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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
UUP	Ulster Unionist Party

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

House of Lords

Tuesday 13 December 2022

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Introduction: Lord Prentis of Leeds

2.37 pm

David Prentis, having been created Lord Prentis of Leeds, of Harehills in the City of Leeds, was introduced and took the oath, supported by Baroness Wheeler and Lord Lennie, and signed an undertaking to abide by the Code of Conduct.

Death of a Member: Baroness Couttie

Announcement

2.42 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble Baroness, Lady Couttie, yesterday. On behalf of the House, I extend our condolences to her family and friends.

Renewable Energy: Generation Licences

Question

2.42 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask His Majesty's Government what plans they have to increase the number of renewable energy generation licences.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the acceleration in renewable deployment will be supported by the UK's main renewable energy scheme, contracts for difference. The latest round delivered almost 11 gigawatts of new renewable projects, almost double that achieved in the previous round. The next CfD round will be brought forward to March 2023, and future rounds will run annually to further drive deployment of renewable power. The majority of CfD applicants are exempt from the requirement to hold a generation licence.

Baroness Jones of Moulsecoomb (GP): So far, it has been much more difficult to get renewable licences. One thing that might help, as well as the Government's investment, is if the Minister could go back to his government colleagues and ask them to stop taking party donations from fossil fuel companies. That might give renewables a fair chance.

Lord Callanan (Con): I thank the noble Baroness for that, which is totally unrelated to the Question she tabled. There have been almost 1,000 generation licences issued. It is a demand-driven process. All generators below 50 megawatts are exempt from having a licence in the first place.

Lord Forsyth of Drumlean (Con): My Lords, could my noble friend the Minister indicate what has happened in recent days, as temperatures have fallen so low and there being no wind, to the cost of electricity as a result?

Lord Callanan (Con): My noble friend makes an important point. I suspect that he knows the answer to his own question: because it has been relatively still, there have been relatively small amounts of wind in the power sector, so the other sources of power—nuclear, imports, gas, et cetera—have moved in to fill the gap. That is how a diverse system should work.

Baroness Humphreys (LD): My Lords, getting a grid connection, never mind a generation licence, for any kind of generation is increasingly difficult, and indeed is even beginning to restrict housing developments. Will the Government instruct Ofgem to increase the pace of grid investment to avoid a literal energy gridlock?

Lord Callanan (Con): The noble Baroness raises a good point. We are seeing a total reconfiguration of the grid away from large nodes, such as coal-fired power stations, to a much more diversified system of generators. That requires massive configuration of the grid, which is extremely expensive and, I might add, politically controversial. Many people do not want new pylons, et cetera, going through their neighbourhoods. Nevertheless, work is ongoing to reconfigure it. Considerable sums are being invested, but clearly we need to do more in that area.

Lord Geddes (Con): My Lords, I have asked my noble friend this question before, and to an extent it follows up the question from my noble friend Lord Forsyth. Where are we with tidal power?

Lord Callanan (Con): Tidal power is an interesting technology. A number of schemes are being rolled out. For the first time ever, in the last CfD round a number of schemes were awarded licences. We need to continue supporting and developing it, but we must not run away with the idea that this will be a long-term, sustainable solution for large amounts of power. At the moment, it is on a relatively small scale. We need to continue supporting it, and we will.

Lord Hain (Lab): My Lords, the biggest tidal power project is, of course, the Severn barrage. Will the Minister receive a delegation to brief him on the potential for that? It is equivalent to two nuclear power stations, and it is lunar, and therefore generates predictable baseload energy. Frankly, it is a no-brainer.

Lord Callanan (Con): I understand the point the noble Lord makes. A Severn barrage scheme has been talked about since I was an electrical engineering student, way back in the 1980s; it is not a new scheme. It all comes down to the cost and the environmental

[Lord Callanan]
damage that would result from implementing it. We continue to keep all these things under review. I assure the noble Lord that both I and the department know all about the details of the scheme.

Lord Hayward (Con): My Lords, I add my comments to those made in relation to both tidal and wave power. We have the second-largest tidal range in the world. Some 40 years ago, I lobbied the Government on the Severn barrage, but there are many alternatives. They are not small power generators but potentially very substantial generating powers, particularly wave power.

Lord Callanan (Con): The barrage schemes are potentially large-scale schemes. I meant that some of the bottom tidal schemes are on a relatively small scale. It all comes down to cost. The costs of these schemes fall on bill payers. The Government's general approach is to support forms of renewable power that offer the best value for money for taxpayers—principally solar and wind, but we are starting to support some of the other tidal schemes as well. The barrage schemes are extremely expensive and very long term, and there are a lot of environmental implications.

Baroness Blake of Leeds (Lab): My Lords, we note the increase in the frequency of contracts for difference allocation rounds every year. Can the Minister expand what impact this will have on deploying more energy regeneration? Why is the process so prescriptive? It has "lack of ambition" written all over it. Surely more flexibility is the key to encouraging more investment in zero-carbon technologies. Are any plans coming forward to make Britain the clean energy superpower it deserves to be?

Lord Callanan (Con): I disagree with the premise of the noble Baroness's question. We are already a renewable energy superpower. She talks about lack of ambition. In the last auction, round 4, we delivered more than 11 gigawatts and 93 renewable power projects—enough to power 12 million homes. We have the largest offshore wind capacity in the whole of Europe and the second largest in the world. We want to scale-up that ambition and deliver more, but I think the noble Baroness should give us some credit for what we have already achieved.

Lord Vaux of Harrowden (CB): My Lords, I remind the House of my interests in the register. Now that the feed-in tariff has ended, there is not much incentive for people to install more capacity on their homes than they use themselves. The smart export guarantee pays typically between only 1p and 5p per kilowatt-hour, which is not enough to encourage people to install excess generating capacity. Does the Minister agree that a peer-to-peer trading facility that allows people to sell their excess power to their neighbours might increase returns to generators and improve the incentive, and also reduce the cost of power to neighbours?

Lord Callanan (Con): It is an interesting concept. As the noble Lord knows, the smart export guarantee is a market-driven mechanism, and it is for suppliers to determine the value of the exported electricity to them, taking account of their administrative costs. There are a number of schemes, such as the one mentioned by the noble Lord, and I am certainly very happy to look at it. However, we always have to bear in mind that any subsidy offered to certain generators is paid for by every other customer on the network.

Lord West of Spithead (Lab): My Lords, all this talk of tidal power makes one think of ships. Noble Lords will be glad to hear that I am not going to ask a question about ships. There is going to be a huge growth in demand for electrical power. The only certain way of providing electrical power, no matter what the weather and completely green, is nuclear. What is the actual percentage that we are looking for in the provision of nuclear power, looking to the future of electrical supply within this country?

Lord Callanan (Con): The noble Lord is right: we need to expand our nuclear production. We have just agreed the contract for Sizewell, only a couple of weeks ago, and other developments are planned. We have not set a specific target for nuclear production, but we will need to replace a lot of the aging plants that will come offline in the next 10 or 15 years or so.

Baroness Jones of Whitchurch (Lab): My Lords, the Minister, in reply to several questions, has said that it comes down to cost. Could he assure us that the full cost of continuing to invest in fossil fuels is factored in when that equation is calculated? Fossil fuels come at a cost to the environment and certainly to our climate change ambitions. Can he assure us that this is fully taken into account when those balanced decisions are taken?

Lord Callanan (Con): There are of course no subsidies given to fossil fuel generation. In fact, it is the opposite: they are paying into the system record levels of taxation. This is a gradual transition. To all those who want to get rid of fossil fuels, I say great, but 80% of our heating is gas heating at the moment; are we going to turn off people's gas boilers overnight? I suspect that the answer to the noble Baroness's question is no. Of course we want to roll out renewable generation, which is what we are doing, but it is intermittent, as the question from my noble friend Lord Forsyth intimated earlier. We need back-up generation for that; that could take a number of different forms, and nuclear is one of the possible options. In the short term, as we move to a more renewable system, we will need fossil fuel generation.

Lord Kamall (Con): My Lords, I want to ask my noble friend the Minister about the long-term thinking in the department. Looking at the developments in technology, particularly in storage capacity and micro-generation, might there be a day when there really is no incentive for people to feed into a grid, and they can generate all their energy locally? What sort of long-term thinking has there been on the impact on the grid of more local generation and storage?

Lord Callanan (Con): My noble friend makes an important point. There will be, and has been, an increasing amount of microgeneration. I am told by

the suppliers that there are record demands at the moment for things such as solar panels and PV generation, as people respond to high electricity costs. Many people will want to install systems that will save them money in the long term. Of course, the higher electricity prices are, then the pay-back period for microgeneration schemes becomes less and less. It comes down to the question that was asked earlier about the reconfiguration of the grid. There would be much more small-scale generation rather than the big node operators that we are used to. A considerable investment is going into the grid to bring that about. We also have schemes such as smart metres; 50% of the country is now connected to a smart meter, and they enable better charging regimes, demand-management schemes, et cetera, all of which will contribute to what the noble Lord suggests.

Railway Station Ticket Offices

Question

2.54 pm

Asked by ***Lord Snape***

To ask His Majesty's Government what representations they have received from (1) rail passenger groups, and (2) other stakeholders, about the proposed closure of railway station ticket offices.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government regularly hold meetings with rail passenger groups and other stakeholders, including the Disabled Persons Transport Advisory Committee. Retail and workforce modernisation, including industry plans for ticket offices, forms part of those discussions. To propose any changes to the opening hours or the closure of ticket offices, train operating companies must follow the process set out in the ticketing and settlement agreement.

Lord Snape (Lab): Would the Minister be relaxed about catching a late-night train—operated only by a driver with no other staff on it—from an unstaffed station and then leaving the train at an unstaffed station at her destination? Does she think that ticket machines would come to her assistance in the event of any problems? If something unfortunate happened and she had to use a wheelchair, how would she consider travelling in those circumstances? Bearing in mind that, in the Greater London area, the London Overground, the Underground and the Elizabeth line all have stations staffed from the first to the last train, why cannot the rest of the country be treated in the same way?

Baroness Vere of Norbiton (Con): My Lords, driver-only operations have been around since about the 1980s. It is certainly not a new concept. Over half of passengers who use the railways are on trains where driver-only operations are in place and have been accepted by train drivers. If we are able to change arrangements at ticket offices in some locations, that will mean that more people will be out and about in stations, providing the eyes and ears that we need to keep passengers safe. The Government are very conscious of more vulnerable adults and how they travel. We work very closely with the police and the Rail Delivery Group.

Lord Udny-Lister (Con): My Lords, will the Minister comment on the fact that, in 2015-16, Transport for London closed all ticket offices on the Underground to free staff to be available for helping passengers and providing information? Why has it taken Network Rail all these years to get round to this particular modernisation? Indeed, what is happening with all the other modernisations? After all, this is fairly low-hanging fruit.

Baroness Vere of Norbiton (Con): It is up to the train operating companies, which operate the ticket offices, to think about the best way to manage their resources—including people—to serve customers better. I accept that TfL is often ahead of the game in many areas. Noble Lords will recall a time when you could pay by cash for a bus ticket in London; that is the case no longer. There are ticket offices across the country where less than one ticket an hour is sold. I put it to noble Lords that the person behind that glass screen could be doing other things.

Baroness Randerson (LD): My Lords, many of the stations that I use have not had ticket offices for years, but my main concern is not just how and where you buy the ticket but how much it costs. We already have the most expensive railway in Europe. Are the Government committed to ensuring that fare increases are frozen next year to help with the cost of living in these difficult times, and to reflect the dire service that passengers have received in recent months from many train operating companies?

Baroness Vere of Norbiton (Con): When it comes to the railway, DfT Ministers have front of mind the impact on passengers of recent disruption, and value for money for all taxpayers. The railway has lost 20% of its passengers since the pandemic, which means that it has also lost between £125 million and £175 million a month in revenues. Nobody wants to see fares go higher but the reality is that we need to ensure a good deal for taxpayers. Part of that involves being able to modernise the railways such that they can offer the sort of service, at the sort of fares, that people want.

