noble Baroness, as it is a very fair and rather basic question.

On the other public bodies that might be in a position to borrow money—that is, who they are and perhaps to what extent—again, that is something I will need to write on. It may be a very long list or it may be a very short list, but it is a fair point in terms of providing some sort of context to this matter.

I hope that that provides a little reassurance. With that, I ask that the amendment be withdrawn.

Baroness Hayman of Ullock (Lab): I thank the Minister for his response and look forward to his letter. I thank him for agreeing to write to me so that I have the details of the response. On that basis, I am happy to withdraw my amendment.

Amendment 17 withdrawn.

Debate on whether Clause 17 should stand part of the Bill.

Lord Stunell (LD): I rise to oppose the proposition that Clause 17 should stand part of the Bill.

Clause 17 is a strange animal. In explaining something of the context for new sub-paragraph (2)(a), the Minister did not give me the impression that there is a clear context for its inclusion in the Bill. However, it is much easier to see what it is for when you look at new sub-paragraph (2)(b). The way I see it—perhaps the Minister can tell me whether I have got it wrong—this is, in essence, the wing-clipping clause. Wing clipping leaves the bird looking fine; it just cannot fly. So the Electoral Commission will retain all its plumage and hopefully make all the right noises at the right time, but it will not be allowed to deliver so much as a peck to miscreants, let alone take off and fly. In short, new sub-paragraph (2)(b) removes the Electoral Commission's right to instigate criminal proceedings.

In our report on this exact matter last year, the Committee on Standards in Public Life looked very hard at the issue, not least because some of the Minister's friends in the other place had clearly expressed strong views on it. We heard some of the context for that from the noble Lord, Lord Hayward, earlier. If I change the metaphor from birds to football, I could say that the Minister's friends in the other place objected to the yellow cards that the Electoral Commission issued following the 2015 general election. They wanted to appeal to the FA on the grounds that the referee was biased, did not understand the offside rule and had taken a long time studying VAR before reaching for his card.

The committee heard—indeed, the noble Baroness quoted our evidence—that it had been a very stressful time for some people, not least because there was an extended period of uncertainty and a high risk of reputational damage. Nevertheless, the fact is that offences were committed, breaches of electoral law were found and convictions followed. I might say in passing that, as an amateur agent and candidate multiple times over a period of more than 40 years, it is a stressful time. However, of all the difficulties in understanding and accurately following election rules during that time, I must say that I never found the rule that national and local expenditure should be kept separate particularly taxing or problematic—but they found it to be so.

I recommend that noble Lords take a close look at the CSPL report on this, which I believe they will find balanced and persuasive, although it does not seem to have persuaded the Government. In one particular respect, we recommended that the Electoral Commission should in fact have extra powers to grant permission to parties and non-party and referendum campaigners to pay late invoices or bills from suppliers. That is taking over a function that is currently exercised by the courts. At present, there is a very cumbersome process of applying to the courts for relief if a small mistake—or indeed a large one, although most are very trivial—has been made in paying invoices and bills at the end of an election campaign. That application to the courts is certainly stressful and wholly disproportionate. If stress relief is the aim of this clause, or the Bill as a whole, that CSPL recommendation ought to be included in it—that provision should be there.

One argument that has been advanced and that the Minister may be tempted to deploy is that it is not appropriate for the rule-maker to be the prosecutor of breaches of those laws. Well, quite a lot of people exercise power in situations where they might have a conflict of interest, which has been referred to by my noble friend Lord Scriven. I remind the Minister that the Health and Safety Executive is one of many regulators that do exactly that: it manages the regulations and carries out prosecutions. I further remind him that his noble friend, the noble Lord, Lord Greenhalgh, is about to give the Health and Safety Executive, via the building safety regulator, a hugely extended role in tackling the cladding scandal and the many examples of poor practice in the building industry. It may be too much to expect consistency of approach from two Ministers dealing with two Bills on the same issue in the same week, but, in one case, a regulator is being given a greatly enhanced reach of powers to prosecute and fine, and, in the other, one is having its teeth ripped out.

It may be said that there have not been any prosecutions by the Electoral Commission and you never miss what you do not have. That of course is a completely post hoc position; it would make more sense to deploy that argument if there had not in fact been dirty work at the Thanet crossroads—but the court found that there had been. The evidence given to CSPL was that, in England, the very many different police forces have very different levels of expertise in election law and offences. They were often very hesitant to get involved in complex and possibly highly politically charged cases where there is little by way of case law to guide them and quite a low chance of securing a conviction. I do not know whether the Minister has any evidence to the contrary—has he got chief police constables and police and crime commissioners queueing up to ask him, "Please can we take on more election offences"?—but I have to say that that evidence missed CSPL. So, in the absence of that, what does subsection (4)(2)(b) achieve? As far as I can see, it reduces the chance of a successful prosecution or inquiry.

[LORD STUNELL]

So, if there is no evidence that the police are gagging to take on more work, the impression that the Electoral Commission's wings are simply being clipped is strengthened. So I want hear how the Minister expects prosecutions of egregious offences to proceed if this is removed from the system. If the system is to function effectively, the Electoral Commission needs the backstop power to institute proceedings, not least as a spur or lever to make sure that police engage properly in taking action in an area of law where they have traditionally shied away from it.

Although Clause 17 is by no means as dangerous as the earlier ones—Clauses 14 and 15—it is here simply as a piece of red meat to give to disgruntled politicians who had a near miss. It is out of place in a Bill that was once called the "election integrity Bill"—very sensibly, the Government dropped the word "integrity". I am afraid that it diminishes the power of the Electoral Commission in yet another small way and reduces its capacity to deliver fully and properly on one of its core functions. It runs entirely contrary to the recommendations made by CSPL, which have been delivered to the Prime Minister after a most careful consideration of all of the available evidence. I and my noble friends say that it should come out of the Bill.

6.15 pm

Lord Khan of Burnley (Lab): My Lords, I welcome the noble Lord's intent to oppose Clause 17 standing part of the Bill and to probe the new restrictions on the Electoral Commission which, in effect, will prevent it instituting criminal proceedings. This represents a significant change in the role of the commission which, until now and since its establishment, has held the power to bring prosecutions against those who break electoral law.

This will no doubt mean that greater responsibilities are left to the police and the Crown Prosecution Service to enforce electoral law. On this, can the Minister confirm whether additional resources, support and training will be provided for this purpose? The transfer of functions away from the commission will also reduce its overall responsibilities and could mean that the positions of some of its workforce are made redundant. Does the Minister expect that any jobs will be lost as a result of these clauses?

Overall, I am concerned that these measures could be short-sighted and form part of a broader attack on the capabilities of the independent Electoral Commission. At a time when democracy is under threat elsewhere in the world, the UK should stand as a beacon for our values and oversight is crucial to that. If the Government can justify this transfer of functions away from the Electoral Commission for the purpose of effectiveness, they will have our support, but given that other clauses in this Bill undermine the independence of the commission, I am sure the Minister will understand our caution over these provisions.

Let us look at the evidence. The Electoral Commission considers that its

"current powers to establish a prosecution function are consistent with those available to many other regulators"

and that the proposed measure would

"reduce the scope for political finance offences to be prosecuted, relying solely on the police and prosecutors having the resources and will to take action."

It notes that the current low levels of prosecution for a PPERA offence, referencing one in the past 20 years, have "important implications for deterrence."

Assistant Chief Constable Pete O'Doherty from Thames Valley Police noted:

"the current state of legislation has created a two-tier system with parties and non-parties being investigated and regulated by the commission with civil penalties imposed, while of course candidates and individuals by the police, who will end up with much more severe sentences and even criminal records. Also the relationship between the police and the commission is very strong, and having organisations that apply two very different pieces of legislation is not ideal. For example, it can cause issues in deciding what should be classed as party and what should be classed as candidate expenses, to give you an example."

The Government note that the CSPL's recent report on electoral finance regulation did not recommend that the Electoral Commission should be able to develop the capacity to bring prosecutions. They stress that they are

"committed instead to supporting the police as necessary to enforce electoral regulation proactively and effectively and as stated in the Government's response to the Committee on Standards in Public Life's report, the local nature of offences under the Representation of the People Act 1983 means that it is sensible for investigations to lie with local forces police, rather than being run on a national scale. The Government will consider further the Committee's findings and recommendations, including on enforcement of electoral law."

Finally, I turn to the PACAC recommendations:

"The Government has not clarified whether more resources and training will be provided to the police and Crown Prosecution Service (CPS) and Public Prosecution Service in Northern Ireland (PPS) to investigate alleged criminal offences under PPERA.

… The Government should set out how it will 'support the police as necessary to enforce electoral regulation proactively and effectively', as committed by the Government in its letter to the Committee of 7 October 2021, including what resources it will make available to the police to investigate and bring forward criminal prosecutions under PPERA.

… We urge the Government to commit to review, monitor and report on potential criminal breaches under PPERA and their enforcement, which would assist in bringing forward any further legislative changes to either the civil and/or criminal sanctioning regimes. The Government should publish its findings and lay a statement in Parliament every year.

… The Government should also commit to undertaking a review of the civil sanctioning regime for electoral law offences and its interplay with criminal prosecutions under PPERA and the RPA, providing a timetable for consultation and review of the CSPL's recommendations in this regard."

On the Government's response to the PACAC recommendations, we do not think that the Government have not done enough to address the committee's concerns.

I finish by echoing the words of the noble Lord, Lord Stunell, that, as it currently stands, this is wing-clipping of the Electoral Commission. It is silencing and reducing its power—a theme that we have seen continuously through different groups of amendments in Committee. I look forward to hearing the Minister's response.

Lord True (Con): I thank all noble Lords who have contributed to this brief debate and I welcome the noble Lord, Lord Khan, as another member of the team on the Front Bench opposite for this Bill. I look forward to working with him as I do with other noble Lords opposite.

The purpose of Clause 17, which the noble Lord opposes, is not to change anything but to maintain the existing role of the Crown Prosecution Service and Public Prosecution Service in Northern Ireland in bringing prosecutions under electoral law by clarifying the extent of the Electoral Commission's existing powers.

I remind noble Lords that, when PPERA was passed—and it was an important reforming Bill by a Labour Government that established the commission—Labour Ministers then were absolutely explicit that the Electoral Commission should not have prosecution powers. The noble Lord, Lord Bach—a fine noble Lord—said at the time that the Neill committee, which was the independent committee that had looked into this,

"made clear its view that prosecutions in respect of breaches of the law relating to controls on donations and election expenses should be placed in the hands of the Director of Public Prosecutions and should not be the concern of the commission … the commission does not have that power … the commission will be an enforcement authority but not a prosecuting authority."—[*Official Report*, 20/11/2000; col. 631.]

That was what the noble Lord said then, and I agree with him now.

The Explanatory Notes for PPERA clearly state that the Electoral Commission shall have

"a duty to monitor compliance (but not to mount criminal prosecutions)."

That was the basis on which the commission was set up, and all parties at that time assented to that proposition, including the Liberal Democrats.

What has actually changed? The Electoral Commission publicly stated in its *Interim Corporate Plan 2020-21 – 2024-25* its intention to develop a prosecutorial capability that would allow it to investigate and bring suspected offences directly before the courts. That was in the aftermath of what some might consider the debacle of the pursuit by the commission of some citizens, which was summed up in by a headline in the *Guardian* on 14 September 2018:

"Elections watchdog got law wrong on Brexit donations, court rules".

While the commission considers that current legislation provides scope for it to develop this function, that has never been explicitly agreed by any Government or Parliament. Indeed, as I just suggested to noble Lords, absolutely the reverse was the intention of Parliament when the Labour Government introduced this legislation. It is therefore important to clarify, in the light of the Electoral Commission's statement, the relevant legislation to make it clear that the commission should not bring criminal proceedings and to put the matter beyond doubt. By doing so, we will avoid the risk of wasting public money as well as the risk of duplicating the work of the prosecution authorities who are already experts in this domain—I agree with the noble Lord opposite that that is where the resources should go.

The clause that the Government propose would add to the Political Parties, Elections and Referendums Act 2000 to make clear the original attention of Parliament that the commission should not bring criminal prosecutions in England, Wales and Northern Ireland. This would not apply in Scotland where there is already a single prosecutorial authority.

The clause will not amend any of the commission's other existing powers. The commission will continue to have a wide range of investigatory and civil sanctioning powers available to it, and it will remain able to refer criminal matters to the police, as is currently the case. We must not forget that, as the noble Lord, Lord Stunell, himself reminded us, the commission has never brought a criminal prosecution to date, although it may be talking of wanting to develop that role. Clause 17 merely retains that status quo in practice, so our measure will not add a burden to the prosecution authorities or lead to fewer prosecutions.

The proper place for criminal investigations and prosecutions lies with the experts in this domain—namely, the police and prosecution authorities. That is in line with the *Regulating Election Finance* report by the Committee on Standards in Public Life, which found that there was no evidence or support for allowing the regulator to develop a prosecutorial ability in order to increase the number of prosecutions. The proper place for criminal investigation and prosecution is with the police and the Crown Prosecution Service, and the Public Prosecution Service in Northern Ireland. These are the experts. Having the commission step into this space is unnecessary.

I draw the Committee's attention to the Crown Prosecution Service's evidence to the Committee on Standards in Public Life in July 2021, when it stated that

"the CPS deals with criminal offences under the RPA and criminal charges under PPERA, while the Electoral Commission has civil powers to deal with PPERA cases. We assess this is an appropriate division. There are important prosecutorial functions that the CPS has vast experience of, and expertise in, including police PACE processes, adherence to CPIA legislation and to disclosure rules … In our view"—

this is the CPS, not the Government—

"a criminal-civil divide provides a good level of precision … Any unintentional blurring of the lines would be counter-productive."

I think that is advice from prosecutorial authorities who know what they are doing.

We are committed instead to supporting the police as necessary to enforce electoral regulation proactively and effectively. For that reason, I urge the Committee to resist this opposition to the clause. If your Lordships were to follow it, it might encourage the Electoral Commission to develop this function. I think the existing practice should be maintained, and therefore I urge that Clause 17 should stand part of the Bill.

Clause 17 agreed.

Amendment 18

Moved by ***Lord Rennard***

18: After Clause 17, insert the following new Clause—

"Fines for electoral offences

(1) The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 (S.I. 2010/2860) is amended as follows.

(2) In Schedule 1, paragraph 5, for "£20,000" substitute "£500,000, or 5% of the total spend by the organisation or individual being penalised in the election to which the offence relates, whichever is greater"."

Member's explanatory statement

This new Clause would allow the Electoral Commission to impose increased fines for electoral offences.