Lord Grocott (Lab): My Lords, is it not the case that ticket offices are providers not just of tickets but, frequently, of essential information for travellers? Given the huge complexity of ticketing systems across the country and lack of knowledge, perhaps, about the cheapest or quickest route, does the Minister not agree that ticket offices need to remain open for that reason in addition to those pointed out by my noble friend Lord Snape?

Baroness Vere of Norbiton (Con): I think the noble Lord sort of makes my point for me. I agree with him that people need help, but it may not just be about buying a ticket and that person does not necessarily have to be sitting behind glass. Some customers need all types of help, particularly if they have reduced

[Baroness Vere of Norbiton]
mobility. Our view is that there may be circumstances where it is appropriate to make sure that people are out and about helping customers to learn to use ticket machines and answering questions on the platform and not downstairs at the ticket office. It is all about flexibility.

Baroness Buscombe (Con): My Lords, am I not right in saying to my noble friend the Minister that we now have a new Minister for Railways in another place who will focus entirely on updating the so-called antiquated systems of ticketing and the way that the railways are managed and run?

Baroness Vere of Norbiton (Con): My noble friend is quite right. Huw Merriman MP has taken over as the new Rail Minister. If I may, I will just plug the meeting I have arranged with the Rail Minister tomorrow at 5.30 pm for any noble Lord who wishes to attend to ask him questions about current services, industrial action or, indeed, the critical modernisation that he is focused on.

Lord Berkeley (Lab): My Lords, the Minister has talked about driver-only trains, but the key surely is to have people on the station who can help people who are in wheelchairs or disabled in some way—my wife uses a wheelchair all the time—to get on and off the trains. Whether they are behind a ticket barrier or in an office, it does not really matter. Can she assure the House that there will be no reduction in the number of people who are on the platforms—whether they are from the train or the platform—to help people who need mobility assistance?

Baroness Vere of Norbiton (Con): I can reassure the noble Lord that we are absolutely focused on making sure that every single passenger, whether they have reduced mobility or not, gets the service that they need at the place they need it. That may not be the ticket office; it may be on the platform. I am really pleased that the Government have worked closely with the Rail Delivery Group on developing the app for passengers with reduced mobility. That has proved very successful. It is but one step and there are many more things that we can do.

Baroness McIntosh of Hudnall (Lab): My Lords, yesterday morning when there was significant snowfall, I stood on the platform at my local station and watched the person who is often behind the glass—as the noble Baroness put it—in the ticket office clearing the snow from the platform and helping people, other than me, who needed help. Why is the noble Baroness making a distinction between people who are behind the glass and people who are helping other people? They are the same people now and we need them all.

Baroness Vere of Norbiton (Con): That is exactly what we want to see. We want people who are multiskilled and able to clear the platform of snow, help passengers with reduced mobility and sell tickets. I am not entirely sure that I understand that there is such a differentiation.

Baroness Butler-Sloss (CB): My Lords, will the Minister take back to her department that it is extremely difficult ever to find anyone on any platform in the West Country?

Baroness Vere of Norbiton (Con): A voice behind me said, "Including passengers", but let us not go there. I will take that back to my department.

Baroness Seccombe (Con): My Lords, the person who sold me my ticket yesterday certainly made her views clear. She said, "What's all this nonsense about doing away with the House of Lords? They can't do that, can they?"

A noble Lord: Hear, hear!

Baroness Vere of Norbiton (Con): Maybe we are headed towards the ways of ticket office workers. Who knows? I very much hope not.

Lord Tunnicliffe (Lab): My Lords, at the Conservative Party conference in October, the previous Transport Secretary, when saying that she was asking industry to launch consultations on reforming ticket office provision, suggested the move was about putting passengers first. Have the Government set out the terms of those consultations and can the Minister confirm that it will include thorough consideration of the impact on passengers with accessibility needs?

Baroness Vere of Norbiton (Con): I can absolutely confirm all those things. This is not one central consultation. The train operating company that operates a ticket office will engage with passenger groups and, indeed, with passengers at the ticket office where they propose to make changes. It is all set out in the ticketing and settlement agreement, which all train operating companies must abide by. If there are any concerns, they should be registered and notified to the relevant body, which is either Transport Focus or London TravelWatch. They will then raise it with the Secretary of State, who will take that into consideration, plus various other elements, if there are concerns.

School Meals: Funding

Question

3.04 pm

Asked by ***Baroness D'Souza***

To ask His Majesty's Government which government departments share responsibility for (1) the funding of, and (2) and decisions about, school meals in (a) term times, and (b) vacations.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, free school meals are intended to support children in term time while they are being educated in school. They are funded by the Department for Education. The department also provides the holiday activities and food programme during the longer school holidays. The policy regarding

eligibility for free school meals is also set by the Department for Education. School food standards are set in secondary legislation and are the responsibility of schools to implement.

Baroness D'Souza (CB): I thank the Minister for her Answer. Given the depth and spread of need in a whole generation of our children, does the Minister agree that a senior Minister—preferably at Cabinet level—should be appointed to oversee, co-ordinate, prioritise and extend free school meals for children immediately, thereby also providing a powerful voice for children at the heart of government?

Baroness Barran (Con): The noble Baroness will be aware that this Government have extended the reach of free school meals in many important ways, including the provision of universal infant free school meals and further education free school meals. In relation to a Cabinet-level position, the House will be aware that in his independent review of children's social care, Josh MacAlister recommended a Cabinet-level post of Minister for Children and his recommendations are currently under consideration.

Baroness Berridge (Con): My Lords, my noble friend will be aware that during a cost of living crisis, free school meals are essential during term time. However, at short notice during the cold weather there can be the closure of schools or a failure in the building. So can my noble friend confirm that there is resilience within the system to stand up vouchers very quickly for those children? The lack of a meal for one, two or three days can be essential.

Baroness Barran (Con): I commend my noble friend for the work she did during the pandemic when she was standing up very flexible responses. We continue to work very closely with schools to ensure that children get the support they need.

Lord Storey (LD): My Lords, the Minister will be aware from reports from various charities that there are children going to school who have not had a proper breakfast. She will be aware that children do not always get proper meals. This is not acceptable. She will recall that the coalition Government brought in free meals for all children in key stage 1. When asked about this, she always says that the benefit system is the way we provide support. If that money is not going directly to provide these meals, what is the Minister's answer?

Baroness Barran (Con): The Minister's answer is the same as when the noble Lord, understandably, challenged the Government on this quite recently. There are essentially two choices one can make. One is to give multiple smaller, specific handouts for particular issues. The other is to give funding to parents and allow the parents to choose how they wish to spend it. The Government believe in the latter.

The Lord Bishop of Chelmsford: My Lords, building on the question the noble Lord has just asked, research by the Joseph Rowntree Foundation has found that out of 3.9 million children living in relative poverty in the UK, only 2.3 million receive free school meals. Can the Minister say whether the Government intend to extend free school meals to all children from families receiving universal credit?

Baroness Barran (Con): As I said in answer to an earlier question, the percentage of children receiving free school meals is at an all-time high. If one takes benefit-related free school meals and universal infant free school meals, over one-third of all pupils in this country—37.5% of pupils in state-funded schools—receive free school meals. The Government keep this policy under review at all times, but there are no current plans to extend free school meals to all those receiving universal credit.

Lord Davies of Brixton (Lab): My Lords, to pursue the point on the advantages to children's education of being well fed, this has been known for many years. Does that not lead inexorably to the conclusion that all children require a decent education, so we need to ensure that all children are well fed? It is not just about poverty relief; it is not just about nutritional standards; it is about ensuring that all children get a decent education.

Baroness Barran (Con): This Government are absolutely committed to all children getting a decent education—but, as I said in response to the question from the noble Lord, Lord Storey, we believe that parents also understand that very well.

Lord Weir of Ballyholme (DUP): Can I ask the noble Baroness whether there has been any examination by the Government of the approach taken to free school meals, and particularly schemes tackling holiday hunger, of the devolved regions, particularly in Northern Ireland by the Department of Education, which have proved successful in being able to provide a much more coherent approach to being able to assist children.

Baroness Barran (Con): The Government obviously look at what happens in relation to these issues across all the devolved Administrations. We have a very targeted approach to supporting children during the holidays which addresses the longer school holidays when the pressure on families is greatest.

Lord Brooke of Alverthorpe (Lab): Given that we now have the world-leading position of having the earliest onset of type 2 diabetes among our children, leading all countries in the world, whether you are having a free meal or not, what is the Government going to do about the quality of the meals being served, which are abysmal?

Baroness Barran (Con): I would be interested if the noble Lord has specific examples of where he thinks schools are serving abysmal meals. I would be delighted if he shared that with the department, because the regulations are very clear and specific on quality. There is an element of flexibility for schools as to how they implement that, but the responsibility is clear, and my understanding is that it is being upheld.

Lord McColl of Dulwich (Con): My Lords, does the Minister agree that it would be a good idea to concentrate on the content of these meals? In particular, could she use her influence to ensure that the meals contain the right kind of fat? When fat goes into the duodenum, it releases hormones that delay the emptying of the stomach and make one feel full earlier on, hence reducing the tendency to obesity—which is rather important in view of the fact that half the children in this country are obese.

Baroness Barran (Con): My influence may not extend to duodenal fat levels, but I will do my best to support my noble friend. I would like to ask the House to share my impression of what is going on in many of our schools. I visited a primary school on Friday where they are bringing the kitchen into the classroom and are preparing healthy meals with children, building their awareness of both the content and cost of their meals; that is something that is very important for their futures.

Baroness Chapman of Darlington (Lab): My Lords, of course that is very important, but is the Minister not ashamed that more families than ever cannot afford to feed their children properly—that family incomes, even where parents are working, are no longer enough to pay the bills? The Minister referred earlier to the holiday activities and food scheme. Last summer, 27 local authorities had only between 6% and 15% of their free school meal children going to one of these programmes. So what more is she going to do to make sure that the schemes that are up and running are taken up and reaching the people who need them?

Baroness Barran (Con): Well, it is up to parents whether they want to send their children to free activities in the holidays—so, if they are not taking them up, that perhaps begs a slightly different question. Secondly—if the noble Baroness would bear with me—local authorities have the flexibility to offer the provision to up to 15% of children whom they know to be in need but may not be eligible for free school meals. But I remind the House that the Government have directed an overall package of £37 billion of support, of which £12 billion has been direct support in 2023-24 for the most vulnerable households in the UK.

Albanian Asylum Seekers

Question

3.15 pm

Asked by ***Lord Dubs***

To ask His Majesty's Government how many Albanian asylum seekers are currently waiting for a decision about their claim; how many applications have been accepted in the last 12 months and how many have been refused.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): As of 30 September 2022, there were 19,897 Albanian asylum cases pending an initial decision. In the year ending September 2022, 334 decisions on asylum claims from Albanian nationals were grants and 318 were refusals.

Lord Dubs (Lab): I am grateful to the Minister for those figures. He will be aware that I tabled my Question long before I knew that the Prime Minister would make a Statement on this issue this morning. His Statement suggested to me that the Conservatives must have been in opposition for the past 12 years, but I will let that one go. I have two questions. Will the Minister confirm that, even if we are going to move to a fast-track approach for Albanians, which the Labour Party has already supported, that does not mean that an individual claimant will not have his or her claim properly considered? Secondly, will the Minister confirm that referring to asylum seekers as "illegal immigrants" is totally the wrong term? An asylum seeker cannot be illegal, even if he or she flees for safety to another country.

Lord Murray of Blidworth (Con): I thank the noble Lord for his question. As ever, he is very à la mode and clearly foresaw that there would be a Statement by the Prime Minster. I will answer his two questions. First, on the fast-track removal of Albanians, as the Prime Minister made clear in the other place, the new deal with Albania will allow us to return people with confidence that necessary protections will be provided for genuine modern slavery claims, in line with our international obligations. Of course, Albania is already a scheduled safe country under the 2002 Act, passed under Mr Blair's Administration. On the noble Lord's second question, on the term "illegal immigrant", that nomenclature derives from the provisions in Nationality and Borders Act, which make it an offence to enter illegally.

Baroness Hamwee (LD): My Lords, it is reported that there has been a big rise in online advertisements offering transfers from Albania to the UK by boat or lorry for a price—in other words, smuggling. If this is openly advertised, is it not possible to track down the smugglers and prosecute them?

Lord Murray of Blidworth (Con): The noble Baroness is exactly right: the gangs involved in people smuggling do advertise in Albania, usually on social media platforms—I understand that TikTok is particularly favoured. The Home Office has an intelligence unit that considers all these sources and, working with the National Crime Agency, steps are taken to prevent this sort of criminal activity. As the noble Baroness will have seen, the Prime Minister's announcement increases the NCA's funding to tackle organised crime within Europe, which will achieve greater control of this type of criminality.

Lord Anderson of Swansea (Lab): My Lords, when will the new policy announced by the Prime Minister this morning be fully implemented? Is it proposed that there be any element of retrospectivity—looking back to those who are already here—in the scheme?

Lord Murray of Blidworth (Con): Certainly, the deal with Albania will take effect as soon as it is agreed, which should be in the near future. The asylum backlogs will be dealt with by the end of next year. A new

permanent small boats operational command will be set up, with more or less immediate effect, and enforcement activity will be boosted in the near future. As noble Lords will have heard the Prime Minister say, we plan to bring forward legislation in early January next year.

Lord Alton of Liverpool (CB): My Lords, will the Minister assure the House that people who have been involved in people smuggling or cocaine trafficking will be brought to justice, but also that a distinction will be made where women and children, for instance, are involved and are clearly victims of the criminal gangs that have been identified? Will he also update the House as to the total number of outstanding claims by refugees and asylum seekers? When I last looked it was 143,000, which was a 180% increase since 2019. What are the Government doing to ensure that those claims are processed more expeditiously?

Lord Murray of Blidworth (Con): As of the end of September, there were 117,400 cases, which related to 143,377 people awaiting an initial decision. On enforcement and the penalisation of those engaging in people smuggling, as the noble Lord will know, it is a criminal offence to be the criminal mastermind—if you like—behind a smuggling operation, and the maximum penalty for those types of offences is life. I have no doubt that a sentencing court would bear in mind, as the noble Lord anticipates, that it is an aggravating factor if women and children are involved.

Lord Leong (Lab): My Lords, asylum seekers coming here from Hong Kong have a very different experience from British national (overseas) visa arrivals. They are not given the same freedom as BNO holders to study, work or live, and that is very impactful on their mental health. Nearly one in four Hong Kongers who fled the crackdown of the ruling Chinese Communist Party says that they still suffer from post-traumatic stress disorder, linked to the violent crackdown on the 2019 protests and the subsequent fear engendered by the national security law. What assessment have the Government made to identify those suffering from PTSD?

Lord Murray of Blidworth (Con): On the BNO Hong Kong cohort, I do not have the answer, and I will write to the noble Lord in relation to it.

Lord Kirkhope of Harrogate (Con): My Lords, I am very pleased that the Government have reached an agreement with Albania about the large number of Albanians arriving in this country. However, I dispute slightly what my noble friend said about the legality or illegality of asylum seekers. Under the 1951 convention, it is perfectly clear that merely seeking asylum cannot in itself be an act of illegality. It is, however, obvious to all of us, I think, that the illegality about which we are so concerned lies with the people traffickers, smugglers and those forcing often very poor people to come to this country. I urge my noble friend that we must take further action to alleviate that problem.

Lord Murray of Blidworth (Con): I entirely agree with my noble friend: the 1951 convention prohibits the penalisation of asylum seekers. It is the illegal entry—entry without leave—that renders it unlawful under the Act.

Lord Ponsonby of Shulbrede (Lab): My Lords, as my noble friend Lord Dubs said, the Labour Party supports the fast-track approach, but I would like to ask about an appeals process. The Minister quoted the Prime Minister saying that there will be protection for modern slavery claims. What about people who are fleeing domestic violence? Will youths be treated the same way as adults through this appeals process?

Lord Murray of Blidworth (Con): The Home Office is increasing the number of staff making asylum decisions in relation to these areas. We have increased the number of asylum case workers by 112%, from 597 staff in 2019 to 1,276 as of this month, and we propose to increase that again next year with a further 500 in March 2023, up to 1,800 by the summer. In terms of the appeal mechanism, as the noble Lord will be aware, Albania is a certified safe country and the mechanism for inadmissibility will apply. Plainly, there is an appeal right out of country and judicial review opportunities in relation to certification decisions.

Lord Dobbs (Con): My Lords, I will step back from the subject of Albania. Is it not a fact that the large, underlining trend of asylum seekers or illegal refugees—whatever term one wants to use—still comes from Iraq and Afghanistan, countries in which we went to war, with the promise that we would make them safe parliamentary democracies? Will the Minister remind his colleagues constantly that military adventures of the sort that Mr Blair and others pursued, rather than solving the problems, have only made them very much worse?

Lord Murray of Blidworth (Con): Obviously, I agree with my noble friend that the consequences of conflict have led to greater migration. As the Prime Minister observed, that problem is not going to go away; we have to address it head-on.

Trade (Australia and New Zealand) Bill

First Reading

3.25 pm

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

Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2022

Motion to Approve

3.26 pm

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

That the draft Regulations laid before the House on 31 October be approved.

Considered in Grand Committee on 6 December.

Motion agreed.

Procurement Bill [HL]

Third Reading

3.27 pm

Motion

Moved by ***Baroness Neville-Rolfe***

That the Bill be now read a third time.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, before the Procurement Bill is read a third time, I will deal with the legislative consent aspects. Most of the provisions apply to England, Wales and Northern Ireland only, and a few also apply to Scotland. Throughout the preparation and passage of the Bill, we have been working closely with each of the devolved Administrations. As noble Lords will know, there are provisions in the Bill which engage the legislative consent process in the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly. Currently, the devolved Administrations have not granted a legislative consent Motion; however, we are engaging constructively with officials and Ministers on addressing outstanding points, and I reassure noble Lords that the Government will continue with this engagement as the Bill is introduced into the House of Commons. I beg to move.

Bill read a third time.

Clause 110: Definitions relating to procurement arrangements

Amendment

Moved by ***Baroness Neville-Rolfe***

Clause 110, page 72, line 35, leave out "11([subsection removed])" and insert "1(4)"

Member's explanatory statement

This amendment would correct the cross-reference so it refers to the definition of "centralised procurement authority".

Baroness Neville-Rolfe (Con): My Lords, I will move a minor technical amendment to Clause 110 in my name. I know how keenly noble Lords have scrutinised the Bill, and I am therefore confident that they will have noticed that, in the definition of "equivalent body" in Clause 110(6), the very incongruous words, "[subsection removed]", appear in square brackets. I am informed that this cannot be amended administratively to make the appropriate cross-reference. Therefore, in the interests of sending the Bill to the other place in a form which can be understood, I have tabled an amendment to insert the missing cross-reference, which is to Clause 1(4). I beg to move.

Lord Fox (LD): I thank the Minister because I have been worrying myself to death about this issue and clearly welcome her amendment.

Amendment agreed.

A privilege amendment was made.

3.30 pm

Motion

Moved by ***Baroness Neville-Rolfe***

That the Bill do now pass.

Baroness Neville-Rolfe (Con): My Lords, having taken over this crucial Bill from the now Leader of the House, I have had the pleasure of hearing a range of informed contributions from across the House on it. Noble Lords have offered a rich and stimulating debate in Committee and on Report, and I thank them for engaging constructively with what has at times been a challenging piece of legislation. As ever, I thank noble Lords for their forbearance with what I fear may be a record number of government amendments tabled in the Lords to help the Bill function optimally.

My objective in leading this Bill has been to ensure that it encourages a more open, effective and transparent public procurement while encouraging economic growth. One in every £3 of public money—some £300 billion a year—is spent on public procurement, yet at present we must wrestle with over 350 different procurement regulations across four different regimes. Noble Lords know my passion for paring back needless bureaucracy, in particular removing barriers for SMEs, and I know they have welcomed the new provisions I instigated to require contracting authorities to think about SMEs routinely. We have also put provisions in the Bill for the new single central online platform, which will underpin the new system and achieve a real step change in transparency.

This simplification of regulations is not at the expense of stringent, well-thought-out measures ensuring that procurement is done safely and appropriately in the relevant sector. Noble Lords will be aware of the national procurement policy statement, the procurement review unit and the debarment list. All these measures will make public procurement safe and ethical and take into account wider factors that I know many noble Lords right across the House care deeply about. These reforms are intended to provide a shift towards a modern and flexible procurement regime and deliver better outcomes for taxpayers, service users and the businesses and social enterprises involved.

Before I conclude, I would like to make noble Lords aware of an error on my part during the second day of Report, which I must correct. Amid the highly technical debate, I wrongly said that the national security exclusion ground was mandatory. In fact, it is discretionary. This is because it is desirable to have flexibility for contracting authorities considering exclusion on this ground, depending on the specific circumstances involved—for example, the nature of the threat to national security and/or the risk to the contract being tendered.

In concluding, I thank my noble friends Lady Bloomfield and Lady Goldie for their support on this Bill. I also extend particular thanks to my noble friends on the Back Benches for their contributions, challenge and support. I am very grateful to noble Lords on the Front Benches opposite and on the Cross Benches for their time and constructive engagement from the day I took the Bill over from my noble friend the Leader of the House. Finally, I thank the officials who have worked on the Bill, particularly Sam Rowbury, Ed Green, the previous Bill manager Phillip Dunkley and the current Bill manager Katrina Gajewska, as well as the wider official team, others supporting noble Lords across the House and my private office. I wish the Bill a safe passage through the other place.

Lord Fox (LD): My Lords, as the Minister pointed out, this is a really important Bill. It will guide an estimated £300 billion of public procurement, hopefully making it safe while driving some of the things we want to happen. I thank the Minister. She had an interesting start on this Bill; she too was a Back-Bencher and tabled several critical amendments early on, and was then suddenly propelled to the Front Bench. I think we benefited from that change of perspective—that is not to criticise her predecessor.

It is appropriate that we should bookend this Bill with another amendment, because it has been a story of amendments. We should thank the Bill team, who worked through the night at the start of this in Committee in July, explaining and setting out what the hundreds of amendments were there to do. But because there were so many amendments and clearly there was so much work to do, the Bill leaves us with still more work and scrutiny required, if it is going to achieve the things that we all want it to achieve—that is, to have a transparent process that helps our small, medium and social enterprises to flourish in the public procurement system. When it goes to the other place, I hope that those further changes can be made to make sure that it delivers that, and in an ethical way.

I thank the Minister, her predecessor and her Whips in this. I thank the noble Baroness, Lady Hayman, and the noble Lord, Lord Coaker, for what has been a very constructive and co-operative process. I also thank my colleagues. I will name them, because they have worked very hard: my noble friends Lady Brinton, Lady Humphreys, Lady Northover, Lady Parminter, Lord Purvis, Lord Scriven, Lady Smith, Lord Clement-Jones and Lord Wallace. That list reflects the fact that the Bill touches so much of public life. Finally, I thank Elizabeth Plummer in our Whips' office, without whom life would have been extraordinarily confusing for us on these Benches. That said, we wish the Bill well and beg that the MPs continue to work on it on our behalf.

Lord Alton of Liverpool (CB): My Lords, I have something to add before the thanks are completed. The Minister was good enough to express her thanks to the Cross Benches, and I draw the attention of the House to the all-party amendments which were included in the Bill. I begin by thanking her. As the noble Lord, Lord Fox, just said, it was unusual for a poacher to be turned gamekeeper in the course of the proceedings of the Bill and she did it with great aplomb and showed all the characteristics that we have come to associate with her, in the way that she dealt with constructive attempts to improve the Bill as it proceeded through Committee and Report.