Lord Rennard (LD): My Lords, one of the problems with the Bill is that the Government failed to make any changes at all to their proposals when the Committee on Standards in Public Life published its recent report, *Regulating Election Finance*. The whole purpose of setting up the CSPL was to meet Sir John Major's aim of cleaning up the reputation of politics, including political finance. It now seems that the Government want not only to control the watchdog responsible but to make sure that it has no teeth. I believe the Government have a significant conflict of interest in this matter.

The CSPL report recommended that the Electoral Commission should be able to levy increased fines for serious electoral offences. It proposed a comprehensive package of measures to improve enforcement, which included decriminalising some offences and addressing an enforcement gap in the regime covering candidate spending. There are some matters that are best dealt with by regulators such as the Electoral Commission, which must be able to enforce fines, rather than necessarily by the police and criminal courts. As the commission itself says, there could be more proportionate ways for the commission to deal with breaches of political finance law.

6.30 pm

In 2000, when some of us sat through 11 days of debate in this House on what became the Political Parties, Elections and Referendums Act, we knew that all the parties were very nervous about having a new regulator and having to comply with new regulations. The maximum fine for parties was therefore set at a very low level. With hindsight, 22 years later, a fine of £20,000 may be seen as a very modest level of taxation for a multi-million-pound offence that could alter the result of a general election or a referendum.

In considering the appropriate level of fines, we should look at regulatory models such as that for the Information Commissioner's Office. Since 2010, the Information Commissioner's Office has handed out £23.5 million in fines to organisations found to have been breaking the law on rules about spamming or failing to look after consumer data.

There are two tiers to the level of fines that can be imposed by the Information Commissioner's Office. The higher maximum amount is £17.5 million or 4% of the total annual worldwide turnover in the preceding financial year, whichever is higher. The higher maximum amount can also apply to any failure to comply with any of the data protection principles, any rights an individual may have under Part 3 of the Data Protection Act or in relation to any transfers of data to third countries. There is also a standard maximum if there was an infringement of other provisions such as administrative requirements of the legislation. The standard maximum is £8.7 million or 2% of the annual worldwide turnover in the preceding financial year, whichever is higher.

Parliament has agreed to a regulatory body such as the ICO being able to regulate organisations through the imposition of penalties on this scale. I believe the political parties must also be respectful of election law rules and, in particular, those concerning donations and election spending. The present limit of £20,000 for a regulatory body is clearly woefully inadequate. Amendment 19 in the name of the noble Lord, Lord Young of Cookham, proposes what I consider a modest increase, to £50,000, in the level of fines that can be imposed by the commission. Amendment 18 in the name of my noble friend Lord Wallace of Saltaire would put the regulation of political parties more in line with that imposed by other regulatory bodies such as the Information Commissioner's Office. I beg to move.

Lord Young of Cookham (Con): My Lords, I wish to speak to Amendment 19 in my name, which has been grouped with Amendment 18. When I tabled my amendment, I did not realise I had been gazumped by the noble Lord, Lord Wallace of Saltaire, who had the same objective as me but had put a significantly higher price on it, of £500,000 instead of £50,000. I will add a brief footnote to the case made by the noble Lord, Lord Rennard.

I have two interests in this. The first is that I was the opposition spokesman on the original legislation to set up the Electoral Commission over 20 years ago. My party fully supported the establishment of an independent body to monitor elections in this country and, as a corollary, the need to give it powers to carry out its functions and to deter behaviour that undermined the integrity of the electoral process. My view is the same and, although the Electoral Commission has not got everything right, I do not join those who seek to undermine its independence, as we heard in earlier debates.

My second interest is as the immediate predecessor to my noble friend as Minister with responsibility for the Cabinet Office in your Lordships' House and, in particular, responsibility for answering questions from the noble Lord, Lord Wallace, and others, about the powers of the Electoral Commission. Indeed, my DNA may still be on the folder in front of my noble friend.

Both experiences lead me to the view that the original powers to fine, untouched since the Act was passed, need updating to reflect what has happened in the intervening period, not least the erosion in the value of money.

Looking through the exchanges on which I took part on this very subject, I see that on 28 March 2018, in response to a Question from the noble Lord, Lord Hunt of Kings Heath, I said:

"On the specific question of the £20,000 fine, the noble Lord is correct that the Electoral Commission has expressed concern in the past that this might be regarded as simply the cost of doing business, and it is making representations that it should be enhanced to a higher level. The Government are considering those representations and, alongside any other recommendations that come out of the investigation currently under way, we will then consider what further action to take."—[*Official Report*, 28/3/18; col. 833.]

On 28 June that year in response to a Question from my noble friend Lord Cormack I replied:

"My noble friend will know that the Electoral Commission has made requests for legislation, particularly to increase the sanctions that are available to it."—[*Official Report*, 28/6/18; col. 240.]

Also, on 17 July that year in response to Lord Tyler—whose participation in these debates we all miss—I said:

"On the question of legislation, as I have said, we are currently considering whether the Electoral Commission should have more powers; we know that the commission wants the maximum fine to be increased from £20,000 to a higher level". —[*Official Report*, 17/6/18; col. 1141.]

I am now free to express views that were at the time constrained by the rules of collective responsibility—which I stretched from time to time but I hope never broke. I fully expected on the briefing I had received that, when we legislated on the Electoral Commission, we would increase the maximum fine available.

The amendment from the noble Lord, Lord Wallace, reflects the recommendation of the CSPL. We should attach weight to that body because its first report led to the establishment of the Electoral Commission, and it has a paternal interest in its well-being. It recommended a maximum fine of £500,000 or 4%, which the noble Lord, Lord Wallace, has generously rounded up to 5%. My amendment is more modest, seeking simply to retain the value of £20,000 to take account of inflation and rounded up modestly.

It is worth digging into the CSPL report to find out why it came to this decision. The Electoral Commission itself gave written evidence, saying:

"Recent research indicates that the public believe that fines for breaking political finance laws are too lenient, given the amount of money that could be spent on campaigning. More than half of the respondents (52%) in our regular tracking research carried out in early 2020 said that a £20,000 maximum fine was not high enough. Only 27% felt that it was about the right amount".

Although my party gave evidence the other way, the Committee on Standards in Public Life was robust in its conclusion.

My noble friend quoted with approbation the views of the CSPL in an earlier debate, and I will quote what it said on this subject, at paragraph 9.79:

"We consider that an effective regulatory system must be backed by strong sanctions. The prospect of significantly greater fines will act as an incentive to ensure that parties and campaigners put in place robust systems to ensure that the requirements of electoral law are complied with. For anyone contemplating deliberately breaching the law, it should give pause for thought. It seems that the Commission's powers have fallen behind equivalent regulators such as the Information Commissioner's Office and we have concluded that this should be redressed".

I agree. Finally, it went on to say:

"We support the recommendation made by the House of Lords Democracy and Digital Technology Committee that the maximum fine the Electoral Commission may impose should be increased to 4% of a campaign's total spend or £500,000, whichever is higher".

I do not want to hark back to earlier debates, but it seems that this is further evidence of government antipathy towards the Electoral Commission. I hope my noble friend will be able to persuade me that this is not the case.

Baroness Jones of Moulsecoomb (GP): My Lords, it is quite sweet to have these two amendments in the same group. I am sure the noble Lord, Lord Young of Cookham, knows which one I prefer.

Clearly, you have to make the political parties pay attention. At the moment political parties face higher fines for data protection breaches than they do for breaking election law, which is really inappropriate. The risk is that fines for breaking election law just become part of the cost of doing business for political parties, especially those with the deepest pockets and richest donors. That is clearly not the Green Party, but it could be other political parties represented in this Chamber.

Amendment 18 would mean that the penalties for breaking election law would actually hurt the law-breakers. It follows the same logic as the general data protection regulations by implementing proportional fines so that big organisations have to pay attention.

Lord Stunell (LD): My Lords, I rise to support my noble friend and Amendment 18 and to thank the noble Lord, Lord Young, who, once again, trumps everybody by having been the Minister, which is a bit of a theme in the debates he has contributed to that I have heard. He is all the more welcome for that, and I hope that in due course his DNA may reappear on the ministerial file so he can complete the job.

I think the case has been made very clear. In fact, the noble Baroness from the Green Party, whose name has just evaporated—the noble Baroness, Lady Jones, I do beg her pardon—made the clear comparison between the fine a party might get from screwing up on its data protection and the fine it might get from screwing up on its election expenses. I think any ordinary member of the public, and indeed any rational Member of this House, would think that if one offence were worse than the other, the election offence is surely the more serious. I hope we shall hear that, subsequent to the new Minister picking up the file, he has been able to talk to the relevant officials who decide these things on his behalf and will be able to give us some idea that the Government will produce their own amendment on Report, or perhaps will assist the noble Lord, Lord Young, in tweaking his, so that it is at an acceptable level for his officials to approve.

I want to make the case that we and my noble friend Lord Rennard set out very clearly to make this proportionate to the fines and the impact that other regulators can have on the behaviour of the organisations they regulate. This may not be entirely in the best interests of those of us in this room, because it could be our political parties that end up paying significant amounts of money. That, of course, is the trouble, because whether the turkeys will vote for Christmas is always a difficult question to answer. Actually, it is an easy question to answer, but how do you overcome the natural reluctance there is to impose on ourselves the burdens that we willingly impose on other people when they offend regulatory standards?

I hope to hear something from the Minister. If he cannot come in at £500,000, could he at least, for goodness' sake, come in at £50,000 and give those of us here who think this system urgently needs uprating some glimmer of hope that progress is being made?

Lord Khan of Burnley (Lab): My Lords, I first say how much I am enjoying hearing the noble Lord, Lord Young of Cookham, expressing his views in an unconstrained manner. I am also glad that he still has his DNA all over this folder, which means there are some valuable contributions.

[Lord Khan of Burnley]

The amendments in this group, which would have the effect of increasing the fines the Electoral Commission can apply, raise the question of how the commission can effectively deter non-compliance. This is an especially pertinent question given that the Bill removes its power to institute criminal proceedings.

In the past year alone, the commission has investigated close to 40 different parties, individuals and campaigners. Many of these investigations have led to fines. These include penalties totalling almost £18,000 to the Conservative Party for failing to deliver accurate quarterly donation reports and failing to keep accurate accounting records. In the most recent recording period, however, there seems to be no instance of the commission imposing the maximum fine. Can the Minister confirm how many instances there have been of the full £20,000 fine being applied?

The amendment of the noble Lord, Lord Wallace, raises the possibility that the fine could equal a percentage of the total spend of the organisation—a point that the noble Lord, Lord Rennard, and the noble Baroness, Lady Jones of Moulsecoomb, have raised in relation to bringing it in line with the fairness of other organisations, such as GDPR and the Information Commissioner's Office. This is significant in relation to raising the possibility of the equal percentage of the total spend of the organisation, because a number of smaller parties have received fines that are as large as the main parties' fines. I look forward to hearing the Minister address the concerns raised by noble Lords in this group in particular.

6.45 pm

Viscount Younger of Leckie (Con): My Lords, I am happy to respond to Amendments 18 and 19, which were spoken to very eloquently by the noble Lord, Lord Rennard, and my noble friend Lord Young of Cookham.

I start by saying that I am aware that the Committee on Standards in Public Life recommended as part of its report, *Regulating Election Finance*, that the Electoral Commission's fining powers be increased to 4% of a campaign's total spend or £500,000, whichever is higher, as was mentioned during this debate. This proposal mirrors the amendments in their intent to raise the fining powers of the commission beyond its current limit.

First, we should differentiate between civil and criminal cases. The Government's view is that the commission already has adequate powers to impose civil sanctions on political parties and non-party campaigners up to £20,000 per offence—and I underline "per offence". Criminal matters can be, and are, referred to the police and, in certain cases, taken to a criminal prosecution. The courts have the power to levy unlimited fines for some offences and, as the Committee is probably aware, to impose custodial sentences where appropriate.

As set out in the Government's response to the Committee on Standards in Public Life's report, any extension of the commission's fining powers would need to be considered carefully to assess its necessity and proportionality. This is because it is vital that they are an effective deterrent but do not cause a chilling effect on electoral participation and campaigning. I will say more about that, because a point was made, particularly by the noble Lord, Lord Rennard, about a comparison with the Information Commissioner's Office. Any direct comparison with the fines that can be issued by the ICO should note the clear differences between the two regulators and the types of entities they regulate. I understand his point in making the comparison, but political parties across the spectrum are not global corporations. I am pleased that the noble Baroness, Lady Jones of Moulsecoomb, has popped in for this last group. I am sure the Green Party aspires to be global, but I hope I do not offend her by saying that it is not at the moment.

Baroness Jones of Moulsecoomb (GP): I will just say that there are Greens all over the world, and I have not popped in just for this last one—I have been here several times today for different groups.

Viscount Younger of Leckie (Con): I have been corrected on two points, and I am glad that the world is full of Greens, I am sure, doing a lot of very good work.

There are over 350 political parties currently registered with the Electoral Commission, and many are predominantly made up of volunteers. While it is vital that the sanctioning regime is effective, it needs to be ensured that such deterrents do not cause a chilling effect on electoral participation and campaigning.

I have more of a general point to make, which I think chimes with the views expressed during this very short debate, following up on the Committee on Standards in Public Life's recommendations. The Government are committed to making sure that elections are secure and fit for the modern age. As part of this, we keep the Electoral Commission's role, powers and regulation under review regularly to ensure that it is able to discharge its responsibilities effectively and that electoral law can be upheld in the most effective manner.

As part of further work looking at the regulatory framework for elections beyond the Elections Bill, the Government intend to look at all the recommendations of the report by the Committee on Standards in Public Life, alongside similar reports. These include a forthcoming report from the Public Administration and Constitutional Affairs Committee into the work of the Electoral Commission.

Regarding the question about statistics, which was raised by the noble Lord, Lord Khan, I will have to write to him about how many times the £20,000 has been levied. However, the fact that he says it has not been used lately suggests that there is not an urgent need to raise it. I have attempted to answer the question on raising the amount. I appreciate the points raised. I am afraid that for this evening, at this late hour, being a Scotsman, it is not £50,000, or even £500,000. It remains at £20,000.

However, for these reasons, I hope that the House will accept my explanations. I ask the noble Lord to withdraw his amendment.

Lord Rennard (LD): I thank the Minister for his kind remarks at the outset of his reply. I might have hoped that the notes in his folder were still those of the

noble Lord, Lord Young of Cookham, as opposed to the ones that he read out this evening, since I suspect that they might have been slightly different.