As the noble Lord, Lord Fox, said, the Bill has enjoyed support from around the entire House and, of course, whatever form a Bill is in, we will all always want to try to add to it, if we are able to do so. I was therefore very grateful to the House for including the cross-party amendment I moved on the removal of surveillance equipment. I also supported the all-party amendment in the name of the noble Lord, Lord Hunt of Kings Heath, who is here, on the use of forced organ harvesting. Those two amendments are now in the Bill as it goes to another place. Unlike on ping-pong, this is a pristine Bill going to the other place. I hope that Ministers will engage with those amendments and not simply try to remove them.

There were two other amendments. The Minister will recall that the noble Baroness, Lady Stroud, moved an all-party amendment which was not taken to a vote. We had a discussion during Report about how that could be taken to the Minister who might deal with the Bill when it reached the House of Commons. I hope that the noble Baroness, Lady Neville-Rolfe, will be able to draw that to the attention of the House of Commons Minister and suggest that such a meeting should now take place.

With those remarks, I thank the noble Lord, Lord Fox, and his noble friends, but also the noble Baroness, Lady Hayman, and her noble friends—the noble Lord, Lord Coaker, in particular—and those on the Cross Benches who supported the amendments that we brought forward.

Baroness McIntosh of Pickering (Con): My Lords, I think I am the sole surviving Member of the Committee here today who contributed. I congratulate my noble friend the Minister and the Bill team on getting the Bill thus far. I am obviously immensely disappointed not to have succeeded in my attempt to source more local food in our procurement contracts, but I hope that this can be redressed in the other place.

My noble friend alluded to something that is a source of great concern to me. I have in my possession the memorandum from the Scottish Government, which expressed their concern and inability to add their consent to the Bill. Does she not share my concern that it would be very regrettable if the Scottish Government felt obliged to carry out their own Bill in this area, because of their concern about the continued ability to carry out cross-border procurement? Could this still be addressed in the other place before the Bill reaches Royal Assent?

Baroness Hayman of Ullock (Lab): My Lords, I am sure that noble Lords will be very surprised to know that I thank my noble friend Lord Coaker for supporting me and sticking with the Bill all the way through. It has been a long haul, and I think we are all pleased we are at Third Reading.

I thank the noble Lord, Lord True. At the beginning of the Bill, he gave me an awful lot of time, as did his officials, when we had some serious concerns. As the noble Lord, Lord Fox, mentioned, we had a bit of a sticky start. The officials worked incredibly hard to get us to a position where we could properly debate the issues in Committee; at the beginning, we were not in that position, unfortunately. We all congratulated the noble Lord, Lord True, on his promotion, but we were also delighted as a Committee when the noble Baroness took over this Bill, because she was genuinely interested in what we were debating and genuinely understood what we were trying to achieve. I think she worked very hard and brought in some important improvements to the Bill, having listened to Committee. I thank her for her time, efforts and energy in helping us all to come out with a Bill that was better than what we had at the start.

[Baroness Hayman of Ullock]

I also thank the noble Lord, Lord Fox, and other Members who took part for the constructive work we did going forward on the Bill. It is much appreciated. I think all Members of the Committee would agree that the Bill we have sent to the other place is in a much better state than it was when we received it. I thank everybody very much for their hard work. I hope the other place considers our amendments seriously—I think they make the Bill better—and perhaps brings some further improvements that we can look at when it arrives back. It has been a pleasure to work on the Bill, but I am pleased we are now moving on.

Baroness Neville-Rolfe (Con): I would like to briefly thank all those who have spoken. I agree with them on almost everything, and I also agree that we should commend my noble friend Lord True, now the Leader of the House, perhaps partly because of his achievements in this area. It has been a great pleasure to become a gamekeeper for the Government rather than be a poacher for the Back Benches. My noble friend Lady McIntosh of Pickering raised the devolved issues; of course, we hope that these things can be amicably resolved in the other place. Procurement is a devolved issue—the Scottish Government have not joined the UK Government's Bill and will be maintaining their own legislation. Contracting authorities in Scotland will therefore not be bound by the Bill other than to enable their use of frameworks, dynamic markets and joint procurement. They are operating their own regulations, having transposed the EU directives into their own statute book. There are some outstanding issues, particularly with the Scottish Government. We are pursuing those, and I hope they will be resolved before we see the Bill again.

Bill passed and sent to the Commons.

Higher Education (Freedom of Speech) Bill

Third Reading

3.44 pm

Motion

Moved by ***Baroness Barran***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, let me begin by thanking noble Lords for their important contributions during all stages of the Bill's passage through this House. As we have debated, freedom of speech is critical to modern society and is the lifeblood of our higher education sector. This Bill will establish new mechanisms for ensuring that freedom of speech is properly protected.

The discussions we have had since the Bill was introduced in this House have resulted in important clarifications, which we debated on Report last week. For example, we discussed the very definition of freedom of speech. I am pleased that we have introduced amendments which make clearer what we mean by that term, referring to Article 10(1) of the European Convention on Human Rights as it has effect in the UK. I am grateful to the noble and learned Lord, Lord Hope of Craighead, for spearheading the discussions on this point.

We have also addressed drafting problems to which noble Lords drew our attention. We have avoided inadvertently giving alumni the same protections as current students. We have also clarified that the new power given to the Office for Students to give guidance on supporting freedom of speech is not related to the duty on higher education providers and their constituent colleges to promote the importance of freedom of speech and academic freedom. I thank the noble Lord, Lord Wallace of Saltaire, and my noble friend Lord Willetts for their amendments in Committee that brought these issues to light.

We have also made a breakthrough on an important issue. Building on the progress made in the other place, we have agreed to ban the use of non-disclosure agreements by providers and colleges in cases of sexual misconduct, abuse or harassment, or other forms of bullying and harassment. I thank the noble Lord, Lord Collins of Highbury, for tabling this amendment, which the Government supported. Significant progress has been made in this area in the last year, with many institutions signing up to the voluntary pledge not to use NDAs launched by the previous Minister for Higher and Further Education, my right honourable friend Michelle Donelan, in conjunction with Can't Buy My Silence. I am sure this amendment will be celebrated when this Bill is brought back for consideration by Members of the other place.

I turn now to the provision which has generated the most discussion: the tort. Last week, the House decided to remove the relevant clause from the Bill. The Government will naturally reflect on this verdict and the arguments advanced to support it very carefully indeed. Of course, I am disappointed that noble Lords were not persuaded by the government amendments, which we tabled to ensure that a person could bring a claim only if they had suffered a loss and that claims could be brought only after a complaint scheme had been used. I will not repeat the arguments in favour of retaining the tort, subject to those amendments, as they have already been rehearsed at some length. However, Ministers continue to believe that those arguments have genuine force and validity.

On Report, the noble Baroness, Lady Thornton, raised some remaining concerns about the new powers of the Office for Students and how they might impact on commercial partnerships of higher education institutions, in particular university presses. I hope the noble Baroness has received my letter. If it would be helpful, I would be more than happy to meet with noble Lords who remain concerned to clarify those points, as needed. The noble Baroness also asked whether the Office for Students could refuse to give evidence to, for example, the Education Select Committee. We have spoken to the Office for Students, which has reassured us that it would co-operate fully with requests from Select Committees.

As a latecomer to this Bill, I have been struck by the level of engagement with it. That means there is a long list of people to thank—perhaps too many to mention by name. There has been an extraordinary number of constructive and helpful contributions, both during our debates in the Chamber and in discussions outside it.

These have included the noble Baronesses, Lady Thornton, Lady Smith of Newnham, Lady Garden, Lady Morris of Yardley, and Lady Chakrabarti; the noble Lords, Lord Collins, Lord Wallace of Saltaire, Lord Triesman, and Lord Hunt of Kings Heath; my noble friends Lord Willetts, Lord Johnson, Lord Moylan, and Lord Sandhurst; the right reverend Prelate the Bishop of Coventry; and, last but definitely not least, the noble, and noble and learned, Lords on the Cross Benches: the noble and learned Lords, Lord Hope and Lord Etherton; the noble Lords, Lord Grabiner and Lord Macdonald of River Glaven; and the noble Baronesses, Lady Shafik, Lady Deech, Lady Falkner, and Lady Fox of Buckley.

There are many other noble Lords on all Benches whose speeches in debate have lent weight to our proceedings. While we may not have been in agreement on all these issues, I am heartened that the constructive debate heard in Committee and on Report has fostered a consensus in this House on the need for this Bill. I thank all of your Lordships for your engagement.

Lastly, I would like to express my profound gratitude to the stalwart members of the Bill team: Sophie Cahill, Jamie Burton, Vicki Stewart, Zoe Forbes, Samer Almanasfi, and last but definitely not least, Suki Lehrer. Throughout the last six months, they have provided nothing short of superlative support to me and to my ministerial colleagues, my noble friends Lord Howe and Lady Penn, and who have worked long hours, never without a smile on their faces—sometimes virtual, on Teams. Ministers, and indeed the House, are in their debt. I also express my personal thanks to my noble friend Lord Howe. In my words, he has definitely done the heavy lifting on this Bill with his professionalism, concern and extraordinary attention to detail, which are all well known in this House.

We send this Bill back to another place with, I hope, the same ambitions as when it reached your Lordships' House. We need to support a higher education sector in which students and staff are free to speak their minds and engage in contentious debates. I believe that this Bill has the potential to make a crucial contribution to that aim, and I wish it well.

Lord Wallace of Saltaire (LD): My Lords, I thank the Minister. I also thank the noble Earl, Lord Howe, for the way in which he handled Committee and Report on the Bill, and the various consultations. It was a model of how Ministers should engage. We had a very constructive process with the Bill, for which I am, and all of us are, very grateful.

This Bill was drafted by the last Secretary of State but five. It was eventually inherited by the current team in the Department for Education, with what I dare say was an element of surprise as well as interest: it was, after all, initially drafted almost entirely by Policy Exchange through a range of papers, and Policy Exchange had based its analysis very heavily on American as much as British sources. There were therefore oddities in the Bill, which I hope we have ironed out as we have gone through.

Many of us were very much concerned about the potential for this Bill to damage university autonomy and extend state authority, including Members on the Conservative Benches and others. There are a number of areas in which we have made considerable progress on the defence of freedom of speech. For many of us, there is the removal of civil tort, not simply the reduction of the weight of the civil tort on universities. That remains to be sorted out in the Commons. I hope that the current ministerial team will reflect very deeply on whether to insist on its own amendment or to accept the amendment which a substantial majority in this House produced.

There is also the outstanding issue of the appointment of the new free speech champion. I very much hope that the Government will take particular care in finding a candidate for that position who will be accepted—possibly even welcomed—by the sector he or she sets out to regulate.

Still outstanding is the question of the degree of overlap between what is set out in this Bill, the recent National Security and Investment Act and the current National Security Bill. All of them impose new duties and new reporting requirements on universities, some of which have not yet entirely been ironed out, particularly for the National Security Bill—I hope we will be able to do that as it proceeds through the House.

I thank in particular the noble Baroness, Lady Smith, and the noble Baroness, Lady Garden, who took the burden when I was away for part of Committee, as well as our team, including Sarah Pugh in our Whips' Office. I know that the Bill team must have worked extremely hard throughout this. One recognises that civil servants are often not thanked enough for the criticisms they accept and the burdens they undertake.

Our universities are a huge national asset. They are an important part of our soft power in the world and a major source of our international income. We all need to be sure, as we have done in considering the Bill and as we look now at the National Security Bill, that we do not damage our universities in dealing with some of the problems and threats which they face, sometimes from their students, sometimes from visiting speakers, and sometimes from foreign powers, because they are such a large part of what makes this country very special.