All the debates today have shown that the House overwhelmingly wants to have an election watchdog, and wants it to be independent and effective. The Committee, and the whole House in due course, will have to return to the issue of the role and powers of the Electoral Commission, in particular the report on election finance by the Committee on Standards in Public Life. I was surprised that the Government committed just now to looking at those recommendations; they should have been looking at them in time for them to be considered in the passage of this Bill. That might have assisted us all.

However, the hour is now late enough. We will return to these issues in due course so, on that note, I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Amendment 19 not moved.

House resumed.

Supply and Appropriation (Anticipation and Adjustments) Bill

First Reading

6.51 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

House adjourned at 6.52 pm.

Grand Committee

Thursday 10 March 2022

Arrangement of Business

Announcement

1.01 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): 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.

Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022

Considered in Grand Committee

1.02 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office and Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I beg to move that the draft Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022, laid before the House on 24 January 2022, be approved. I am pleased to introduce this instrument. Subject to approval, it will make some necessary legislative changes to prevent overlapping entitlements of the soon-to-be-introduced Scottish adult disability payment, with UK disability benefits.

In consequence of the Scottish Government's child disability payment, very similar regulations were made in July 2021. As these regulations mirror, in relation to adult disability payment, much of the policy intent and technical application of the previous instrument, I hope that noble Lords will forgive me if I repeat much of what was said during the debate on those previous regulations. My honourable colleague the Minister for Disabled People, Health and Work brought this instrument before the other place on Monday, so there is little new to outline in my opening remarks. I am satisfied that the Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022 are compatible with the European Convention on Human Rights.

The UK Government are committed to making devolution work and to ensuring the transition of powers to the Scottish Government under the Scotland Act 2016. This is a long-standing commitment. As a result of the devolution of social security powers to the Scottish Parliament under this Act, the Department for Work and Pensions will need to update its legislation from time to time to reflect the introduction of the Scottish Government's replacement benefits. Section 71 of this Act allows for the necessary legislative amendments, in this case as a result of benefits introduced under the Social Security (Scotland) Act 2018.

I am grateful for the opportunity to debate these regulations today. They will effect some purely technical, administrative changes. They will prevent overlapping payment of the Scottish adult disability payment and UK disability benefits such as the personal independence payment and Armed Forces independence payment. The instrument also includes some time-limited overlapping provisions for Northern Ireland.

Noble Lords will be aware that the Social Security (Scotland) Act 2018 established the legislative framework for the Scottish Government to introduce new forms of assistance using the social security powers devolved under Section 22 of the Scotland Act 2016. Specifically, Section 31 of the 2018 Act allows the Scottish Government to introduce legislation to provide financial support through its disability assistance for people in Scotland with long-term additional health needs.

The Scottish Government recently legislated to provide for its disability assistance for working-age people, which will be introduced from the 21st of this month. They are calling this "adult disability payment" and I will refer to this as ADP from now on. If the regulations are passed today, they will ensure that there are clear boundaries between entitlement to ADP and entitlement to a relevant UK Government benefit to ensure that there is no overlapping provision of payments. It will do that by making it clear that a Scottish resident cannot be entitled to a relevant UK Government benefit and that in the case of those who move cross-border, a DWP payment will not start until the day after payment of ADP has ended. This will not only protect the public purse by avoiding double payment to the same claimant for the same need but help prevent the need for complicated overpayment calculations and recovery. Furthermore, it is also in the best interests of the claimant, who will have clear expectations of which Government are responsible for paying their benefits at which point in their claim or award.

As just noted, as part of the offer, although ADP has residency-based conditions attached, the Scottish Government will continue to pay ADP for a period of 13 weeks after a claimant has left Scotland and moved to another part of the UK. This will allow claimants time to sort out new benefit arrangements, should they wish to, and the instrument sets out that a successful claim to a UK Government benefit will start the day after the end of that 13-week period.

Our intention is to offer later this year a similar facility for those moving to Scotland, and this is not the subject of these regulations brought before this Committee today. What are needed now are modest but necessary legislative amendments to avoid overlapping payments in order to both support the devolution agenda and strengthen a union that works together in the best interests of our shared citizens. The instrument also includes provisions on behalf of the Ministry of Defence to ensure that Armed Forces independence payments will similarly not overlap with ADP.

Finally, provisions have been included to prevent overlapping entitlement when a claimant moves to Northern Ireland and is in receipt of the 13-week

[Baroness Stedman-Scott]
run-on payment from the Scottish Government. I commend this instrument to the Committee.

Baroness Sherlock (Lab): My Lords, I thank the Minister for introducing these regulations. As we have heard, following devolution of responsibility for certain social security benefits, the Scottish Government are introducing ADP for applicants ordinarily resident in Scotland. It will start to replace personal independence payment, PIP, in Scotland from this month.

The primary purpose of these regulations, as the Minister has explained, is to prevent overlapping payments of attendance allowance, DLA, PIP or Armed Forces independence payment when a claimant is getting ADP. We support the instrument and are pleased to see the Scottish Government using the powers transferred to them under the 2016 Act and subsequent legislation—although I express a bit of disappointment that it has taken such a long time for this to happen. It is critical that the rollout of ADP goes well, and that the transition from the current regime is smooth. Since these regulations are part of that process, we want to see them succeed and are pleased to support them.

The Minister mentioned that ADP will carry on being paid for a period of 13 weeks following a move from Scotland to England or Wales or Northern Ireland, to allow the claimant time to make a claim for the relevant benefit. When the Social Security (Scotland) Act (Disability Assistance and Information-Sharing) (Consequential Provision and Modifications) Order 2022 was discussed in the other place on 2 March, the Minister Iain Stewart said:

"At its introduction, adult disability payment will operate in broadly the same way and for broadly the same group of people as personal independence payment."—[*Official Report,* Commons, Delegated Legislation Committee, 2/3/22; col. 3.]

So can the Minister tell the Committee whether the conditions for eligibility for ADP are the same as they are for PIP, or will someone moving from Scotland to another part of the UK have to undergo a fresh assessment to get PIP? If they do have to be assessed, is that classed as an assessment or a reassessment? There is a distinction in terms of time, as the Minister will know, and priority for processing a claim.

The Minister Iain Stewart also said:

"The 13 weeks is a safety net, and applications can be made in advance. It is there to ensure that payments can continue if there is some delay, so that no one is disadvantaged."—[*Official Report,* Commons, Delegated Legislation Committee, 2/3/22; col. 8.]

The intention clearly is that there should not be a gap in payment between somebody moving from Scotland on ADP and coming to England, say, and claiming PIP. So can the Minister tell the Committee how long it takes to process a claim for PIP? Is she confident that 13 weeks will be long enough to ensure that there is no break in payment?

I dug out what I think are the latest official statistics, which were for last October, and which showed that clearance times for normal-rules new claims were 24 weeks from registration to a decision being made—and that is assuming the claimant was not one of the millions who end up having to go for mandatory reconsideration to get their benefit established in the first place. That adds another 11 weeks to the process. So can the Minister tell the Committee whether this means that, if someone moves from Scotland to England—just across the border, say, to Berwick—then makes a claim, and it takes either 24 or potentially 35 weeks, they will still get only 13 weeks' run-on? What happens to them during those remaining weeks when they are still waiting for their claim to be processed? Also, does the comment by Iain Stewart about applications being made in advance mean that someone preparing to move from Scotland to England or Wales could make a claim for PIP while they were still living in Scotland in advance, as they prepared for their move to England—again, to avoid any gap in payments? That might deal with the problem that it takes longer than 13 weeks to process a claim.

I understand that applications for ADP will open at different times in different parts of Scotland. I think it will be piloted in some parts. Does the Minister know when it will be fully rolled out? If somebody were to move now from England and they happened to land in the bit of Scotland where it is being piloted, presumably they would have to make a fresh application for ADP. The Minister mentioned that the intention of the Government was to arrange this so that the run-on is a two-way street—so that, in due course, if you move from England to Scotland, you will get a 13-week run-on of PIP while you make an application for ADP. In fact, Iain Stewart said in the Commons that

"the situation does apply both ways. If a person in England claims PIP or one of the other benefits and moves to Scotland, the DWP would look to ensure they had an equivalent transition period."—[*Official Report,* Commons, Delegated Legislation Committee, 2/3/22; cols. 7-8.]

But if somebody on 1 April were to move to Scotland and happened to be in an area where they had started doing ADP, would they get a run-on or no run-on? Would they suddenly find that their PIP stopped immediately and they had no benefits at all until their ADP was processed?

Finally, the Minister said something about the regulations also introducing some time-limited overlapping provisions for Northern Ireland. Can she tell us what they are, because I could not figure it out? I apologise for that and look forward to her reply.

Baroness Stedman-Scott (Con): My Lords, I thank the noble Baroness, Lady Sherlock, for the points she has made. I shall try to deal with them.

I turn first to what happens to a person if they move now. While DWP is administering the existing disability benefits on behalf of the Scottish Government under agency agreements, any customer moving to Scotland will be handled as a routine change of circumstances. This means that these cases will continue in payment on the same benefits as now and form part of the Scottish caseload administered on behalf of the Scottish Government. DWP will continue to manage their claim until they are transferred to Social Security Scotland. The case transfer process has been agreed with the Scottish Government and claimants will not see any disruption to their payments.

1.15 pm

The noble Baroness asked why the regulations include provisions for Northern Ireland. Social security in Northern Ireland is a devolved matter. The inclusion

of provisions for Northern Ireland has been agreed with the Department for Communities, as it does not have the powers to make these necessary amendments because matters relating to the Scotland Act are outside the legislative competence of the Assembly. However, what has come to be known as the parity principle contained in Sections 87 and 88 of the Northern Ireland Act 1998 provides for a single system of social security in line with the DWP. As such, the UK Government can agree to legislate on behalf of Northern Ireland at the request of its Ministers.

Including Northern Ireland amendments will ensure as consistent an approach as possible and minimise disruption for claimants in receipt of ADP moving to Northern Ireland from Scotland. The Northern Ireland provisions are narrower, in that they will prevent duplication of disability payments only during the period when the Scottish Government pay their 13-week run on following a move from Scotland to Northern Ireland.

The noble Baroness asked what will happen when a claimant moves from England and Wales to Scotland once the agency arrangements have ended. We intend to provide a similar payment run-on to that offered by the Scottish Government. We recognise that people need time to sort out their financial affairs when they move, including making new claims to benefits. This provision will not be needed until all cases for the relevant benefit have been transferred to the Scottish Government. We are currently completing policy and legislative work on this.

The noble Baroness also asked what safeguards are in place for the transfer process for those currently on PIP. The UK and Scottish Governments are committed to ensuring safe transfer of powers and claimants between their agencies. DWP will continue to administer individual cases through agency arrangements until the Scottish Government are ready to take over payment. Both Governments are working closely on the practical and technical issues associated with the transfer of cases and data, ensuring that processes and data are safe and secure.

The noble Baroness asked what the Government are doing to reduce the time it is taking to clear a new PIP claim. This is not what we are here to debate, but we are committed to ensuring that people can access financial support through PIP in a timely manner. However, I accept that the current average time that it is taking to clear new claims is far too long. That is why we are using a blend of phone, video and face-to-face assessments to support customers and deliver a more efficient and user-centred service; where it is safe to do so, we are making in-house decisions without referral to the assessment providers; we are increasing case manager and assessment provider health professional resource; and we are prioritising new claims while safeguarding the continuity of existing awards.

The noble Baroness asked what will happen when a claimant in receipt of Scottish disability benefit moves from Scotland to England or Wales. Once the claimant notifies Social Security Scotland of their move, the Scottish Government will write to them to advise that they will continue to be paid ADP for a period of 13 weeks following the move and that they will need to make a claim to the DWP for a UK disability payment such as PIP if they so wish. The DWP and the Scottish Government are working collaboratively to ensure communications to claimants will be clear.

If the claimant is late in making a claim following a move, there is a greater risk that there will be a break in payment. However, arrears will be paid back to either the date of claim or the date the run-on ceases, depending on circumstances. If a claimant delays making an application and their ADP stops before their claim has been made, any new claim can be paid only from the date of that claim. The payment of a 13-week run-on from the Scottish Government following a move will reduce the risk of claimants experiencing a break in payment. It is, however, the claimants' responsibility to make a claim to DWP for PIP following a move to England or Wales and to do so as early as possible to reduce the risk of seeing their payments stop.

I believe that the noble Baroness was very keen for us to say that PIP is taking far too long, and with the 13 weeks there might be a break in payment. If she will allow me to, I shall go back to the officials to get more detailed information, in the hope that I can answer her question in full.

Baroness Sherlock (Lab): I am grateful for the considerable information that the Minister has given me. In fact, I was not asking or generally complaining about PIP being slow, which is what she said. I do think that it is too slow, but that was not my point; my point is that everything about the description of ADP suggests that the intention is that there will not be a break in payment. The Minister in reply to me has just said that the 13-week run-on will reduce the risk of a break in payment, but it is the claimants' responsibility to apply quickly. As she seems to be suggesting that a claim cannot be made until the claimant has actually moved to England, and if there is only a 13-week run-on, and even if she applies on day one, it takes 24 weeks to process the claim, even if she discharges her responsibility with impressive speed, it seems impossible to avoid there being a break. That is what I am interested in. What are the Government going to do about that?

Baroness Stedman-Scott (Con): I think that I was trying to make the point, although I accept that I made it badly, that on the specific point that the noble Baroness has just raised I want to go back to the officials to get more detail, because this must have crossed their desks as a risk. If the noble Baroness will allow me, I shall write to confirm.

As I have said, the UK Government are working collaboratively with the Scottish Government to ensure that the two systems of social security will operate effectively alongside each other, and the required legislation that underpins them is delivered successfully for the people of Scotland and, where relevant, claimants in England, Wales and Northern Ireland. The order highlights the importance that the UK Government place on the effective functioning of devolution. I commend the order to the House.

Motion agreed.

Early Legal Advice Pilot Scheme Order 2022

Considered in Grand Committee

1.23 pm

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

That the Grand Committee do consider the Early Legal Advice Pilot Scheme Order 2022.

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I beg to move this statutory instrument, which establishes the early legal advice pilot scheme that will be conducted in Middlesbrough and Manchester for a time-limited period. The instrument amends part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, colloquially known as LASPO, to bring civil legal services for certain housing debt and welfare benefit matters in scope of legal aid for the purposes of the pilot scheme. It makes consequential amendments to secondary legislation for the purposes of that pilot scheme. The draft order is made using the powers conferred by LASPO itself.

The instrument lays the necessary foundations to put the pilot scheme into operation and signifies a crucial step in delivering a key commitment made in the Ministry of Justice's legal support action plan, which we published in 2019. Through the pilot scheme, we will test the impact of early legal advice on the resolution of legal problems. We will also seek to quantify the benefits to individuals, their support networks, the Government and, ultimately, the taxpayer.