Baroness Thornton (Lab): My Lords, I thank both the Ministers, the noble Baroness, Lady Barran, and the noble Earl, Lord Howe, and also the Bill team for their accessibility and friendliness throughout the whole of this process. I also congratulate the noble Baroness on her list of commendations of noble Lords who have participated, and wish to second that. Obviously, I need to thank my noble friend Lord Collins, who is probably on his feet in the Grand Committee, which is why he is not here. He did most of the heavy lifting around the Bill, particularly around the—for our part—unlamented Clause 4 and the non-disclosure amendment, which the Government accepted and for which we are very grateful indeed. I also thank Liz Cronin in the Lords office and our team in the Commons, Jonny

[Baroness Thornton]
Rutherford, Vicky Salt and Tim Waters, who provided us an enormous amount of support, which, as the Ministers will know, you need when you are in opposition and dealing with complex pieces of legislation. The stakeholders have also provided us with great briefings; of course, some of them are serving vice-chancellors and heads of colleges here in this Chamber.

The question at the outset was whether the Bill was necessary at all. The answer is that the jury is still out, but probably not quite as out as it was at the beginning of the process. I think we can say with some confidence that we are sending back to the Commons a piece of legislation that is much improved from the one we started out with. The reason for that is twofold. The Ministers and the Bill team engaged seriously all the way through this but this House also engaged in a non-partisan, cross-party examination of the Bill, and I congratulate noble Lords on that.

There are still some outstanding matters which will need further attention, such as the role of the students union, but also the issue that the noble Baroness referred to, which is Clause 8, previously Clause 9. I and my noble friend Lady Royall, the noble Lords, Lord Patten and Lord Wallace, and others raised the risk of duplicating security regulations and the risk that the Bill might pose to the business community, the commercial relations and the trading futures in which our universities have been successful.

I definitely welcome the Minister's invitation to have a meeting, because I think the Russell group and others need to further discuss this whole matter, particularly when draft statutory instruments and guidance are under consideration. I am grateful to her for saying that. We were still being approached about this as late as last night, because there are still serious concerns among some of our academic community.

I add my thanks for what has been a really interesting Bill. It is slightly outside my normal remit of health and equalities, but I have very much enjoyed being the number two to my noble friend Lord Collins and working with noble Lords on the Bill.

4 pm

Baroness Fox of Buckley (Non-Afl): My Lords, while I hope the Commons will look again and restore some version of Clause 4 and material remedies for victims of cancel culture on campus, I am still really glad that we have passed the Bill. I think our deliberations have been worth while and even now are having an impact, so I thank all involved.

A highlight for me was when the noble Lord, Lord Collins of Highbury, made his "confession" last week that he had originally thought the Bill "not necessary", but

"during the process of Committee and the dialogue and discussions … I was persuaded that there is an issue to address."—[*Official Report*, 7/12/22; col. 222.]

That is a win, in my book. Credit, then, to those who have spoken so articulately on threats to academic freedom, but also to those who have been open-minded and listened. Does that not remind us of the gains of hearing all sides of a debate, the importance of free speech and why it is so valuable?

In another instance, I have a confession. The noble Baroness, Lady Royall of Blaisdon, was keen to correct any impression I had given that the University of Oxford was creating a hostile environment to academics who might oppose moves to decolonise classical music. I apologise if I was too sweeping, but I am in touch with music scholars who are extremely worried about the dogmatic atmosphere surrounding the classical music canon, disparagingly dubbed

"white European music from the slave period".

They claim that the debate on the topic is toxic and mired in accusations of racism, so I enthusiastically welcome the University of Oxford's insistence that this is just not true. Perhaps this shows that university authorities can be sensitised to the reputational damage of not defending academic freedom or their own academic staff's reputation if they disagree with critical theory orthodoxies. That is a shift away from worrying only about the reputational damage of being mislabelled as bigots by campus activists, and I think the Bill has helped.

A final positive note: I was shocked last week when the UCU, the trade union of Edinburgh University, shamefully demanded that the university cancel the screening of "Adult Human Female" organised by their own colleagues, Edinburgh Academics for Academic Freedom and—not a good example of collegiate atmosphere. I was nervous that Edinburgh University would succumb. After all, it had only recently given into pressure to cancel the titan of Scottish Enlightenment philosophy, David Hume. But no, the university stood firm. The documentary will be shown at the university's theatre tomorrow night, despite transphobic accusations—

Baroness Jones of Moulsecoomb (GP): My Lords, is this normal?

Baroness Fox of Buckley (Non-Afl): I do not know. I apologise; I am trying to be gracious.

Perhaps the debate we have had has already given authorities a bit more backbone, and therefore I congratulate and thank everyone concerned for allowing a freer spirit and discussion around academic freedom to take place, at least outside this place.

Baroness Bennett of Manor Castle (GP): My Lords, in the interests of balance I will speak very briefly. It is important to say that there is not conviction in all parts of your Lordships' House that the Bill is, in its current form, in any way necessary. Attempts to address some of the attacks on freedom of speech—including the influence of commercial sponsors and funders in universities, the impacts of casualisation, and low pay and insecurity for academics—were not allowed into the Bill, so not everyone is convinced that the Bill should go forward.

Baroness Barran (Con): My Lords, perhaps I can acknowledge that, in the spirit of free speech, we have heard different perspectives in our final remarks. I pick up on the description by the noble Baroness, Lady Thornton, of the collaborative spirit and cross-party working, which make us all so privileged to work in your Lordships' House.

Bill passed and returned to the Commons with amendments.

Voter Identification Regulations 2022

Motion to Approve

4.05 pm

Moved by ***Baroness Scott of Bybrook***

That the draft Regulations laid before the House on 3 November be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, this statutory instrument is a key part of how we will implement the voter identification policy agreed in the Elections Act 2022. This area was debated extensively during the passage of the Act earlier this year. The Act was passed by both Houses and delivers on a government manifesto commitment.

Through this statutory instrument, we will be fulfilling a major manifesto commitment to

"protect the integrity of our democracy, by introducing identification to vote at polling stations".

Gaps in our current legislation leave open the potential for someone to cast another's vote at a polling station. Our priority is adopting legislation that ensures the public can have absolute confidence in the integrity of our elections and certainty that their vote belongs to them and them alone.

The introduction of a voter identification policy is the best solution to this problem and has long been called for by the independent Electoral Commission, as well as by international organisations such as the Organization for Security and Co-operation in Europe, which regularly monitors and reports on our national polls.

The statutory instrument sets out further detail on the new processes that will be put in place to help us implement this policy. First, it sets out the updated polling station conduct rules for a range of elections and referendums. It details exactly how photographic identification documents will be checked and how data will be recorded by polling station staff.

Secondly, it sets out a series of updates to the election forms. As you would expect, a number of existing forms such as poll cards have been updated to inform electors of the new requirement to show identification and the types of document that will be accepted. On top of these changes, there are some new forms, such as those polling station staff will use to record data that will help our planned reviews of the policy.

Lastly, the policy sets out details of the new electoral identity documents which can be obtained if someone does not already have an accepted document: the voter authority certificate and/or the anonymous elector's document. These forms of photographic identification will be available to voters free of charge from their electoral registration officer and will ensure that everyone who is eligible to vote will continue to have the opportunity to do so.

Baroness Taylor of Bolton (Lab): My Lords, on that specific point, can the Minister explain why younger people are treated differently to older people in terms of which documents will be accepted? Is that not a form of age discrimination?

Baroness Scott of Bybrook (Con): I assume the noble Baroness is speaking about railcards, et cetera. We had that debate very clearly when the Bill went through. We have discussed it and I do not think there is any need to discuss it further.

Noble Lords: What is the answer?

Baroness Scott of Bybrook (Con): Can I move on, please? The statutory instruments also sets—

Lord Harris of Haringey (Lab): My Lords, my noble friend has asked a reasonable question. Perhaps the Minister could give the House the courtesy of a reply?

Baroness Scott of Bybrook (Con): I have given a reply. The details of why we would not accept young people's railcards were well discussed and debated at the time of the Bill. We are now discussing the statutory instrument to deliver that legislation that has already been discussed.

I will now move on. Showing photo identification is a part of day-to-day life for people in all walks of life and it is a perfectly reasonable and proportionate way to confirm that a person is who they say they are when it comes to voting. Indeed, it has already been a requirement to show photographic identification to vote in person since 2003 in Northern Ireland.

I must also speak to the two amendments tabled by the noble Baronesses, Lady Hayman of Ullock and Lady Pinnock. I thank them both for having met me in the past week to share their concerns and suggestions for this statutory instrument. On the amendment in the name of the noble Baroness, Lady Pinnock, we disagree strongly with the views that she has set out. We are aware of concerns that have been raised in the sector about the pressures that election teams may face, but the Government remain confident that the electoral administrators will be able to deliver this important measure to protect our democratic system from fraud. We have worked extensively with stakeholders across the sector to develop implementation plans, and extensive funding has been made available to local authorities to deliver the new processes and to the Electoral Commission for its national awareness campaign.

The Government also disagree with the suggestion that electors will be prevented from voting. As we have said on a number of occasions, everyone who is eligible to vote will continue to have the opportunity to do so. Any elector who does not have a suitable form of photographic identification will be able to apply for a voter authority certificate from their local electoral registration officer, free of charge. It will be possible to apply online or on paper, just as for registration to vote; indeed, it will be possible to register to vote and to apply for a certificate at the same time. We are working hard to make the application system as accessible

[Baroness Scott of Bybrook]
and user-friendly as possible, and testing with both electors and electoral administrators is receiving very positive feedback.

Baroness Taylor of Bolton (Lab): I am sorry to interrupt the Minister again but, if everything is as well prepared and clear as she suggests, why is the Conservative chair of the Local Government Association calling for a delay?

Baroness Scott of Bybrook (Con): I am aware that he is calling for a delay. I have not spoken to him, and I do not know why he is doing so, because the electoral officers—

Noble Lords: Oh!

Baroness Scott of Bybrook (Con): No. The electoral officers, who are independent in local government, say that they know it will be challenging, but they are confident that they will be able to deliver.

While I cannot agree with the substance of the noble Baroness's amendment, I also note in passing my concerns about the form that it takes. It is not the usual practice of this House to decline to approve regulations giving effect to primary legislation that has already been passed—for sound constitutional reasons. It is also worth noting that the Liberal Democrats supported the introduction of photographic identification in Northern Ireland elections. The Liberal Democrat Front Bench told Parliament that

"we accept the need for a Bill ... The Liberal Democrats also welcome the Government's intention to introduce an electoral identity card."—[*Official Report*, Commons, 10/7/01; cols. 705-07.]

The legislation passed Second Reading without a vote. I would therefore urge noble Lords to join me in opposing this amendment.

On the regret amendment to the Motion tabled by the noble Baroness, Lady Hayman of Ullock, we fully support a review being held rapidly following the May 2023 elections. Scrutiny is essential to ensure that we can refine and improve the delivery of this policy for future polls. We have already committed to a review that will take place after the May elections. I can confirm our intention that the results of that review should be published no later than November 2023. Work is already under way with a research agency on gathering evidence to support the planned evaluation of voter identification after the May polls, alongside our in-house team of analytical professionals. However, to give the House comfort on the independence from government of the review, we are happy to increase the role of the external research agency to include the drafting of the final report, which we will of course publish in full. However, this is conditional on the amendment before us not being pushed.

We would also very much welcome further detailed parliamentary scrutiny of the results. However, we do not believe that a new specific Select Committee is the appropriate method to facilitate this scrutiny or to undertake the evaluation itself. It is the long-established practice of this House that the Liaison Committee considers and directs committee resource.

4.15 pm

It is right that we consider where there is potential for duplication and existing routes that could facilitate scrutiny. We believe that there are committees in this House and the other place, with considerable depth of understanding and breadth of expertise, that could consider these subjects, and we would welcome further scrutiny through these routes if the committees felt able. We have already contacted both the Constitution Committee and the Commons Public Administration and Constitutional Affairs Committee about whether they would be willing to provide further scrutiny. Of course, it will be up to those committees to consider whether they are able to and want to conduct any inquiry that they see fit. My colleagues in the other place and I are very happy to provide evidence to Select Committees once the review has been completed.

In addition to the specific request for a swift and independent review, the noble Baroness reiterated her concerns on the potential impacts this policy might have on the turnout at elections. I believe that the best evidence we have to show that there will not be a significant impact on participation is the existing example of Northern Ireland, where a near-identical requirement to show photographic identification has existed for almost 20 years—it was introduced by the Labour Government of the time. The policy has been a clear success: voters' confidence that elections are well run in Northern Ireland is consistently higher than in Great Britain, and there are extremely limited allegations of electoral fraud at polling stations. The policy has quickly become readily accepted by the Northern Irish electorate: Electoral Commission opinion research shows that voters in Northern Ireland were more likely to have found it very easy to participate in elections, with 83% there finding it very easy, compared to 78% in Great Britain. More tellingly, in the commission's recent 2021 public opinion tracker, not a single respondent reported that they did not have identification and found themselves unable to vote.

Furthermore, when that Labour Government legislated for voter ID, the Lords Minister, the late Baroness Farrington, told this House:

"the Government have no intention of taking away people's democratic right to vote. If we believed that thousands of voters would not be able to vote because of this measure, we would not be introducing it at this time."—[*Official Report*, 1/4/03; col. 1248.]

This Government today repeat and reinforce those sentiments.

None the less, I understand and appreciate the noble Baroness's concerns. I hope I can provide reassurance that the impact on participation will be one of the key focuses of the post-election reviews that will be conducted following the upcoming May 2023 council elections and following the next two parliamentary general elections, as required by legislation. The Electoral Commission also undertakes its own evaluations into the conduct and administration of local elections, and it has a statutory requirement to do so in relation to general elections.

The review will be informed by data collected by polling station staff, who will report to us if and when they are required to turn away an elector, their reasons for doing so, and whether the elector subsequently

returned and was then able to vote. This will allow us to base our evaluation on data collected comprehensively and consistently across all local authorities holding polls in Great Britain next year. Further research via public surveys and other such means will also be in place to supplement this data.

It is not possible to directly attribute the reasons for change in turnout from election to election, as it could be for any number or combination of reasons: electors' interest, the strength of the candidates and even the weather. However, I am confident that, with the scale and detail of the data that we will be able to gather, the review will be able to clearly demonstrate any impacts that this policy might have on electors' ability to vote at the polling station, if any, and the reasons for such impacts.

I hope this will provide reassurance to the noble Baroness that we will take this review seriously and ensure the most rigorous scrutiny is made of this policy, in order to ensure that we are able to continue to refine and improve our electoral processes. As we have consistently said, our aim is emphatically not to disfranchise eligible voters but to deter and prevent those who would take their vote from them through fraud. I hope that the noble Baroness is satisfied by these proposals and will consider not pressing her amendment. However, I must stress that the above assurances are made on the basis that this amendment is not pressed.

We are rightly proud of our long history of democracy, but we should never take it for granted. An essential part of how we keep our system functioning is by keeping the right structures in place, through measures such as this statutory instrument, that stop our elections being undermined. This statutory instrument will strengthen the integrity of our elections, and I hope that noble Lords will join me in supporting these measures. I beg to move.

Amendment to the Motion

Moved by ***Baroness Pinnock***

Leave out from "that" to the end and insert "this House declines to approve the draft Voter Identification Regulations 2022 as they will prevent legitimate electors from voting in elections and disproportionately affect disadvantaged groups".

Baroness Pinnock (LD): My Lords, I thank the Minister for her introduction to this statutory instrument but point out to her that this fatal amendment in my name is not an attempt to subvert the decisions made during the passage of the Elections Bill, where the principle of photo ID for electors was approved. Furthermore, I have been advised that, in 1994, the principle of moving fatal amendments in this House was debated and agreed, and the principle was accepted on such legislation.

The amendment in my name is to demonstrate to the Government that their implementation plan is fatally flawed, for reasons on which I will elaborate. I have a direct interest, in that I am still a councillor and a vice-president of the Local Government Association. I have practical knowledge of the election process, having been involved in elections for the last 30 years.

This is a very major change to the way we vote. Its implementation must reflect that complexity, and currently it is being unduly rushed, which will put in jeopardy the integrity of the ballot. The first major flaw in the regulations is that the start date is the May elections next year, as the Minister has reminded us. The Electoral Commission states that six months are needed for the introduction of changes in voting practice. That is the accepted convention as well for local authorities. There will not be anything like six months before the first week in May. Time is needed to make sure that every voter knows about the change. That should mean direct communication to every elector. That is not the Government's intention. The Electoral Commission is responsible for the communications and has an inadequate budget, and time, to make sure all voters know about this change.

Then there are the practical demands of election administrators. More polling clerks are needed to check ID. The Government are providing funding for an additional polling clerk in every polling station. This is not just to help to reduce queuing but for the security of staff, who may refuse to provide an elector with a ballot paper if they do not comply. There may well be angry and disillusioned voters as a result.

The information I have received from across the country is that regular polling clerks appear unwilling to continue, due to the additional pressures put on them. Experienced polling clerks are a huge asset. We need them, especially when there is such a major change.

There are further basic problems associated with these regulations. Some cultures and faiths require women to be very discreet and wear a face or head covering. Further, some will not enter a polling station unless a female clerk is present and will definitely not remove their face covering unless they are in a private place. Special privacy booths have to be bought, along with mirrors, to ensure that such voters feel able to vote in person.

Funding, or lack of it, is also an issue. There is some direct funding, as the Minister has pointed out, but for some essentials it is subject to a bidding process. Cash-strapped councils cannot be expected to fund government requirements.

The key issue, of course, is the list of acceptable photo ID. It is extremely restrictive. Voters who do not have a passport or driving licence will have difficulty. About 2 million voters are thought not to have access to any of the prescribed ID. The right to vote in a democracy is our birthright. The focus should be on encouraging voting, not deterring it as these measures do. Why does the list of acceptable photo ID in the regulations not include ID that young people can use, such as a railcard or an Oyster pass, both of which have photographic identification?

Electors from minority communities find it more difficult to have ID that is on the list. The Government's own analysis shows that 13% of people who are poorer, who are often on council housing estates, will not have any of the ID on the list. Older people in care may also not have access to that sort of ID. It makes me wonder whether the list is devised to restrict rather than enable voting.

[Baroness Pinnock]

Voters, of course, can apply for a certificate from their election office. They need a national insurance number and a photo to do so, and not everyone has an NI number. One council estimates that it will have 14,000 such applications to process, and most of those will come towards the end of the period before May. It cannot guarantee to process them in time, so some of those voters would not be able to vote.

The Minister argues that compulsory photo ID will make elections more secure. Yet overseas voters do not have any checks to verify their authenticity. Further, why then is obtaining a postal vote so easy? All that is required is a date of birth and a signature. There is no check as to whether the two identifiers are from the same person. Yet postal vote fraud cases have been well documented. I know where I would look for security in the ballot.

The integrity of the ballot is important and that is precisely the reason for my opposing the regulations set out in this SI. It is about whether the inalienable right to vote can be refused because of the failure to produce an acceptable form of photo ID, especially when many voters will go the polls in May and not know about the changes, or will simply have forgotten about them.

In conclusion, this is an ill-thought set of regulations. There is insufficient time for a fair implementation, it is expensive, it will undoubtedly result in some voters being refused a ballot at polling stations, it may affect the result of an election, and it is unnecessary and divisive.

4.30 pm

Those who run elections are opposed to the timetable. The Local Government Association leader, a Conservative councillor, supported by all political parties, has stated very strong opposition. The Secondary Legislation Scrutiny Committee also raised fundamental concerns in its report to the House. All these expert voices are being brushed aside by the Minister.

The introduction of photo ID was not in the Conservative manifesto. It is the birthright of every individual in a democracy to vote. If many thousands are deterred, or refused that right, our democracy is failing. I call on the Minister to withdraw these regulations and resubmit them for a future set of elections. I beg to move.

The Deputy Speaker (Lord Lexden) (Con): My Lords, I inform the House that if this amendment is agreed to, I will be unable to call the amendment in the name of the noble Baroness, Lady Hayman of Ullock, by reason of pre-emption.

Baroness Hayman of Ullock (Lab): My Lords, from the moment that the Government's plan for voter ID was first introduced, these Benches have made it clear that we see it as unnecessary. We believe that voting in Britain is both safe and secure, yet this policy is being introduced at a cost of many millions of pounds and, more importantly, could prevent millions of people exercising their right to vote.

On this basis, we opposed the proposal in the Elections Bill and, just yesterday, Labour Members of Parliament voted against these regulations in the other place. So I will not focus my contribution today on the principle of voter ID, and I will not rehash arguments already made—but I will reiterate our opposition to the policy as a whole.

I want the House to consider what happens next, if the concerns of the Electoral Commission and the Association of Electoral Administrators are realised. There is now a strong possibility that the lack of awareness and preparation will mean that many of the 2 million voters without the right ID will lose their right to vote. The impact of that on our democracy could be extremely dangerous.

It is on this basis that I have tabled a Motion to establish a new Select Committee to consider the impact of the regulations on the May elections. The committee would be tasked with conducting a post-implementation assessment of the policy, based on an impartial examination of evidence. An evidence-based approach to policy-making is all that we are asking for, so I welcome the fact that the Minister has now agreed to commission an independent report to consider the implementation of the policy and I extend my thanks to the Minister and her office for their approach to the negotiations we have had.

This builds on further concessions the Minister made during the passage of what became the Elections Act, which bound the Government to review the relevant sections. I am pleased that the Minister will now go further and ensure that the report is drafted independently. I welcome the further fact that the Minister has approached the Constitution Committee and that colleagues have approached the House of Commons Public Administration and Constitutional Affairs Committee, with a view that they will consider the evidence.

However, notwithstanding these significant concessions made by the Minister, I want to reiterate the strength of feeling on these Benches, and I hope that the Minister can provide clarification on a number of further points. If she is able to offer these assurances in her response to this debate, I will consider not pressing our Motion.

On voter cards and other ID, it is now less than six months until this policy is introduced in May, when people across most of England will have the opportunity to vote. Yet there has still been no public awareness campaign launched, and there is no reason to believe that all those who do not own the necessary ID will be aware that they cannot vote without it. Just yesterday, the *Financial Times* reported that the Cabinet Office has found that 42% of people with no photo ID are unlikely to apply for one. Given that we are in a cost of living crisis, this is hardly surprising; after all, a passport costs £85 and a driving licence is £43. Will the Minister remain open to expanding the list of ID if the independent report provides evidence to support this?

The proposal for a free voter card was of course intended to help address this, but the application process has not materialised, and even at the best of times, many people struggle to access local authorities because of their limited opening hours. As a result, it is likely that many people who may not have the time or capacity to travel to a local authority and deal with the lengthy application process may just not bother, and therefore lose their vote. Can I therefore ask the

Minister to commit to work with local authorities to ensure that the voter card is open to applications as soon as reasonably possible, and that it operates as swiftly and smoothly as possible? Can I also ask the Minister to assure me that the Government will take steps, together with local authorities, to monitor applications and any relevant issues, and also ensure that voters are aware that the document is free?

In addition, the Association of Electoral Administrators —the body that represents local authority electoral registration officers responsible for delivering elections—is now raising serious concerns about the huge administrative burden that will be placed on already overstretched local authorities. With the new responsibilities placed on the staff of polling stations, there is also a possibility of long queues and overburdened staff. Will the Minister commit to engaging with representatives of those working at polling stations to ensure they are fully prepared for the rollout? Specifically, will the Government monitor any instances of polling stations closing prematurely when there are still electors in the queue?

The Minister will recall that, when the Government piloted mandatory voter ID in a handful of local authorities during the 2018 local elections in England, more than 1,000 voters were turned away for not having the correct form of ID; of these, around 350 voters did not return to vote. Then in 2019, about 2,000 people were initially refused a ballot paper, of which roughly 750 did not return with ID and therefore did not partake in the election.