Civil legal aid is available to an individual if their issue is listed in Part 1 of Schedule 1 to LASPO. Legal aid may also be available on an exceptional basis where there would be a breach, or the risk of a breach, of the individual's rights under the European Convention on Human Rights or any retained enforceable EU rights. This is known as exceptional case funding, or ECF.

Eligibility for legal aid, for both in-scope matters and ECF, is subject to a statutory means and merits assessment. The means test sets out that, if an individual's capital or disposable income is above a certain threshold, they are generally not eligible for legal aid. There are different merits tests depending on the type of case but, generally, the merits test provides for a cost-benefit test and a "prospects of success" test. If those tests are not met, again, funding would not be granted. Under the current arrangements, legal aid for social welfare law matters such as debt, housing and welfare benefits is limited to the most urgent and important circumstances, for example if an individual is at risk of losing their home through eviction or repossession. This is so that legal aid is targeted at those who need it most.

However, during the post-implementation review of LASPO, we heard from respondents that the reforms in that Act, which came into effect in 2013, might have caused increased financial costs to individuals, their support networks and the Government. Those respondents explained that individuals experiencing social welfare legal problems, especially related to housing, were now unable to resolve their problems at an early opportunity. This meant that they were now likely to experience problem-clustering and problem escalation, each of which can lead to costly intervention. Frequently cited examples included increased use of court services for possession proceedings; greater reliance on welfare benefit and on temporary and permanent accommodation services; and increased use of health services for stress and anxiety.

Although we have some anecdotal evidence to support the view that early legal advice could produce benefits to individuals and to local and central government, there is limited empirical evidence. In particular, there is limited evidence in relation to the financial impact of early intervention through the legal aid scheme. I am sure we can all agree that the argument that early intervention can result in cost savings feels intuitively correct. However, in order to make robust arguments for funding for early legal advice and ensure that we provide value for money for the taxpayers who will fund it, we need an argument based on actual evidence. We are therefore bringing these matters into scope and using the pilot scheme as an opportunity to gather robust, quantitative evidence that can demonstrate whether early legal advice can lead to early problem resolution, thus bringing savings to the public purse.

The pilot will be in two specific areas—Manchester and Middlesbrough—and will be time limited, from 1 April 2022 to 31 March 2024. Individuals will be eligible if they live, or habitually reside, in the area of Manchester City Council or Middlesbrough City Council. They must be selected to participate by a person appointed by the Lord Chancellor, who will publish guidance explaining who the person will be—they might be an independent evaluator—and how they must select participants. Participants will receive a maximum of three hours of advice and assistance for housing, debt and welfare benefit matters.

We have worked closely with legal aid providers and other government departments to devise the pilot scheme and finalise the terms of this amendment. The amendment to Part 1 of Schedule 1 to LASPO in this instrument brings these matters into scope for legal aid, subject to some exclusions outlined in the order; for example, participants cannot receive advocacy or representation services. This reflects the intentions of the pilot because it is all about advice before court proceedings are initiated.

It covers, therefore, civil legal services relating to advice and assistance in relation to housing, debt and welfare benefits for a maximum of three hours. Participants can receive advice and assistance irrespective of whether their matters fall into one or all of those categories. They will receive holistic advice on all those categories as far as needed. The maximum time for advice is fixed at three hours, but there is no means or merits test. The only criteria are the geographical requirements and that they are included in the pilot scheme by the person appointed by the Lord Chancellor.

1.30 pm

I should also point out to the Committee that there are some technical amendments to other instruments. It amends the regulations on financial resources, merits criteria and remuneration. The financial resources and

merits criteria regulations set out the means and merits tests, and they are amended, as I explained, to enable participants to meet the means and merits tests. The amendments to the remuneration regulations introduce a new fee for the legal providers undertaking work as part of the scheme. They will be asked to provide information and data for the purposes of assessing the pilot in addition to the information they normally provide to the legal aid scheme, as any legal provider would do. Because they are being asked to do more, we will pay them an extra 25% uplift to reflect that extra burden of providing information for the pilot.

The essential point is that this will enable us, we hope, to have an evidence base to allow us to determine whether a service as set out in the pilot would provide meaningful benefit to individuals and local and central government. We think this is the best way to proceed so we can obtain that evidence, and I commend the instrument to the Committee.

Lord Thomas of Gresford (LD): An evidence base? The clue to these proceedings was in the Minister saying that they are looking for savings to the public purse. I think the Treasury is definitely behind this.

When I was a humble solicitor in the 1960s, I used to fill in a green form for people to give them advice. In 1973, a simple green form scheme was introduced and in 1994 the noble and learned Lord, Lord Mackay of Clashfern, then Lord Chancellor, described it as

"an important means of access to legal advice for people on low incomes. In 1993/94, over 1,600,000 people received help from the … scheme."—[*Official Report*, 3/11/1994; col. *WA 73*.]

I fail to see why we now need a highly expensive two-year study to find out whether there is a need for such advice. It is obvious. It was in 2013 that the coalition Government, I am afraid, reformed the scope of civil legal aid in the LASPO Act, including, as the memorandum tells us,

"the removal of funding for early legal advice and support for most social welfare law."

Some reform that was.

As for research, the Explanatory Memorandum states in paragraph 7.3:

"While research by organisations such as Citizens Advice, Shelter, the Law Society and the Equality and Human Rights Commission was persuasive in suggesting a link between early legal advice and downstream benefits, officials in the department concluded that their findings did not robustly quantify the financial savings for government, nor did they account for the costs of individuals whose problems would not be resolved with early legal advice".

So there has been considerable research by NGOs, all pointing the same way.

The Government produced their review in 2019, and it has been knocking about for three years before anything was done under it. There will now be a two-year pilot scheme, very limited to 1,600 individuals in Manchester and Middlesbrough. Some five years will elapse from the review that the Government themselves carried out.

The Government describe the pilot scheme in this way:

"the Ministry of Justice is commissioning a process, impact, and value for money evaluation to support the effective delivery of the project, and the generation of robust impact evidence. An initial phase ahead of pilot delivery will be an in-depth feasibility study to fully assess and recommend a robust, practical research pilot and evaluation design".

It is

"the gold-standard approach to assessing impact, highly novel in the Access to Justice policy area."

These very helpful answers were provided to the Secondary Legislation Scrutiny Committee, whose questioning of the Ministry of Justice was admirable and full and produced a lot of information that I need not go into. But there we are: gold-plated research, which means that people whose needs were seen in 2019 will have a five-year wait before anything happens, and we do not even know whether it will happen then because it will depend on the evaluation of the gold-plated people of the project.

We currently face a great rise in deprivation that will happen to people in this country. The situation as we know it is dire and will get worse, with price rises and additional taxes. Now is the time for the people in this category—the people I used to advise in those far-off days when we did not live in a very rich area—to be given support, not in 2024 and thereafter. This is a disgrace.

Lord Ponsonby of Shulbrede (Lab): My Lords, the noble Lord, Lord Thomas, has given us an historical context for what we are receiving through this statutory instrument. We of course support it, because it goes some way to ameliorating the position we have had since the massive cuts in 2013 with LASPO. The noble Lord has made the broader points, with which I agree.

I want to focus on two particular questions, one of which was asked by my honourable friend Afzal Khan when this matter was debated in the House of Commons. He contacted the Greater Manchester Law Centre and the Law Society there, the only two welfare benefit and legal aid providers in Manchester city and the only two debt legal aid providers in Middlesbrough, one of which also advises on welfare benefit law. He made the point in the House of Commons that the scheme will undoubtedly create an increase in demand. There was scepticism, from that limited number of providers, whether the three-hour limit is enough in itself and whether the pay is enough for those three hours. How, given that there is very likely to be an increase in demand, will the ministry respond?

The Minister used a couple of phrases that I thought were appropriate when he talked about the problem of the clustering of cases around a multitude of different contexts—housing, welfare and the like—and about the problem of escalation. From different parts of our working lives outside this House, we all know that both of those things are right and true, both in the housing context and the criminal justice context as a whole—something I know from my work in magistrates' courts.

The Minister said that there was limited evidence of financial benefit from early intervention. The noble Lord, Lord Thomas, expressed extreme scepticism, and I agree with him: there is a multitude of reports about the benefits of early intervention, and I have lost track of the number of early-intervention pilots that I have seen on the criminal justice side that have fallen by the wayside for various reasons.

[Lord Ponsonby of Shulbrede]

I will raise another question, which comes from the Secondary Legislation Scrutiny Committee report's appendix 2:

"Further information from the Ministry of Justice on the draft Early Legal Advice Pilot Scheme Order 2022".

Question 1c is as follows:

"The wording of the SI indicates that those who are selected but receive no advice will also be informed that they are part of the pilot—will that control group also be required to fill in any evaluation or description of their experience? Otherwise, they will be just like any other Housing benefit claimant—what marks them out?"

That is to say, what marks them out as different in the data collected? The answer is:

"The pilot is seeking to develop robust quantitative impact evidence, and so how to best collect control or comparison group evidence is a priority issue to be examined. The specific criteria and process for identifying and engaging the control or comparison group is to be determined based on feasibility work to be undertaken by the independent evaluator."

I did not read that out very well, but I understand what it means. My experience on the family court side is that a large number of people drop out of the system. Advice is made available and people start accessing it, but then the process becomes difficult and tiresome and people just stop engaging.

So, arising out of that question and answer, my question to the Minister is: will there be an evaluation of people who start the process but do not finish it? That is part of the overall cost, and it is also a demonstration of the impact or otherwise of these schemes. As I say, from my experience in a different context—family law—a very big part of the overall picture is the people who do not pursue the advice and support that are available to them because doing so is just too burdensome.

Lord Wolfson of Tredegar (Con): My Lords, I am very grateful for the contributions from the noble Lords, Lord Thomas of Gresford and Lord Ponsonby of Shulbrede. I will pick up a few points in response. On the Treasury being behind it, I say that this is not a Treasury-driven measure, in the sense that the sole focus is not the public purse. But we have to recognise that the Treasury is ultimately behind the legal aid system: it is funded by the public purse, and we have to make sure that we get value for money.

One of the things that we are doing here is trying to answer this question—we all feel this instinctively, perhaps, and, as the noble Lord, Lord Thomas, said, there are lots of people in the market, so to speak, who say, "Spend some money now; you'll save more money later on". But we want to have some robust evidence to see to what extent that is actually the case—and also to see to which particular groups it applies more and to which it applies less. We have a very diverse population, and one of the things that we will be able to do in the pilot is look at people with different backgrounds and needs and see the extent to which the early legal advice actually helps. Although I am well aware of the research by the various NGOs that the noble Lord mentioned, that is not empirical evidence. We do not have the robust, quantitative evidence that we will get from the pilot.

I will pick up the points made the noble Lord, Lord Ponsonby, who asked a few questions around time limits and associated points. First, on the appropriateness of the fee, I explained the 25% uplift. To obtain the figure for the underlying fee, we used the existing non-London hourly rates for housing and family matters; that generated the baseline fee for the work. We added the 25% uplift to increase the extra costs. We are confident that that will mean that we get proper take-up from providers.

1.45 pm

As to why the allocation is three hours and not, for example, two and a half hours or four hours, I will make two points. First, at the moment, little information is available about the average time that providers would spend with somebody requiring advice of this nature. As part of the pilot, we will ask providers to record the time that they spend. We will also ask them whether they spend that time during one appointment or over a series of appointments, because some people might come and say, "This is my problem", and the provider might say, "Ah, I can help you on that, but I need to see a particular document that you haven't brought with you. So please make another appointment and come back". So they might have an initial half-hour, for example, and then another two and a half hours later. The pilot will enable us to gather that evidence. To make this administratively simple, the way we are doing this is that, even if the provider spends only two and a half hours, there is a flat fee for three hours with the 25% uplift. There may be a bit of rough with the smooth, so to speak, in that we have sought to make it simple because we want providers to engage and we want proper take-up.

On the other point made by the noble Lord—I say respectfully that it was a very good point—we will follow up on the experience of people who are part of the scheme. Specifically on dropouts, it may be a bit more difficult, but we will attempt to follow up on the experience of people who dropped out and ask them why they dropped out. Was it because they did not like the provider, for example? Was it because they thought their issue was a housing issue but it turned out that it was a different issue? We are focused on that; it is an important point.

I hope I have responded to the main points that were made. I am grateful for the broad support for the instrument, even if it is on the basis that heaven rejoices over all sinners who repent. At least there was broad agreement on the principles underlying the pilot; I therefore commend the instrument to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, the Committee will adjourn for a few moments until the people involved in the next business are in place.

1.48 pm

Sitting suspended.

Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2022

Considered in Grand Committee

1.49 pm

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

That the Grand Committee do consider the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2022.

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee

Viscount Younger of Leckie (Con): My Lords, I beg to move that the regulations be considered.

Slots are a means of managing scarce capacity at the busiest airports. Ordinarily, airlines must operate slots 80% of the time to retain rights to them the following year. This is known as the 80:20 rule or the "use it or lose it" rule. In normal times, this rule helps ensure capacity is used efficiently and prevents airlines from hoarding valuable slots without using them.

The Committee will be aware that Covid-19 has caused exceptional challenges for the travel industry. One way in which the Government have supported the sector over the past four seasons has been with generous alleviation of these rules. On 11 February this year, we lifted most remaining travel restrictions, which means that people can now travel abroad and visitors can come to the UK more easily, whether for a holiday, for work or to visit loved ones. We have reopened the country, and our slot alleviation plans for the summer season are designed to support this process.

This package was developed following consultation with industry. We received 48 responses from air carriers, airports and industry bodies, which supported a wide range of different measures. Views ranged from calls for a full waiver to support for full reinstatement of the 80:20 rule, with most responses somewhere in between. We have carefully considered these views, alongside the available data, to develop this package of measures.

I shall give some brief background to this. When the pandemic initially struck, the 80:20 rule was fully waived to avoid expensive and environmentally damaging flights with few or even no passengers on board. Following the UK's departure from the EU, the UK Government chose to extend the European Commission's waiver of the 80:20 rule to cover the summer 2021 season, which lasted until 30 October 2021, through the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021. Taking the opportunity of our departure from the European Union, we then used the Air Traffic Management and Unmanned Aircraft Act 2021,or ATMUA, to create a more flexible set of powers that could adapt to the specific circumstances of the sector. That legislation was recognised as an essential tool to help to manage the impacts of the pandemic, and received cross-party support.

For the winter 2021 season, we used these powers for the first time. As recovery remained uncertain, our focus was on supporting the sector. Our measures were generous and exceeded the alleviation package provided by the EU. By allowing airlines to hand back full series of slots, we gave them certainty that they could retain their slots, even if not operated, which helped to mitigate some of the commercial impacts of the pandemic. This is because otherwise airlines might have chosen to incur the cost of operating near-empty flights merely to retain slots. This also reduced the likelihood of needless emissions from near-empty aircraft. We are proud that, thanks to these measures, we are not aware of any flights that have taken place solely to retain an airline's slots.

As required by the ATMUA Act, we have determined that there is a continued reduction in demand, which is likely to persist. We consider that further alleviation measures are justified for the summer 2022 season, which runs from the 27 March to 29 October 2022. On 24 January, we therefore published this statutory instrument, setting out the package of alleviation measures that we propose to put in place for this coming summer. The draft instrument applies to England, Scotland and Wales. Aerodromes are a devolved matter in relation to Northern Ireland and, as there are currently no slot co-ordinated airports in Northern Ireland, the Northern Ireland Executive agreed that it was not necessary for the powers in the Act to extend to, or apply in relation to, Northern Ireland.

In the draft instrument we are considering, our measures aim to encourage recovery, while protecting carriers where severe international travel restrictions remain. This includes changing the minimum usage ratio to 70:30. This means that airlines are required to use their slots at least 70% of the time to retain the right to operate them the following year. This is lower than the 80% in normal times but higher than the 50% ratio adopted for the winter season, thereby reflecting progress towards recovery.

The draft regulations include stronger provisions to avoid low-volume flying, by expanding the reasons which airlines may use to justify not using slots to include existing Covid-19-related restrictions. This will apply where measures, including flight bans and quarantine or self-isolation requirements, are applied at either end of a route and have a severe impact on demand for the route or on the viability of the route. Unlike during the winter season, this will also apply when restrictions could reasonably have been foreseen, so as to protect carriers in markets with long-term restrictions in place. There will be a three-week recovery period during which the provisions may still apply following the end of the Covid restrictions.

In addition, we will allow earlier applications for justified non-utilisation of slots. By this I mean that, where there is an official government announcement, either domestic or overseas, about the duration of the Covid restrictions, at that point the carrier will be able to ask the slot co-ordinator for justified non-use to cover the whole period. This can be done in advance and will mean that the carrier will not have to reapply every three weeks, as at present. This will allow earlier hand-back of slots, so that other carriers will have an opportunity to use them, and it will remove some of the administrative burden on airlines.

In the winter 2021 season we made provision for "full-series hand-back"—in other words, allowing an airline to retain rights to a series of slots for the following year if it returned the complete series to the

[Viscount Younger of Leckie]
slot co-ordinator for reallocation prior to the season's start. We have decided not to continue full-series hand-back this season. It was a generous measure that reflected the uncertainty around the winter season.

Given the success of the vaccine rollout, the relaxation of travel restrictions and the more positive demand outlook for the coming summer, I believe that it is now time to move towards a normal usage ratio, but with a strengthened justified non-utilisation provision to provide protection in case of severe restrictions or the emergence of new variants of concern. These measures will cover the summer 2022 scheduling period. and we are currently considering alleviation for winter 2022. I reassure the Committee that we will consult on this later in the year.

I will say a final word about so-called "ghost flights". Carriers in restricted markets will still be protected by our justified non-utilisation provision. For open markets, the decision to operate flights is ultimately a commercial one for airlines, but carriers will be subject to a lower than normal usage ratio of 70%. The alternative of providing unlimited relief would allow incumbent airlines to retain unused slots at airports while preventing other carriers from using them, restricting competition and ultimately harming consumers.

Through this package of measures, we aim to strike a balance between supporting the sector and encouraging recovery and the efficient use of slots. The regulations that we are considering today make use of time-limited powers designed specifically to respond to the impact of Covid. However, the Government are focused on supporting the industry not just in the short term. As the UK's aviation sector grows, we will review the slot allocation process as a whole to ensure that it is well equipped to encourage competition, consumer choice and efficiency. I commend the instrument to the Committee.

Baroness Foster of Oxton (Con): My Lords, I thank my noble friend the Minister for his comprehensive update on the adjustment from 80:20 to 70:30. It is a reasonable and practical way forward. Could he also take into account that, although there are fewer long-haul flights to east Asia due to the impact of Covid, the closure of Russian and Siberian airspace will also have serious long-term repercussions, as the traffic from the UK naturally increases for our long-haul carriers?

Although a side issue, the knock-on effects of these airspace closures on the reduced frequency of operations will include increased fuel burn, which in turn will affect ticket prices on what are normally extremely lucrative routes. As of Sunday, carriers such as China Eastern, Air China, Cathay Pacific, Korean Air and some others with bilateral air service agreements with the UK were still flying over Russian and Siberian airspace to the UK. Some of those countries actually abstained in the vote on the invasion of Ukraine at the Security Council meeting, and will no doubt continue to fly when possible. That brings in a competition issue. I would be grateful if the Minister could take on board these points for further consideration.

2 pm

Baroness Randerson (LD): My Lords, I welcome this SI and thank the Minister for his explanation. It provides stability for the aviation sector and, importantly, removes much of the incentive for airlines to operate environmentally damaging ghost flights or flights with very few passengers just to keep their slots.

The Secondary Legislation Scrutiny Committee questioned the Government's decision to opt for 70%, which was the preferred option of airports, over 60%, the preferred option of airlines. This is a finely balanced decision based on data that is not available to me but which I hope the Government have analysed. I tend to side with the airports and hence endorse the Government's decision, because airports have a much less flexible business model than airlines. You cannot just park up an airport; you have to keep it functioning, for certain safety reasons, even if you no longer have any commercial income.

I also welcome the Government's additional reasons for non-utilisation of slots. The Explanatory Memorandum refers in paragraph 12.2 to what I call the game of slots played by certain airlines. It explains how attempts to consolidate valuable Heathrow slots have an impact way down the line on smaller airports—and, it is worth pointing out, on the availability and choice of flights and their price for passengers. This emphasises to me that the airlines have the upper hand here. That is another reason to endorse the Government's decision.

However, I have one important question for the Minister, which echoes the points made by the noble Baroness, Lady Foster, with whom I fully agree. All these decisions were made prior to the recent awful war in Ukraine and its impact on many long-distance routes. There is likely to be a deterrent effect on travel to eastern Europe, which is generally regarded as being potentially affected by political instability. A vast range of frequent short-distance flights for leisure travel, as well as for business travel, to eastern Europe may be affected by this.

The noble Baroness pointed out an important loophole in the rules on overflying Russia and accepting flights in this country that have in practice flown over Russia. It is important that the Government clarify their position and amend their decisions in that regard. Can the Minister tell us what discussions the Government have had with the aviation industry about the impact of the war in Ukraine on it and what trends are emerging from what they can see so far? This is already being described as a second major challenge to our assumption that we can rely on easy international travel.

Lord Rosser (Lab): We are in agreement with the statutory instrument so I do not intend to speak at any great length. However, I have one or two questions and queries, which may display the fact that I have not fully understood the SI rather than anything else.

The reality is, as the Minister said, that we have slots because of lack of runway capacity and, indeed, airports. Presumably, if we had sufficient runway capacity and airports, we would not need slots. Do the Government accept that that is the case? If so, is that issue of runway capacity and airports, or lack of runway capacity and airports, one that the Government intend to address, since it appears that slots are related to that situation?

There is also a reference in paragraph 6.1 of the Explanatory Memorandum to the
"allocation of slots to air carriers at congested airports".

I almost certainly ought to know the answer to this but I cannot think of it offhand. Which UK airports are deemed congested and therefore have the slots? Is it just the obvious ones that we can probably think of, or is it rather more extensive?

I believe the Minister said in his comments that, as a result of the measures that had been taken, the Government were not aware of any flights that had taken place just to retain the slot—that is, ghost flights. I may not have understood correctly what the Minister said but, if I did, how have the Government got this information and how would they define a flight that has taken place just to retain slots? As I understand it, during the waiver period, there were a substantial number of flights at very low capacity. I know that there may be an argument that they were carrying cargo, or they may have been repatriation flights, but does that mean that the Government really have kept tabs on all those flights and have satisfied themselves that none of them was flying purely to retain a slot? Admittedly, with a waiver rule, one wonders why they would have been doing that in any case, but it would be helpful if the Minister could comment on what I believe he said about the Government not being aware of any flights just to retain the slot.

Before the pandemic, can I take it that we were in a situation whereby no flights took place just to retain slots? In other words, in the summer of 2019, how many empty or near-empty ghost flights were operated? Perhaps the answer is none at all, in order to retain an airline's historic rights to its slots. Is it anticipated that, with the 70:30 ratio, on which there has been a lot of consultation, as the Minister said, there will be no need for any airlines to start to operate ghost flights to retain that ratio? Is that how the figure has been determined as the appropriate one for this summer?

Finally, I come back to a point to which the noble Baroness, Lady Randerson, referred, on the response of the airlines. As I understand it from the Explanatory Memorandum, there were rather more airlines in favour of the 60% usage ratio, and most airports preferred 70%. The Government have decided on 70%. I am certainly in no position to say that they have got that wrong, but the noble Baroness referred to the data on which that assessment was made. I know that I am repeating a question she has already asked, but what data led the Government to decide that the 70:30 ratio was appropriate, bearing in mind that they apparently had airlines more likely to go for 60% and airports more likely to go for 70%? Was it a case for the Government of tossing a coin, or is there some hard data and evidence that led them to go down the road of 70%?

Viscount Younger of Leckie (Con): I start by thanking noble Lords for their consideration of these draft regulations. I appreciate the comments that have been made and the questions that have been asked. Before I respond, I shall say a few words about the challenges that our aviation industry has been tackling and take this opportunity to pay tribute to its efforts.

At the height of the pandemic, in April 2020, passenger numbers fell by 99% compared with the same month in 2019. Only 330,000 passengers passed through airport terminals. During the summer of 2020, passenger numbers increased as travel corridors were introduced but remained 80% below the equivalent 2019 levels. Following the introduction of the traffic light system on 17 May 2021, flight and passenger numbers rose at a steady pace between May and October 2021. In December 2021, 9.1 million passengers used UK airports but that was still 57% down on the same month in 2019.

I move on to answering the questions that were asked, if I can, in no particular order. I will start with the basic but important question asked by the noble Lord, Lord Rosser, about which UK airports we consider to be congested and which ones fall within the remit of these draft regulations. There are eight of them in the UK, including Heathrow, Gatwick, Birmingham, Bristol, London City, Stansted and Manchester. Of course, there are a lot of other airports around the UK, but they are not considered part of this.

The noble Lord, Lord Rosser, also asked about engagement; that ties in with some of the points made by the noble Baroness, Lady Randerson. I have a bit to say about this. In November and December, we held a targeted, four-week consultation in which we asked airports, airlines and industry bodies for their views on alleviation measures and invited supporting evidence. This takes account of the noble Lord's point about the 70:30 or 80:20 split. We received 48 responses from 36 carriers, seven airports and five industry bodies, which we carefully considered alongside the available data. I say "the available data" but, as I said in my opening speech, we took account of them all and decided to take a middle line. As ever, in a consultation, you have to take account of all views.

On the impact of these measures, I want to go a little further in answering a question asked by the noble Baroness, Lady Randerson. The impacts were carefully considered—the noble Baroness mentioned the Secondary Legislation Scrutiny Committee, which is a fair point—as they were developed. We sought feedback and evidence from across the aviation sector and an impacts note was prepared to inform the advice to Ministers following the consultation. A formal impact assessment has not been prepared for this instrument because it makes provisions that are to have effect for a period of less than 12 months. That is my understanding of how the process works, which the noble Baroness may know more about than me.

I want to say some more about ghost flights in response to a question from the noble Lord, Lord Rosser. There have been reports, particularly in the press, of up to 15,000 ghost flights; I think that is what the noble Lord was alluding to. The figures reported in one newspaper—it happened to be the *Guardian*—covered departing flights from 32 airports between March 2020 and September 2021. During this period, there was full alleviation of the slot usage rules in place. One of the purposes of this was to prevent airlines needing to operate environmentally damaging ghost flights during the Covid-19 pandemic. We do not hold data on why flights may have taken place but, given the financial pressure that the Covid pandemic has put on the aviation sector, I know that airlines will not have wanted to operate flights unless they had to. As well as maintenance and training, we believe that many of these passenger flights will have been for

[Viscount Younger of Leckie]
reasons such as carrying cargo, as the noble Lord alluded to, or returning UK citizens home when Covid restrictions were introduced or changed at short notice. I am not sure that the data one can get is an exact science but I hope that that goes some way to offering a response; it is certainly as far as I can go.

2.15 pm

My noble friend Lady Foster and the noble Baroness, Lady Randerson, raised some very important and highly topical points about Russia and Russian airspace. It is too early to give a full answer on what we are doing, but I will give an overview of the aviation sanctions we have and explain the sanctions we have in place, which I hope will go part way towards being helpful. The Committee might know some of this.

UK Ministers have signed legislation bringing the existing ban on Russian aircraft under the sanctions legislation. This bans all aircraft that are Russian registered and owned, operated or chartered by persons connected with Russia or designated persons from entering UK airspace and landing in the UK effective from 5 pm on 8 March 2022. This legislation is part of an unprecedented package of sanctions that delivers the highest economic costs we have ever imposed on the Kremlin. This is a necessary act to hold the Russian Government to account for their actions in Ukraine, a sovereign democratic state.

These measures also include powers to detain Russian aircraft already at an airport and to direct them out of UK airports, as well as to ensure that anyone sanctioned by the UK can no longer register aircraft and will have any existing registrations terminated in the UK. Our actions are legitimate and proportionate as a response to Russian aggression towards Ukraine and its failure to comply with its wider international obligations. I hope the Committee would wholeheartedly agree with that.

To address the question raised by my noble friend on our aircraft flying into Asia and needing to avoid airspace, that is the gist of my point: it is too early to give a view on that, although it is quite clear that will have an effect on the length of flights and fuel consumption. It is something we will get back to the noble Baroness and the Committee on. She raises a very important point.

To go back to the regulations, overall, throughout this period, we have supported the industry not just through slot alleviation but since the start of the pandemic. We estimate that the air transport sector will have benefited from around £8 billion of government support. We have seen some new services start, both to European destinations and transatlantic. Since the international travel changes implemented on 11 February, the UK now has one of the most open and streamlined Covid-19 border regimes in the world. That is why we feel the time is right to focus on recovery and to allow the sector to move towards normal, notwithstanding what is going on in Ukraine.