I do understand the points that the Minister has made regarding Northern Ireland, but I am sure she will also accept that the scale across England creates much more of a challenge. Without any real public awareness, guidance, and time for preparation, I am not confident that this challenge will be met before May. Nevertheless, I welcome the fact that the Minister has agreed to an independent report into the impact that this may have on the upcoming local elections. I hope the Minister can now provide the additional clarification necessary to avoid a Division on this Motion.

I also want to make it clear that our concerns remain over the implementation of this policy, and we will return to this during, and after, the rollout of the May elections. I look forward to seeing the independent report, and I truly hope that it will not be possible to find evidence of widespread disenfranchisement in May, but if these concerns are indeed realised, then the Minister should expect that we will be calling for the policy to then be withdrawn.

Lord Strathclyde (Con): My Lords, it was very interesting to hear the noble Baroness, Lady Pinnock, pray in aid the Motion passed by this House in 1994 on the application of fatal Motions in this House. Of course, this House has a power to use fatal Motions, but, as with so many powers of this House, it is not used by convention. I cannot think, off the top of my head, of an occasion when it should be used. I am convinced that the noble Baroness did not really make the case for it, because all the arguments she used—which were perfectly valid arguments—should have been used, and probably were used, during the passage of the Bill earlier this year. That was the time when your Lordships' House should have stopped that part of the legislation coming into force, rather than dealing with it now. As I understand it, it was a manifesto commitment. Even if it were not, we have been discussing it in both Houses of Parliament for the last seven or eight years, going back to when my noble friend Lord Pickles was Secretary of State; he launched a review and an investigation in 2015 into how local government held elections.

Furthermore, the regulations, while they are only coming into force now, have been discussed for many months, and good local authorities will no doubt have taken steps to organise themselves. The noble Baroness, Lady Hayman of Ullock, spoke very reasonably in her speech, and, if it does not embarrass her for me to say this, I agreed with much of it. However, I also felt that my noble friend the Minister had dealt with a lot of the arguments earlier, and perhaps she can go a little further now.

The point I want to raise with the noble Baroness is on the suggestion in her regret amendment to the Motion that there should be a Select Committee of this House to examine these regulations post legislation. I wanted to confirm my understanding with both the noble Baroness and my noble friend the Minister that there is nothing to stop the House from conducting such an inquiry, but, rather than putting it in a regret amendment to the Motion before the House today, it would be entirely right to make a case to the Liaison Committee, which I have no doubt would be supported by the noble Baroness the Leader of the Opposition and the noble Lord the leader of the Liberal Democrats.

Baroness Lister of Burtersett (Lab): My Lords, during the passage of the Bill, I raised the likely impact of the photo identification requirement on people living in poverty. I remind the noble Lord, Lord Strathclyde, that the word "photo" was not in the manifesto.

While I welcome the Government's focus on those with protected characteristics, the Bill is not sufficient to assess adequately the impact on all marginalised groups, given the Government's refusal to enact the socioeconomic duty in the Equality Act. I will not repeat the arguments I made previously, but my fears, far from being allayed, are all the greater given how little time there is between the laying of the regulations and the May local elections, the inadequacy of which has been underlined by the Secondary Legislation Scrutiny Committee, the Electoral Commission, the Local Government Association and others.

I will raise just two main issues, the first of which concerns consultation. The Explanatory Memorandum states:

> "Significant consultation has been carried out with … stakeholders",

including "civil society organisations". Both in Committee and on Report, I asked specifically about consultation with organisations working with people in poverty and with those who can bring the expertise of their experience of poverty to bear on the matter.

4.45 pm

The private office of the then Minister, the noble Lord, Lord True, wrote to me subsequently, which I appreciate. The list of civil society organisations it

[Baroness Lister of Burtersett]
gave me included some which had poverty within their remit but no anti-poverty organisations as such and no groups with direct experience of poverty. The email said that Ministers had asked officials to consider opportunities for such engagement. I therefore ask whether such engagement has taken place or is due to take place, with reference to the introduction of the voter authority certificate. I mentioned Poverty2Solutions in the debate, but I would also suggest the APLE—that is, the Addressing Poverty with Lived Experience—Collective, which recently met the APPG on Poverty, which I co-chair and, at its request, focused on digital exclusion.

This brings me to the second issue I want to raise. The impact assessment explains that it is anticipated that most electors will apply for the VAC online. In doing so, it totally ignores the extent of digital exclusion in various forms among people living in poverty and the damaging impact that digital-by-default approaches often have on them. Of course, I accept that it will be possible to apply in person or by post, but as the impact assessment acknowledges,

"there may be a cost associated with completing an application"

and there will be a "time cost" for those completing the application online or in person. There may also be a "travel cost" for those applying in person. It does not attempt to quantify those costs, but in any case, not all of them can be quantified. There may also be psychological costs in engaging with officialdom whom voters who need a VAC may not trust to treat them with dignity and respect. For those who are time-poor as well as financially poor, applying for a VAC, even if they are aware of the need to do so, may be just too much. This is especially so over the coming months, as people in poverty struggle on inadequate incomes in the face of the cost of living crisis, which is hitting them particularly hard.

I ask the Minister to put herself in the shoes of, let us say, a lone mother in low-paid, part-time work, claiming universal credit, whose energy is already depleted by the struggle to get by as food and fuel bills rocket and she attempts to combine paid work with the care of her children. Research by social psychologists indicates that poverty taxes the mind, reducing the bandwidth available for decision-making and action. It may simply be unrealistic to expect that people with too little money and no photo identification will claim a VAC, however good the publicity campaign. It is therefore all the more important that officials engage with people who have experience of poverty in drawing up plans for implementing the regulations and their evaluation.

On the evaluation, the impact assessment talks about the collection of public opinion data. Will that include the most marginalised groups—those in poverty and others—who, if the data collection is online, may be excluded? The Minister mentioned the staff in polling offices, but what about those who do not even go to the polling office because they realise too late that there is no point in doing so because they do not have the requisite identification? That could be a real issue, because those who are hard-pressed are, I suspect, among those most likely to miss the deadline for applications, which I understand has been brought forward from one to six working days before polling day. The Electoral Commission points out that the effect of this crucial accessibility provision will be reduced, whereas allowing applications to be made up to the day before polling day would help to maximise access and minimise the risk that voters will be turned away from polling stations. Could the Minister explain this decision to go from one day to six days and ensure that its impact is properly monitored?

According to openDemocracy, Ministers told the Electoral Commission that introducing photo ID in next year's local elections has the advantage of providing a learning exercise. Certainly, it is to be hoped that the Government will be open to learning from the exercise. In that context, I welcome what the Minister said about independent review of the exercise in May, as far as it goes, and I hope that she can answer my noble friend's questions adequately. However, the implication seems to be that, because only some authorities have elections next year—including my own authority of Nottingham—it is okay if some electors, particularly the most marginalised in those authorities, lose the right to vote because of the rushed implementation of voter photo ID. It is not okay, and I hope that, even at this late stage, the Government will think again.

Baroness Jones of Moulsecoomb (GP): My Lords, the noble Lord opposite—he is not a Minister, I think he used to be something in the Government—has got a real cheek to talk to this House about honouring conventions when his Government colleagues have trampled over dozens of them. They put in a masquerade of a Budget, which then tanked the economy. They have introduced a new Prime Minister every few weeks—another incompetent Prime Minister, I might point out—and have generally behaved like savages at a feast with taxpayers' money. He should really not stand up and defend the sort of thing he just has when his Government colleagues do not do it anyway. This House, to some extent, is self-regulating and can make its own decisions.

Lord Strathclyde (Con): My Lords, it might be worth saying that I was only commenting on the passage of the Motion that the House had carried in 1994 and I certainly do not oppose that position. I then explained the conventions by which we exist when we look at fatal Motions—none of the stuff mentioned by the noble Baroness.

Lord Brownlow of Shurlock Row (Con): My Lords, I will be brief. Like the noble Baroness, Lady Blower, who was in her place a moment ago, and others, this year I sat on a Select Committee of post-legislative scrutiny for the Children and Families Act 2014. One of our findings was that it was quite inadequate to be doing that review eight years after the legislation was implemented. While I support the SIs today—and I have some sympathy with the initial comments from the noble Baroness, Lady Hayman—I urge the Minister and the Government to stick to the timetable of the review that was outlined in her opening statement.

Lord Rennard (LD): My Lords, I welcome the presence of the noble Lord, Lord Strathclyde, for this debate, which will give me the opportunity to remind him and

the House of some of his experiences when he was the Leader of the Opposition in this House. I shall do so shortly, but first, I will quote his report considering the position of statutory instruments, as published in 2015. The executive summary began:

"Since 1968, a convention has existed that the House of Lords should not reject statutory instruments (or should do so only rarely)."

I suggest that this is one of those rare occasions. I will address issues of principle concerning fatal Motions, costs and practicalities. The question being asked is whether the House of Lords can be justified in approving the fatal Motion put down today by my noble friend Lady Pinnock. I accept that such a Motion should be approved only on rare occasions, but I make two points.

First, there have been several times since I joined the House in 1999 when it has carried fatal Motions. I was very involved with two of them, and I think the noble Lord, Lord Strathclyde, was Leader of the Opposition at the time. In any event, both the fatal Motions which were carried were at the instigation of the then Conservative Opposition Front Bench while Labour was in power. It was the time when Tony Blair's Government were criticised for introducing unfair election rules, aimed at favouring the official Labour candidate in the first London mayoral elections. This was by denying the candidates any form of election address.

As a result of the passing by this House of the fatal Motions, which I and the Conservative Benches supported, I was then involved in cross-party negotiations including senior government officials. They resulted in us agreeing new rules that were fairer, cost effective and formed the basis of all future mayoral elections. This House now, and all Members of it, should note that the Conservatives did not have a problem with fatal Motions on such issues when they faced a Labour Government allegedly manipulating election rules in their favour.

Secondly, I turn to consideration of what was in the last Conservative manifesto. Again, the noble Lord seems not to be aware of the lengthy debates we had in the early proceedings on the Bill, in which his noble friend Lord True accepted that this was not in the manifesto. That document did not prescribe "photo ID", as distinct from "some form of voter identification". This very important point was highlighted by the noble Lord, Lord Willetts, on the "Today" programme this morning.

So, even if you subscribe to the principles of the Salisbury convention, which was a gentlemen's agreement —perhaps I should emphasise that—made to deal with the immediate circumstances following the 1945 general election, you cannot feel bound to support this statutory instrument on that basis. It is being rushed through in a costly manner, and in ways that will cause much confusion and effectively deny many people the right to vote. The Delegated Powers and Regulatory Reform Committee looked at the powers it gives to the Government and said in its March report that they should not be determined in this way:

"We consider that, in the absence of a convincing explanation, the powers are inappropriate in leaving it to regulations to determine the circumstances in which electoral identity documents are to be issued."

There are very big issues facing the country, with the cost of living crisis being the most important for many people. The Government say, for example, that they cannot afford to pay more to the nurses who they urged us to clap for at the height of the coronavirus pandemic. At the same time, they propose a costly and bureaucratic system with significant additional costs to the taxpayer for training and communications, new styles of poll cards and the supposedly free new forms of voter identification for the 1.9 million people currently without it.

The Government's own impact assessment for introducing compulsory photo ID shows that they estimate they will spend £180 million or more on this over the next decade. I wonder how many of the people who think that photo ID is a good idea would spend £180 million on it. If there is a significant problem with impersonation—and this has never been shown—we can save a lot of money by using other forms of ID, at no cost to the taxpayer.

We may not all consider ourselves experts on the detail of election law. It is local authorities that have to conduct the elections, so we should consider properly the view of the chair of the Local Government Association, which represents all local authorities across England and Wales. A Conservative councillor, he said on behalf of local authorities last week:

"While we accept that voter ID has now been legislated for, electoral administrators and returning officers should be given the appropriate time, resource, clarity and detailed guidance to implement any changes to the electoral process without risking access to the vote … We are concerned that there is insufficient time to do this ahead of the May 2023 elections and for this reason are calling for the introduction of voter ID requirements to be delayed."