To conclude, without this instrument there would be a return to the default 80:20 slot usage rule. Although the sector is recovering, we believe there is still a need for relief to reflect lower passenger demand to avoid empty or near-empty flights, as well as to support carriers serving severely restricted markets and to protect connectivity. I hope the Committee has found this informative.

Baroness Foster of Oxton (Con): Just before my noble friend's final comments, can he address another point of concern that I made? Notwithstanding that some airlines such as those I outlined are still coming into the UK—China Airlines and so on, which are obviously using Russian airspace to come here—I emphasised that if that continues we will end up with predominantly a competition issue, apart from other issues, whereby we are building our traffic flying to east Asia but it has to go the long way round, which obviously adds cost, while the airlines I mentioned may continue to use Russian airspace, thereby using a shorter route and burning less fuel. It therefore becomes a competition issue. Will the Minister take that away, too, for his colleagues to look at?

Viscount Younger of Leckie (Con): My noble friend makes a good point on incoming flights being cheaper to operate than other flights. I have got that message. All that I can do is take that back to the department; I am sure that the officials will do so.

Lord Rosser (Lab): I ask this more as a matter of interest than anything else. Was it the case in the summer of 2019—that is, before Covid—that the 80:20 ratio meant that there were no ghost flights and there was no need for them? Is it the Government's view that with the 70:30 ratio in operation this summer there ought to be no need for ghost flights?

Viscount Younger of Leckie (Con): On the first point, yes, my understanding is that there were no ghost flights during the operation of the 80:20 rule. I wanted to make that clear but I will double-check and write to the noble Lord if I am wrong. I made that clear in my opening statement but just to be sure I will write to him. With the introduction of the 70:30 rule, the idea is that there should be no need for ghost flights. That has come about as a result of the consultation that has taken place.

Baroness Randerson (LD): Finally and briefly, when the noble Viscount looks at the issue that the noble Baroness, Lady Foster, raised, will he undertake to write to all of us who have taken part in this debate and set out an explanation of the Government's view on the matter?

Viscount Younger of Leckie (Con): Indeed. I thank the noble Baroness for that point. Actually, I was saying to myself—this goes much wider than these draft regulations—that I imagine that an enormous amount of work is going on within the airline sector, the Government and particularly within the Department for Transport as regards discussing quickly and on a timely basis how to address these demanding issues. I undertake to write to the Committee on these matters.

Motion agreed.

Social Security (Scotland) Act 2018 (Disability Assistance and Information-Sharing) (Consequential Provision and Modifications) Order 2022

Considered in Grand Committee

2.24 pm

Moved by ***Lord Offord of Garvel***

That the Grand Committee do consider the Social Security (Scotland) Act 2018 (Disability Assistance and Information-Sharing) (Consequential Provision and Modifications) Order 2022.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Offord of Garvel) (Con): My Lords, I beg to move that the draft order, which was laid on 31 January 2022, be approved. I am grateful for the opportunity to debate this order. It is the result of collaborative working between the two Governments in Scotland. The order is made under Section 104 of the Scotland Act 1998, which allows for necessary legislative amendments in consequence of an Act of the Scottish Parliament. Scotland Act orders are a demonstration of devolution in action and I am pleased to say that, although this is my first order, my office has taken through more than 250 orders since devolution began.

The draft order amends various pieces of legislation in the United Kingdom as a consequence of the Social Security (Scotland) Act 2018, which I shall refer to as the "2018 Act", and regulations made under the 2018 Act. This order has been brought forward as a result of the close co-operation between the UK and Scottish Governments. Through the 2018 Act, the Scottish Government can introduce new forms of disability assistance using the social security powers devolved under Section 22 of the Scotland Act 2016.

Section 31 of the 2018 Act allows the Scottish Government to introduce a payment to provide financial assistance for disabled people in Scotland, called disability assistance. Disability assistance will replace three existing benefits currently delivered by the Department for Work and Pensions: disability living allowance, personal independence payment and attendance allowance. Through these powers the Scottish Government have legislated that adult disability payment will replace personal independence payment, beginning with a pilot on 21 March 2022.

From introduction, adult disability payment will operate in broadly the same way for broadly similar people as personal independence payment. Applications will be accepted from individuals between 16 years old and state pension age. It is the UK and Scottish Governments' intention that there will be equitable treatment for those individuals receiving personal independence payment and adult disability payment. If this order is passed, it will ensure the equitable treatment of individuals in receipt of adult disability payment and personal independence payment with regard to tax treatments, benefits, entitlements and voting rights.

I will next outline the details of what the order does to ensure that people receiving adult disability payment receive equitable treatment with those on personal independence payment. In terms of changes to taxation legislation, the order will extend the definition of a disabled person to include individuals in receipt of a qualifying rate and component of adult disability payment. This will apply in two cases: first, where the tax treatment of property is held in a trust for the benefit of a disabled person; and, secondly, to the early withdrawal of funds from a child trust fund or junior ISA if the young person is terminally ill.

The order also extends provision to ensure that those on adult disability payment benefit from the following reliefs: a VAT zero rate for the leasing of vehicles to individuals under the Motability scheme; a VAT zero rate for the onward sale of vehicles previously let under the scheme; an exemption from insurance premium tax on the insurance covering vehicles leased under the Motability scheme; eligibility for a driving licence at age 16 rather than 17 when the individual has an award of the enhanced rate of the mobility component of adult disability payment; and an exemption or a 50% reduction in vehicle excise duty if the individual receives either the enhanced rate or the standard rate of the mobility component respectively. The order will also allow the DVLA to request data from Scottish Ministers to confirm whether an individual is eligible for a driving licence at age 16 or eligible for reliefs in vehicle excise duty.

The order also ensures that adult disability payment can act as a qualifying benefit for the annual Christmas bonus, carer's credit and carer's allowance in England and Wales. The latter will ensure continued entitlement to the reserved carer's allowance in the small number of instances where someone in England and Wales is caring for an individual in Scotland. The order also makes changes to election legislation to entitle those receiving the enhanced rate of the mobility component of adult disability payment to a proxy vote at UK parliamentary and local elections. It also allows for this group to provide a proxy signature for a recall petition without attestation of the application.

Lastly, corresponding provisions for entitlement to carer's allowance and carer's credit have been included for Northern Ireland. This will ensure that a carer can apply for support in relation to an individual who has moved from Scotland to Northern Ireland while remaining in receipt of adult disability payment for the 13-week run, affording the individual time to apply and be assessed for personal independence payment.

As I highlighted earlier, all these changes simply ensure that the system for disabled people who are receiving adult disability payment operates in an equitable way, as for a disabled person receiving personal independence payment. These changes are not within the competence of the Scottish Parliament, and the UK Government are therefore facilitating them through this order. This ensures that people in Scotland are not disadvantaged by devolution, meeting the principles set out in the Smith commission.

2.30 pm

Finally, the UK and Scottish Governments have worked closely together to ensure that the two systems of social security operate effectively alongside each other, and that the required legislation that underpins them is delivered successfully for the people of Scotland.

[Lord Offord of Garvel]
This order highlights the importance that the UK Government place on the effective functioning of devolution and the strength of the union.

Baroness Sherlock (Lab): My Lords, I thank the Minister for that introduction, and indeed welcome him to the special joys of secondary legislation consideration in the House of Lords. I wish him many more in the future.

We support this order and are pleased to see the Scottish Government using the powers transferred to them under the 2016 Act and subsequent legislation—although I briefly venture that we might wish that they had been a little speedier in so doing. However, to say that is to grumble. As we have heard, the Scottish Government are introducing disability assistance for disabled people, and this new adult disability payment has been created to replace DLA, PIP and attendance allowance, starting with a pilot on 21 March. Indeed, a little earlier in Grand Committee, we were debating an order relating to how the ADP will interact with benefits in the rest of the UK. I will not go back over the other questions, but, as the Minister indicated, the order also extends exemptions in relation to mobility, vehicle exemption, access to early driving licences and the definition of a "disabled person" in some tax and benefit legislation.

I have a couple of questions. The Minister said:

"At its introduction, adult disability payment will operate in broadly the same way and for broadly the same group of people as personal independence payment."—[*Official Report*, Commons, Delegated Legislation Committee, 2/3/22; col. 3.]

I take that to mean that the conditions for eligibility for ADP will be the same as for PIP, at least at introduction. Does the Minister know whether it is intended that the benefits will continue to be in alignment, or might they diverge over time? Does he know whether there will be a similar, or indeed the same, assessment process for accessing ADP as for accessing PIP? That could make a difference if someone was in receipt of one benefit and moved to the other jurisdiction.

What discussions have the UK Government had with the Scottish Government about how this transition will work? When this order was debated in the Delegated Legislation Committee in the other place, the Minister, Iain Stewart, said:

"The 13 weeks is a safety net, and applications can be made in advance. It is there to ensure that payments can continue if there is some delay, so that no one is disadvantaged."—[*Official Report*, Commons, Delegated Legislation Committee, 2/3/22; col. 8.]

I took that to mean that an application for PIP could made while someone was still living in Scotland—in other words, in advance—in order to avoid any gap in payments. But I raised this with the DWP Minister in relation to the earlier DWP order, and, although I have not had the chance to read *Hansard*, I got the impression that this was not the case: someone would have to wait until they moved to England to make that application. But, if the Minister knows, I would be grateful to understand that—I may not have heard it correctly.

Either way, the intention of the run-on is clearly to ensure that there is no gap in payment for someone moving from Scotland to England. But is the Minister aware that the latest official statistics show that it takes 24 weeks for a claim for PIP to be processed? So, if there is a 13-week run-on and a 24-week application process, I wonder whether there have been discussions between the two Governments about how to manage that. Again, I raised this with DWP, but it is a matter for both departments to consider.

Could the Minister tell us what discussions have happened between the UK and Scottish Governments to ensure that disabled people in different parts of the UK are informed of the consequences of a move to or from Scotland? What support will be put in place to ensure a seamless transition from previous benefits to the new regime administered in Scotland? Ministers have said that the intention is that there will be a run-on going the other way as well, but we do not know when yet—so obviously that is an issue in the short term.

Finally, I have one brief question. There will need to be effective interaction between these new Scottish systems and the existing UK infrastructure, including in respect of DVLA as well as DWP. So how do we ensure that both those systems work well and that people who are getting benefits are aware of possibly different timescales and application mechanisms—and, as a result, know what to do? These benefits go to some of the most vulnerable people in our society, and it is very important that they work well. I look forward to the Minister's reply.

Lord Offord of Garvel (Con): I thank the noble Baroness, Lady Sherlock, for her comments. It is indeed interesting that the first instrument on this afternoon's Order Paper covered the same piece of legislation from the other end; we are joined up in that respect. The question here is broadly about the same way and the same people. The principles are very much that the two Governments work in lock-step; that the treatment of individuals in the UK should be the same, whichever jurisdiction they happen to be in; and that, at the current moment in time, there is absolutely equal treatment in terms of qualification and payments between the two countries.

However, as part of the Scotland Act and the Smith commission, a transfer is ongoing. This is in fact the 12th such benefit to be moved north of the border. Effectively, it allows the Scottish Government not only to become the payer but to have the machinery to make payments through Social Security Scotland. The customer should see absolutely no difference in this transition but, going forward, we have pilots starting in Perth and Kinross, Dundee and the Western Isles. Initially, new claimants will come on to the new system. The idea is that, from the summer onwards, 300,000 people will be transferred across from the English system to the Scottish system. However, it is absolutely not our place to debate in this place how that will go forward. When we transfer those powers, we do so on an equal basis; it will then be for the Scottish Government to decide how they will legislate for their programme of government. We cannot comment at this point as to whether there will be divergence; that will be a matter for the Scottish Government.

As far as the 13-week timeframe is concerned, that is considered reasonable. I heard the point made in the first debate about 24 weeks, which seems rather long. I

know that the Minister in that regard will write; the question of what will happen if there is a gap is one that we will probably come back to. The objective here is to have no gap, so that, as claimants move from one region to the other, they can apply and be assessed within 13 weeks, and continue—and, indeed, be backdated as well. The spirit of this legislation is that there should be no gap, but the specific question about 24 weeks needs to be looked at, so I will combine with the Minister from the first debate, my noble friend Lady Stedman-Scott, on that one.

Crucially, the notification of customers is dependent on what we now call customer care. It should be done with the customers. The DWP must write to customers who are transferring, and anyone coming south of the border again must be notified by Social Security Scotland. One has to assume that the agencies involved will do that and take care of the process. At the end of the day, the DWP and Social Security Scotland will co-operate closely. Their objective will be to ensure that there is no detriment to disabled people as a result of the introduction of the adult disability payment.

I conclude by saying that this instrument demonstrates the continued commitment of the UK Government to work with the Scottish Government to deliver for Scotland and maintain a functioning settlement for Scotland.

Motion agreed.

Flood Reinsurance (Amendment) Regulations 2022

Considered in Grand Committee

2.39 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Flood Reinsurance (Amendment) Regulations 2022.

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the instrument before us was laid before the House on 27 January. It makes important changes to the Flood Re scheme, a joint government and industry scheme launched in 2016 designed to improve the availability and affordability of UK household flood insurance.

In 2019, the scheme administrator, Flood Re, published its first quinquennial review. This is a statutory requirement. Flood Re made several recommendations to the Government. A number of proposals have since been assessed and consulted on, leading to the changes set out in this instrument.

To date, Flood Re has helped more than 350,000 households at high risk of flooding across the UK to access affordable insurance. Before Flood Re, just 9% of policyholders with a prior flood claim could obtain flood insurance quotes from two or more insurers, and none could get quotes from five or more. Following the scheme's launch in 2016, the availability of flood insurance policies for those with prior flood claims has increased. Around 96% of customers can now get five or more quotes, and four out of five householders with a prior flood claim have seen price reductions of more than 50% since the scheme's launch.

Building on this success, the statutory instrument makes technical changes to the scheme to improve its efficiency and effectiveness and changes to drive the uptake of property flood resilience measures, helping the UK to become more resilient to the changing climate. I will outline these measures in turn.

The statutory instrument designates a revised scheme, as described in the new scheme document dated 19 January 2022. The scheme document provides the framework for Flood Re to administer the scheme. First, the new scheme document will allow Flood Re to propose a revision to levy 1 every three years instead of every five, and reflects the Government's assurance process. Levy 1 is the scheme's primary income, raised from UK household insurers based on their market share. The revised levy amount will be subject to parliamentary approval every three years. This change will allow Flood Re to obtain better value for money when purchasing reinsurance and be more dynamic in response to the potentially changing risk profile. The instrument amends the figure for levy 1 from £180 million to £135 million per year for the next three years. This will ensure that the total levy is no higher than it needs to be.

Secondly, the new scheme document will allow Flood Re to set the liability limit— this sets the maximum amount of claims that Flood Re is liable to pay to insurers in any one financial year—every three years instead of every five. This will align it with the levy-setting cycle and afford Flood Re greater flexibility to respond to the scheme's changing income needs and risk profile.

Thirdly, the new scheme document also makes a technical clarification that levy 1 funds will be returned to the Government when the scheme ends, in line with the established agreement between the Government and Flood Re.

I now turn to the change that will help drive the uptake of property flood resilience in UK households. We have seen only recently the devastation that can be caused by flooding and the impact on the lives and health of those households that are affected. Property flood resilience gives homes and businesses the tools to manage the impact that flooding has on their property and their lives, enabling them to respond and recover more quickly if flooding happens.

The new scheme document will allow Flood Re to pay claims from insurers ceding to the scheme, which include an amount of resilient repair up to a value of £10,000 above the cost of like-for-like reinstatement of actual flood damage. This will allow UK householders to build back better after a flood, making their homes more resilient to possible future flooding by using products such as air brick covers, flood doors, water-resistant kitchens and plasterboard. Resilient repair will enable homeowners to return to their homes quicker and reduce the cost of any future claims.

Build back better is being introduced on a voluntary basis. Insurance companies who cede to the scheme can choose whether to offer build back better to their

[Lord Goldsmith of Richmond Park]
customers. Participating insurers will be able to start offering build back better soon after the regulations come into force. Flood Re, the scheme administrator, will require insurers choosing to participate in build back better to offer it across their home insurance offerings rather than just on insurance policies ceded to Flood Re, thus ensuring consistency and fairness for all customers.

By providing Flood Re with the power to pay claims to fund resilient repair over and above normal reinstatement, the Government and Flood Re aim to drive a cultural shift across the insurance market, driving positive changes in supply chains, raising awareness and demand for property flood resilience, and helping to capture the evidence on the benefits of property flood resilience to support future changes in the market.

The Government will publish a property flood resilience road map at the end of this year, identifying the action that government and industry need to take to accelerate the take-up of property flood resilience measures and successfully underpin the market. This will ensure that all relevant bodies play their part and that consumers can have assurance about the quality of products and their installation. The road map will consider whether any changes to build back better are required to strengthen and improve it. Any future regulations brought forward making further changes to the Flood Re scheme would receive parliamentary scrutiny through the affirmative procedure, as required by the Water Act 2014.

Flood risk management policy is devolved. However, insurance policy, including the operation and application of the Flood Re scheme, is a reserved policy. Any changes to the scheme, including those in this instrument, take effect across the UK. The Government have engaged extensively with the devolved Administrations throughout the development of these changes; they support their implementation. No impact assessment has been prepared for this instrument because it has no significant impact on business, charities or voluntary bodies. Most impacts on business are anticipated to be either neutral or positive. There is also no impact on the public sector.

I commend these regulations to the Committee.

2.45 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to this statutory instrument, which seems fairly straightforward. However, I have a number of questions to ask him, if he is able to answer.

The Flood Re scheme was set up as part of the Water Bill in 2014 after the horrific flooding we witnessed during that winter. It was to ensure that, for those properties whose owners would find it almost impossible to gain flood insurance cover on the open market, the owners would not be left with no redress. The fund was to be paid for by a levy on all insurance companies, so spreading the load. The figure at that time was £180 million, as the Minister said; as a result of this statutory instrument, the figure is being reduced to £135 million.

The Adaptation Sub-Committee of the Climate Change Committee, chaired by the noble Baroness, Lady Brown of Cambridge, anticipates that flooding is likely to increase rather than decrease. In that case, how can the Government be sure that reducing the Flood Re fund by £45 million will not have a negative impact on those who cannot get insurance on the open market? Surely the fund should be monitored at the very least, or increase in anticipation of future demands on it.

The Explanatory Memorandum is clear that these regulations designate a new FR scheme. Given that the existing flood reinsurance scheme is working well, why is it necessary to have a new one? Apart from the difference in the sum involved, in what way will the new scheme be different from the existing FR scheme?

Paragraph 7.4 of the Explanatory Memorandum states that the liability limit will be reviewed

"every three years instead of every five."

That is fine. The liability limit was £2.1 billion in 2016, with increases in line with the consumer prices index. Can the Minister say what the liability limit is currently, in 2022? It is important to review the limit but it has to be done in conjunction with the risk profile, as identified by climate change professionals, not just what Defra officials think might happen.

Paragraph 7.5 of the EM states that the surplus funds on the wind-up of the existing scheme will return to the Government. Can the Minister say why this surplus is not being transferred into the new scheme? This seems to me to be a mistake. If the insurance companies are paying a levy towards Flood Re, surely they should be the ones to reap the benefit of any surplus in the existing fund. Paragraph 12.3 refers to the lack of an impact assessment, as there is a negligible impact on businesses. If the surplus in the existing fund were transferred back to the insurers, it would have no impact at all on business. The Government are attempting to have their cake and eat it.

The new scheme will allow insurers on a voluntary basis to make payments of up to £10,000 for resilience repair—build back better—over and above the cost of like-for-like reinstatement of actual flood damage. My recollection is that this resilience repair element was part of the original commitment of Flood Re. Can the Minister say whether this was ever implemented from the start? If not, why not? Resilience is a vital element of this scheme.

I cannot see any reason why a new fund has to be set up if the existing one is operating well and has surplus funds in it. I am sorry to say that I feel something of a sleight of hand is going on here; at best, there is a distinct lack of transparency. Given the view of the Adaptation Sub-Committee of the Climate Change Committee that the incidence of flooding is likely to increase in future, I feel the reduction in the levy pot by £45 million is premature. Can the Minister reassure us that, for those who have access to the Flood Re fund, it will be there when they need it?

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his helpful introduction to this SI and the Secondary Legislation Scrutiny Committee

for drawing it to our attention. I had a strong sense of déjà vu when reading it, as I was present when the first SI was debated back in 2015, which clearly illustrates that I have been in the job too long. I remember our original debates and will come back to some of the issues raised then.

Since then, the UK has suffered more regular and devastating extreme weather events, as the noble Baroness has said, with the result that thousands of properties are being flooded, many on a repeat basis. This has underlined the need for more robust and accessible home insurance. It is good to hear that Flood Re has been judged a success and that it has helped thousands of homeowners in flood risk areas who would otherwise have struggled to insure their homes, as the Minister was saying. It was also reassuring to hear that the scheme has met its initial liquidity and capital requirements and has a high solvency ratio, making it financially secure. On this basis, we accept that it makes sense to reduce the levy on insurance companies from £180 million to £135 million a year.

However, a number of questions arise from the proposals, which I would be grateful if the Minister could address. First, the Explanatory Memorandum referred to the statutory quinquennial review of the FR scheme and the recommendations that arose from it. Have all the recommendations of that review been agreed by government and put forward in this amended proposal today, or are there other recommendations still out there or under consideration or which have been rejected by the Government?

Secondly, as we have heard, one of the recommendations before us today is the build back better proposal to allow claims up to the value of £10,000 to enable homeowners to fund flood-resilient improvements over and above any like-for-like repairs. This is a welcome initiative, but paragraph 12.3 makes it clear that the participation of insurers in the build back better supplement will be voluntary. Why was it not made compulsory for all insurers to offer this payment, given the urgent need to make our properties more resilient to flood risk in future? Do we have any information about the appetite of insurers to pay this extra supplement? The Minister quoted some statistics, but I would be grateful if he could confirm what proportion of insurers are providing the build back better facility.

Thirdly, I return to some of the concerns raised when the original scheme was introduced which still seem relevant today. Are the poorest and most vulnerable—those in tenanted and rented properties—still excluded from the scheme? It really does not seem right that people living in the same or adjoining properties could have access to different standards of flood insurance purely on the basis of the status of those living in the property. Do you still have to be the homeowner to qualify? Since the scheme now appears to be financially secure, what consideration was given to extending access to it to wider categories of claimants, such as tenants?

Can the Minister clarify the current status of farmhouses? I know that this has been a concern for the farming community. Most people would say that they are primarily residential properties, even if they also act as a business address. Can farmhouses join the Flood Re scheme?

Finally, could the Minister clarify whether we are still focusing on properties deemed in high-risk flood areas? Given the recognised threat of extreme weather events arising from climate change—the noble Baroness talked about the issues raised by the Adaptation Sub-Committee on this—how can we be sure that the right areas are now being designated as high-risk flood areas? Has not our experience of flood risk in recent years been that it is increasingly hard to define? Does the Environment Agency have the resources to reassess and redesignate flood risk areas from low to high risk with sufficient speed to ensure that insurers can respond accordingly? What further powers are the Government proposing to give to the Environment Agency to ensure that no further properties are built in high-risk flood areas against its advice, as can happen at the moment?

These are all issues that need to be addressed if Flood Re is to achieve its true potential. I hope the Minister can address them. I look forward to his response.

Lord Goldsmith of Richmond Park (Con): I thank noble Lords who have contributed to the debate. I will address the questions put to me.

As has been noted, the levy will reduce from £180 million to £135 million per year for the next three years. That is based on an assessment that £135 million is what is needed. The view is that we do not want to set the levy higher than it needs to be because it is effectively a form of tax.

I note the arguments put forward by the noble Baronesses, Lady Bakewell and Lady Jones, that everything suggests that flood risk is increasing and that volatile weather patterns are likely to become more so, but the scheme is not designed to be the UK's answer to flood risk; it is a part of the answer. There is a whole bunch of other policies designed to make the UK more resilient in the face of increasingly volatile weather. For example, a major component of the environmental land management subsidy system is about better land management to create more resilience. Our tree strategy, the peat strategy and so on are all different components of it. There is the grey infrastructure component of the work Defra is doing as well. This is just part of the much wider approach the UK is taking.

The scheme is financially secure. Flood Re has met its initial liquidity and capital requirements and has a high solvency ratio. The Government have undertaken the necessary due diligence to assure themselves that Flood Re has enough funds to cover any losses as a result of a major flood event. The Government Actuary's Department agrees that £135 million is suitable and well within the risk appetite of Flood Re.

The noble Baroness, Lady Bakewell, asked about the liability limit. Flood Re has set the liability limit at £1.9 billion from 1 April 2022 for the following three years. This is a non-statutory change already approved by the Secretary of State for the Environment, aligned with the Government's assurance process.

[Lord Goldsmith of Richmond Park]

Build back better will play a key role in helping to increase the resilience of UK households to flooding. We hope that it will drive a cultural shift across the insurance market, driving positive changes in supply chains, raising awareness and demand for property flood resilience, and helping to capture the evidence on the benefits of property flood resilience to support future changes in the market.

Research by Defra and Flood Re has demonstrated that the additional investment for flood resilience over standard repair can be as high as £35,000, but averages to around £5,200. However, the Government recognise that the cost of making different properties resilient may still exceed the contribution from build back better. Insurers and/or the householders can choose to pay for build back better above the £10,000 cap if that is what they want to do.

3 pm

The noble Baroness, Lady Jones, asked whether the scheme is open to farm buildings. It is open to them but not to outbuildings—the precise definition of which I am unable to offer her now but I will do so if she asks me to follow up in writing.

Build back better is being introduced on a voluntary basis, as I have said. The reason why it is not a mandatory scheme is that we calculate it is very much in the interests of the insurance companies to buy into it, if additional flood resilience measures have a knock-on effect in terms of the costs they are likely to bear going forward. Insurance companies that cede to the scheme can choose whether to offer build back better to their customers, but I am encouraged to hear that insurers representing a big proportion of the home insurance market have already applied to participate. While the noble Baroness was talking, I tried to find exactly how many have signed up, but I am afraid that I do not have the figures so will come back to her. However, I am assured that it is a significant proportion of the market.

Property flood resilience is a nascent market. At this early stage, we want insurers to adopt build back better, embed it into their processes and encourage innovation and learning by doing. Flood Re will work with insurance companies to capture and contribute data and insight to assist the development of an evidence base on the impact of the policy and property flood resilience. Flood Re will encourage insurers to meet best practice when implementing build back better and will set out its expectations in the scheme's treaty and underwriting guide. This will include recommending assessment surveys and that proposals for measures and installations are underpinned by the property flood resilience code of practice, and highlighting the training opportunities available and the BSI standards and kitemarks for insurers to use.

The Government will publish a road map by the end of 2022 to further accelerate take-up of property flood resilience measures. This will ensure all relevant bodies are playing their part and that consumers can have assurance about the quality of products and their installation. The Government have the option of tightening the regulations in the future, should that be necessary, following the publication of the PFR road map, which will identify the action required by government and industry to successfully underpin the property flood resilience market.

These changes will come into force on 1 April 2022, subject to the will of Parliament. Build back better will be a business decision by insurance companies. It will be for insurance companies that cede policies to the scheme to opt into build back better and to choose how best to offer it to their customers. The Government expect participating insurers to begin offering build back better to their customers soon after these regulations come into force.

I hope that I have covered the questions put to me. The scheme is necessary; it helps improve the efficiency and effectiveness of the Flood Re schemes and builds a nation more resilient to climate change. I hope that I have reassured noble Lords on their questions.

Baroness Jones of Whitchurch (Lab): Before the Minister sits down, one question that I do not think he addressed was about high-risk flood areas. At the moment, you can access the scheme only if you live in a high-risk flood area. Obviously, that is a moveable feast these days because of extreme weather events, so it would not necessarily be the traditional areas that get flooded. There could be flash flooding in many parts of the country for all sorts of reasons. How often does the Environment Agency update that information and allow new properties to come onstream to be insured under the scheme? If we are not careful, it could become outdated very quickly and not be available to all those categories of homes that need it.

Lord Goldsmith of Richmond Park (Con): The noble Baroness makes an important point. I am told that the Environment Agency will reissue a map of flood risk some time in 2024. As she says, even that new map will need to be continuously updated. One hopes that those areas at high risk today will not necessarily be at high risk in the years to come if the measures that we invest in now are carried out appropriately and if our rationale and assumptions are correct.

Motion agreed.

National Minimum Wage (Amendment) Regulations 2022

Considered in Grand Committee

3.05 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the National Minimum Wage (Amendment) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the purpose of these regulations, which were laid before the House on 31 January 2022, is to raise the national living wage and the national minimum wage rates on 1 April 2022.

We are committed to making the UK the best place in the world to work and build a business. The pandemic has presented extraordinary circumstances. The labour market shows strong signs of recovery but both workers

and businesses will be concerned about the rising cost of living. Our approach must always balance the needs of both.

The UK labour market's recovery from the pandemic is one to be proud of. The current number of payroll employees is over 400,000 more than pre-pandemic levels, and unemployment has fallen to 4.1%. This success is in no small part due to government intervention, most notably the Coronavirus Job Retention Scheme, which supported more than 11 million jobs over the course of the pandemic. The UK's economic recovery has been no less impressive. GDP at the end of 2021 recovered to the pre-pandemic level and increased by an estimated 7.5% over the year.

However, we are aware that a key issue on people's minds is the rising cost of living. We have already acted to support households with rising energy bills. We recently announced a package of measures worth £9.1 billion for 2022-23, including a £200 reduction in energy bills and a £150 rebate on council tax bills for all households in bands A to D in England. These are in addition to measures that we have already announced, such as cutting the universal credit taper rate and freezing fuel duty for the 12th year running.

Central to managing the cost of living in the long term is the creation of a high-skill, high-wage economy. We are committed to doing just that. Through policies such as the plan for jobs, we are helping people get into work and gain the skills they need to prosper, progress and succeed. We are also committed to supporting the lowest paid on this issue. Since 2015, we have increased the national living wage significantly faster than average wages and more than twice as fast as inflation, meaning more money for the lowest-paid workers. The increase in the rates this year will continue to protect the lowest paid against the increase in the cost of living.

These regulations will increase the rates of the national minimum wage and the national living wage from 1 April. We estimate that these will provide a pay rise to around 2.5 million workers. I am pleased to say that the Government accepted all the rate recommendations made by the Low Pay Commission in October 2021. The commission is an independent body that brings together the views of business and workers and is informed by expert research and economic analysis. Once again, I express my gratitude for its excellent work and well-informed recommendations.

The Government have a target for the national living wage to equal two-thirds of median earnings by 2024. Commissioners made their recommendations last October, taking into consideration the target and the strong economic and labour market recovery to that point alongside the remaining uncertainty and feedback from a wide range of stakeholders. We are delighted that this increase keeps us on track to reach our target for 2024; we remain committed to it. The Low Pay Commission made its recommendations on the basis of significant stakeholder evidence from business, workers and academic representatives. Businesses spoke of the variety of concerns they faced at that stage of recovery, as well as how they continue to plan for the future based on our target for the national living wage.

These regulations will increase the national living wage for those aged 23 and over by 59p to £9.50—an increase of 6.6%. A full-time worker on the rate will be more than £1,000 better off over the course of the year. The regulations will also increase the rates for younger workers and apprentices. Workers aged 21 and 22 will receive an increase of 82p an hour—a 9.8% increase—to see a minimum hourly rate of £9.18. Workers aged between 18 and 20 will be entitled to an extra 27p an hour, taking their rate to £6.83. Under-18s will have a 4.1% increase of 19p, to an hourly rate of £4.81. Apprentices aged under 19, or those in the first year of their apprenticeship, will receive an increase of 11.9% to an hourly rate of £4.81—51p more. This rate will remain equal to, but separate from, the under-18 rate. The regulations will also increase the amount that employers can charge workers for accommodation without it affecting their pay for national minimum wage purposes. From 1 April, it will be £8.70 per day.

Looking ahead, the Government have pledged to continue raising minimum wage rates. As set out in our manifesto, we have set a target for the national living wage to reach two-thirds of median earnings by 2024. To improve fairness for younger workers, we also have a target to further reduce the age threshold for the national living wage, making it apply to those aged 21 and over by 2024. These targets remain dependent on economic circumstances, and we will monitor the labour market carefully.

In conclusion, these regulations ensure that the lowest paid are fairly rewarded for their contribution to the economy. The Government will continue to monitor the impacts of increasing the minimum wage and will remain abreast of concerns about the cost of living. We will shortly publish the remit to the Low Pay Commission for 2022, asking it to provide recommendations for new minimum wage rates to apply from April 2023. I commend these regulations to the House.

Lord Davies of Brixton (Lab): My Lords, I thank the Minister for his introduction and welcome the fact that the figures are being increased. The support of the Government for having a minimum wage is to be welcomed. The Bible tells us that reformed sinners are to be welcomed. It does not say that we should not remind them of their previous sins. To be honest, I wasted a bit of time re-reading the Second Reading of the National Minimum Wage Bill in your Lordships' House in 1998. I have several good quotes. The Conservative Front-Bench spokesperson said:

"If the Government go ahead with this legislation they will have to accept that business closures will lead to extensive unemployment in country areas."—[*Official Report*, 23/3/98; col. 1078.]

There are several other statements on a similar theme. So I extend a welcome to a reformed sinner.

The second, brief point I will make is that of course this is not the real national living wage, as I am sure the Minister is aware. There was a national living wage before the Government co-opted the title, and it is somewhat greater than the figure being presented to us today. So I ask the Minister: have the Government considered the continued gap between their version of the national living wage and what I regard as the real living wage?

[Lord Davies of Brixton]

Finally, my main point, and why I am here today, is on the issue of pensions. I argue, and ask the Minister to accept, that a national living wage has to have built into it sufficient resources so that people can retire on a decent pension. A national living wage should encompass not just the day to day but a reasonable pension when the recipient of the national living wage comes to retirement. The Low Pay Commission reported on a submission from the TUC setting out that point in some detail—it reported on it but did not respond to it. If you dig down through what the Government are doing on pensions, you see that they are simply adding a margin that reflects what a typical employer does. It begs the question: is that sufficient to provide a decent pension when people get to retirement? The answer is that it is not.

3.15 pm

Of course, some low-paid workers miss out on any pension at all. A worker on the minimum wage working less than 12 hours a week will miss any opportunity of an automatic enrolment pension because they are not entitled to one. If they work less than 20 hours a week, they have to request employer pension contributions. There is no automatic entitlement, and we know from experience how important that is in incorporating people into the pensions system.

So we have a minimum wage that fails to deliver an adequate pension. A worker on 32 hours a week on the proposed level of the minimum wage will earn a bit under £16,000 a year. That results, given next year's earnings limits, in an annual pension contribution from employer and employee of £765. If they maintain this level of contribution for 40 years and we assume average investment returns of 2.5%, they end up with a pension pot of less than £50,000. That is insufficient to provide that worker with an adequate pension.

Clearly, there are other things. The Government are on record as "sometime, sometime, never" increasing the minimum contributions. In the meantime, the Low Pay Commission should build into its calculations the cost of providing a decent pension. I invite the Minister to pass on the message to the Low Pay Commission that pensions are part of pay and that the minimum wage should cover the cost of a decent pension.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to these proposals, and the Low Pay Commission for the thorough and very persuasive way it has drawn up its recommendations. The labour market during the Covid era was undoubtedly worrying, but it is good to see the evidence that, since the economy has started to pick up, pay growth has been the strongest for low-paid workers. As a result, the proportion of the workforce reliant on the national living wage has fallen from 6.5% to 5.4%.

We therefore welcome the decision of the Low Pay Commission to get back on course to meet the national living wage target of reaching two-thirds of median earnings by 2024. We therefore support the increase of 6.6% in the rate, lifting it to £9.50 an hour for those aged over 23, and the subsequent rates that follow on from that.

These recommendations were finalised in December 2021, but since then we have had rising inflation, a rising cost of living and now the reality of huge increases in energy bills. The Minister referred to that. Has any provision been made for the Low Pay Commission to monitor those significant surges in the cost of living, and potentially to make emergency adjustments to the pay rate to ensure that the lowest-paid workers can survive the coming financial crisis without falling into debt? In the first instance, I suggest that the Government could go further and scrap the national insurance increases, and indeed adopt Labour's policy of a minimum wage of at least £10 an hour, which would go some way to alleviate the pain.

I also support my noble friend Lord Davies's point about pensions. He made an important point about pension payments needing to be factored into the living costs of the lowest paid. They therefore should be included as part of the statutory scheme.

Moving on from that, I ask the Minister: what happened to the other recommendations in the Low Pay Commission report? Will they come before us separately? I read the report, and it is clear that the commission has, for example, done a great deal of work on the domestic workers exemption, where staff such as au pairs and domestic servants live with a family. As it says in its report, it heard a great deal of distressing evidence from individuals whose hidden voices are rarely heard. As a result, it made a definite recommendation to remove the domestic worker exemption in Regulation 57(3) of the 2015 regulations. What happened to that recommendation?

Secondly, the commission addressed the issue of the pay for individuals involved in sleep-in shifts in social care. This was subject to a Supreme Court ruling this year, leading to calls for more clarity and consistency. The Low Pay Commission identified that there was a variety of practices across the sector, with payments "unregulated" and

"determined by negotiation between commissioning bodies, providers and the workforce."

It concluded that any further clarification should be "linked to wider plans" for social care funding currently being considered by the Government. Can the Minister confirm that this issue is being considered in the context of the social care reforms, and that adequate money is being set aside to encourage new people into the sector, including those required to sleep over with those for whom they are caring? If we are not careful, this issue, which the Low Pay Commission has flagged up, will fall between all of these stools: it will not be delivered as part of the minimum wage recommendations and it will not be part of the social care reforms either. Once again, those care workers will fall through the crack.

Finally, we welcome the fact that the commission will carry out further work on the impact of low pay on those with protected characteristics, including younger, older, disabled and women workers, and workers from ethnic minorities. We recognise the complexities of untangling the cause and effect of these trends, but given the undoubted pay gaps that we know exist, we believe further measures may be required to rebalance the pay and employment opportunities of these disadvantaged groups.

I hope that the Government's remit to the Low Pay Commission for next year will ask it to do further work on this issue so that we can be completely satisfied that the pay rates are being sufficiently addressed. I look forward to the Minister's response.

Lord Callanan (Con): I thank the noble Lord, Lord Davies, and the noble Baroness, Lady Jones, for their valuable contributions to the debate. The points raised demonstrate the importance of providing a pay rise to workers, and both noble Lords welcomed the increases.

The national minimum wage and national living wage make a real difference to millions of workers in this country, and I am obviously glad that there is cross-party agreement in the House that these increases, which will help to protect workers in all parts of the UK from increased inflation and protect their standards of living, should proceed. It is just a shame that the Liberal Democrats obviously did not consider it important enough to join us for this debate, but I am glad that the other two noble Lords have. The national minimum wage and national living wage have increased every year since their introductions. The regulations mean that, on 1 April, full-time workers on the national living wage will earn over £5,000 more than they did in 2015, when it was introduced.

Everyone will note that, once again, the Government's impact assessment has received a green fit-for-purpose rating from the Regulatory Policy Committee, which is just as well because I am the Minister responsible for that committee. The impact assessment estimates around 2.5 million low-paid workers will benefit from the minimum wage increase. We estimate there will be a total wage benefit to workers of about £1.3 billion. The total cost to employers for implementing the LPC's recommended rate is estimated at £1.6 million. This marks a 42% increase in the national living wage since the policy was first announced in 2015. Of course, younger workers will also get more money from the increases to the national minimum wage.

I turn to the points raised by the noble Lord, Lord Davies. The Government of course consider the expert and independent advice of the Low Pay Commission when setting these rates. We reward workers with the highest possible minimum wage, while considering the impact on the economy and, of course, the affordability for businesses. The Low Pay Commission draws on economic, labour market and pay analysis, independent research and stakeholder evidence. The key distinction between the Low Pay Commission rates and the other rates, such as the Living Wage Foundation's voluntary living wage, is that the Low Pay Commission has to consider the impact on businesses and the economy.

I turn to the next point that the noble Lord, Lord Davies, raised on pensions. From April, the full yearly basic state pension will have increased by over £2,300 in cash terms since 2010. The overall trend in the percentage of pensioners living in poverty is a dramatic fall over the recent decade. There are 200,000 fewer pensioners in absolute poverty, both before and after housing costs, than there were in 2009-10. The Low Pay Commission considers all aspect of low pay when making its recommendations for minimum wage rates.

I move on to points made by the noble Baroness, Lady Jones. In response to the points about the Low Pay Commission considering the change in the cost of living, we consider the expert and independent advice of the commission when setting the rates. The LPC's remit is for the national living wage to reach two-thirds of median earnings by 2024, subject to wider economic conditions. Since its introduction, the national living wage has grown more than twice as fast as consumer prices. This year's increase will be the largest ever in cash terms and will help to protect the income of 2 million low-paid workers against the cost of living. In April, a full-time worker on the national living wage will see their annual earnings rise, as I said, by over £1,000. I also said in my introduction that we will shortly publish this year's remit for the Low Pay Commission, which will once again continue to consider a wide range of stakeholder and academic evidence.

On the point made by the noble Baroness about social care, we are incredibly proud of all the work that our health and social care staff do and recognise their extraordinary commitment. The 1.5 million people who make up the paid social care workforce provide an invaluable service to the nation—and did so especially during the pandemic. The noble Baroness will be aware that we recently brought forward our strategy for the adult social care workforce in the *People at the Heart of Care: Adult Social Care Reform* White Paper. That was backed by at least £500 million to develop and support the adult social care workforce over the next three years. This historic investment will enable a fivefold increase in public spending on the skills and training of our direct care workers and their registered managers. This will include hundreds of thousands of training places, certifications for care workers and the professional development of the regulated workforce. It will help support our commitment to ensure that those who receive care are provided with choice, control and support to live independent lives, that they receive outstanding quality and tailored care, and that people find social care fair and accessible.

Since the introduction of the national living wage in 2016, care worker pay has also increased at a faster rate than ever. So I hope that the noble Baroness will accept that we remain committed to supporting worker protections through this crucial policy and to ensuring clarity for businesses on how the policy will develop over the next few years. We will also run a communications campaign alongside the uprating, thereby helping workers to check their pay and supporting businesses to make the necessary changes. We will also continue to monitor the labour market closely over the coming months. We will continue to prioritise enforcement of the minimum wage through HMRC's ongoing work and the naming scheme, where we will continue to name employers who have underpaid their staff. We named 208 employers on 9 December 2021, including some of the UK's biggest household names. To date, we have named more than 2,500 employers.

As the noble Baroness also mentioned, the Minister for Small Business, my colleague Paul Scully, confirmed in the House of Commons that we will bring forward regulations to remove the exemption from minimum wage legislation for so-called live-in domestic workers such as au pairs. This change will newly extend this

[Lord Callanan]
right to them, ensuring that those workers receive the wages that they deserve and that we thereby do our bit to help tackle exploitation.

I again thank the Low Pay Commission and its staff for gathering the extensive evidence and providing well-reasoned recommendations. It gives me pleasure to commend these regulations to the House.

Motion agreed.

Committee adjourned at 3.30 pm.