I hope that full statement is of assistance to the Minister.

The Association of Electoral Administrators represents the returning officers, whom many noble Lords will have thanked for their efforts in previous elections. It says:

"It is good to see the LGA speaking out about the challenges facing Returning Officers and electoral administrators. Their concerns around voter ID reflect ours and those of the wider electoral community … The timescales to introduce voter ID in May 2023 are incredibly tight. The proposed timetable brings huge risks and jeopardises our members' ability to ensure every elector can cast their vote without issue … We would support a government decision to delay voter ID … until after May's elections".

If noble Lords have ever thanked a returning officer, as many here will have done, they can do so again by supporting my noble friend Lady Pinnock's amendment on the basis of principle, costs and practicalities.

5 pm

I conclude where I began: on the issue of principle. If Conservative Peers in opposition can vote down secondary legislation that changes election law in favour of the governing party, so can Labour Peers when they are in opposition. If the Conservative leader of the Local Government Association calls for the introduction of this scheme to be postponed, so can Conservative Peers. If this House, with the experience, expertise and judgment of its Members, can ensure that we get a better, more workable and more cost-effective solution to any perceived problem, we will all have done our

[Lord Rennard]
democracy a big favour. Nothing in the regret amendment will help to do that; only my noble friend Lady Pinnock's amendment can achieve it.

Baroness Verma (Con): My Lords, I spoke in Committee on the Elections Bill on this issue because I was offended then, and am still offended today, by the noble Baroness, Lady Pinnock, saying that black and ethnic minority communities will be marginalised and will not want to be part of this process. I have spoken to lots of people from my community and not one has said that they would be offended by having a voter ID card. To be quite frank, I agree with the Opposition Benches that a review to see how it works would be great, but I take offence at the point continuously being raised in this House that minority communities will somehow feel disenfranchised. We do not. Please take that away. We are citizens of this country and we will use our right, just like every other citizen.

Lord Wallace of Saltaire (LD): My Lords, my local politics are in Bradford, where elections are often quite boisterous affairs, and in some cases threatening. I do not entirely accept the classification that the noble Baroness, Lady Verma, has made of what happens in elections; we have a very large community of Kashmiri origin, now in its third or fourth generation, in Bradford. Some are now extremely prosperous and others are still marginalised. We also have a very poor and marginalised white community in Bradford in a similar position, so it is a question of not just ethnic minorities but the poorest and most marginal council tenants in our society.

Baroness Verma (Con): I also come from a very mixed community: the city of Leicester. We have very boisterous elections there too, but that does not stop people wanting to have something that will make it easier for them not to have those boisterous discussions.

Lord Wallace of Saltaire (LD): I wanted briefly to make one other point. I am holding the National Security Bill, which we will discuss in Committee next week. Clause 14 and Schedule 1 are on foreign interference in British elections, and the Bill lists a number of offences that need to be considered in terms of foreign interference, including personation, proxy voting, postal voting fraud, sources of donations and others. Yet, in the Elections Act, we have extended overseas voting rights for British citizens from 15 years to a lifetime, without any serious checks on or verification of identity either for those who will give donations once they are on the register or for those who will use postal and proxy voting, which they of course have to do. I hope that, in Committee on the National Security Bill, the Minister will engage fully on the changes to the Elections Act that this will make necessary, because the gap between this emphasis on much greater verification and checks for voters who vote in person and the almost total absence of verification or checks for overseas voters is astonishing, is too wide and needs to be addressed.

Lord Browne of Belmont (DUP): My Lords, the purpose of this regulation is to prevent election fraud, and the Minister quite rightly referred to the success in a similar situation in Northern Ireland. Before 2002, there was considerable fraud in elections there, and the election Act was therefore introduced. It was a challenge at the time, but, after a lot of discussion, there was agreement between all the parties to introduce the election fraud Act, which has proved very successful.

In Northern Ireland, the law requires electors to produce one of seven photographic identifications, including, for example, passports, driving licences and senior transport passes. But, in the argument today, some people say that this will exclude many people—but, in Northern Ireland, we have the electoral identity card, which is produced free of charge by the Electoral Office. This form of identification is acceptable to a very high proportion of the electorate in Northern Ireland. It excludes no one, and it is free. Before the election, vans go out to housing estates and different parts of society in Northern Ireland, producing this so that people can get it for free. It does not exclude people, so I do not accept the argument that people, perhaps from lower sections of the community, are excluded. This has been extremely successful in Northern Ireland, and the Minister referred to this success. So we should think very carefully, and we should introduce these regulations.

Baroness Bennett of Manor Castle (GP): My Lords, I doubt this was the intention of the noble Lord, Lord Browne, but he made a powerful case for the amendment to the Motion of the noble Baroness, Lady Pinnock. He set out just how extensive the efforts are in Northern Ireland to make sure that people are aware of what is happening, and how large the education campaign is. We will not have the time to see that, and that is the whole basis of the fatal amendment, for which I offer the Green group's support. This is a call not to go away for ever but to delay.

I ask your Lordships' House to think back to the contribution of the noble Lord, Lord Rennard, who is an expert both on the procedures of this House and on elections. He made the point that positions on fatal amendments tend to shift with party politics, depending on who is sitting on which side. So I will address my remarks particularly to those who do not have a party politics: the Cross-Benchers. It is greatly to their credit that their Benches are so full today; it is great to see this level of interest and concern.

I therefore refer back—we keep getting away from this—to the fact that the Electoral Commission expressed concern about the timeframe. It said that the introduction of voter ID needs to be "accessible, secure and workable" and that those important considerations

"may not be fully met"

when this new principle is operated. If we think about very cautious bureaucratic language, the official regulator saying that it is concerned that the rules it has set may not be met should be of very grave concern.

Many have referred to this. The chair of the Local Government Association, who is a Tory councillor—I should declare my position as a vice-president of the Local Government Association—has said that there is insufficient time and is calling for a delay. Again, that is clearly not someone taking a party-political position, but speaking as the chair of the Local Government Association in a non-party way to say that this is not deliverable.

I want to put two, direct, specific questions to the Minister about implementation and what the Government are planning to do. I think the Minister referred to the fact that the alternative identity card to be delivered by councils in such a tight timeframe is to be free. We all know these days that, as soon as there is some government thing that people are confused and uncertain about, there will be many fake websites on the internet. They will be paying for adverts and telling people to pay £10 or £20; criminals will take advantage of this confusion and uncertainty. Are the Government planning to watch this very closely and stamp down on it as soon as possible? I am afraid we can guarantee it will happen.

The other question is also about the publicity scheme. Most noble Lords, with very good cause, have spoken about the at least 2 million people who do not own the relevant ID needed to vote. Of course, many people will have the ID but will not necessarily have it with them on voting day. Think about the obvious example of students. At some of the universities I know, the relevant student term will start in February. People will very likely leave their passport at home because student accommodation is not necessarily the greatest place to keep a passport. In May, they will need to vote, but their passport would be at the other end of the country. Will the publicity campaign start very soon to catch those students and give them the opportunity to know that this is happening? This could also be the case with driving licences. Some people may have a driving licence but not own a car. They are not necessarily going to carry it with them regularly. We should count not just those who do not own ID but also the people who do not necessarily have it on them.

I will make one final point, particularly addressed to the noble Lords on the Cross Benches. Many Members of your Lordships' House, particularly Cross-Benchers, go to other countries to observe elections and assist the spread of democracy around the world. Here we are trying to defend democracy at home and make sure that our elections are conducted properly. I was in Brussels last week and happened to be speaking on a panel which had a speaker from Belarus and a speaker from Hungary. The chair, who was not from any of our three countries, said "These are three countries in Europe which have problems with—or falling apart—democracy." That is how this country is being regarded overseas. Voter ID is one more step in that process.

Lord Weir of Ballyholme (DUP): My Lords, I speak in favour of the Government's position, drawing from experience of 35 years of elections in Northern Ireland. Some were prior to the 2002 legislation, and some were after that; in some I was a candidate. On each occasion I was someone involved in electoral politics. I also draw from experience as former president and vice-president of the Northern Ireland Local Government Association. I have seen this operate within a local government context.

I can understand, for those who are moving into a new situation, that there are genuine concerns and those need to be addressed. There is a point around trying to ensure that publicity is maximised in the run-up to this. Therefore, I have some sympathy for that point. It is also the case that, no matter how well thought through any scheme is—I take reassurance from what the Government have said—there will be a review of the situation after the elections. It is important that whatever lessons that arise from that are learned.

5.15 pm

I will make a number of points, relatively quickly, from my experience in Northern Ireland. First, fears have been raised from the Northern Ireland experience, but they are fears that do not materialise in practical terms. For example, there has been an argument that there is widespread marginalisation of the electorate—that many people are turned away or unable to cope with the system, from whatever socioeconomic or ethnic background—but that has not been the practice in Northern Ireland over a 20-year period, which would seem a relatively lengthy period in which to test this out.

Secondly, I appreciate the point about the timeframe for introduction, but grasping this concept is not rocket science; this is simply about ensuring that we have fair elections where people come with photographic electoral ID. To our pride, we have had great success in education in Northern Ireland; we tend to lead the nation when it comes to examination results. However, I will say in the spirit of generosity that I have enough faith in the sagacity of my fellow citizens from England that I believe, even within this timeframe, that this is something that may be able to be grasped across the water as well.

Thirdly, a point has been made on the distinction drawn between identification and photographic identification. Prior to 2002, there was for a period of time a mixed economy as regards the identification needed in Northern Ireland. Some identification considered acceptable was photographic and some was non-photographic. I warn the House that it was the worst of all worlds. The non-photographic ID was a vehicle and opportunity for massive electoral fraud and abuse; that is why the changes were made in 2002. I urge the House that, if we are going in this direction, we go not for half measures but for something fully in the way of an electoral ID system.

Finally, I can understand the anxieties of, for example, electoral officers or those working in polling stations; but, again, the experience from across different communities in Northern Ireland has been that, while people will sometimes dispute whether someone has brought the right form of electoral ID, there has not been any experience of violence or disputes in counting centres or, indeed, polling stations. I think it would be fair comment to say that politics in Northern Ireland is occasionally quite boisterous—perhaps the word of the day as regards this debate. Indeed, if at times we could row it back to being boisterous, I think we would find that acceptable. However, the experience in Northern Ireland has not been that this has led to a level of conflict.

As a result, I urge the House to take what I think is a forward-looking step by supporting the proposal put forward today by the Government. If you were to quiz anybody involved in electoral politics in Northern Ireland, from any party, whether they are an elected Member, a canvasser, a voter, or working directly within the electoral system as a polling agent, I challenge

[Lord Weir of Ballyholme]
you to find a single person in any of those categories who would say that we should go back to the old system and remove photographic electoral identification. This is the way forward. Let us grasp that today and support the Government's position.

Baroness Meyer (Con): My Lords, I can say the same about what is happening in Europe. In France and, as far as I know, in most European countries, you need a photo ID to vote. You have to be over 18, and I think the only instance when you do not need a photo ID is if you vote in a municipality of fewer than 1,000 people. I do not think there is a complication, and I have not seen, in France or in other European countries, people in uproar because they have to show a photo ID to prove who they are.

Lord Collins of Highbury (Lab): Everyone there has a national ID card.

Baroness Meyer (Con): They can show an ID card, or a passport, or there is a whole list of identification with a photograph that can be used.

Lord Rennard (LD): Does the noble Baroness accept that there is a fundamental difference if, as in most of western Europe, you are issued with a national ID card and that is a legal requirement? Then everybody has it and can vote, but in the UK we do not have national ID cards, and therefore at the moment there are 2 million people without the requisite form of ID who have to apply. An extra barrier is created, unnecessarily and at great cost.

Baroness Meyer (Con): As far as I know, in England there is a photograph on a driving licence. In France, your driving licence with a photograph is acceptable for voting. There must be a way forward. In my opinion we are complicating this rather simple issue.

Lord Hayward (Con): My Lords, I will pick up on a number of points in relation to comments made during this debate, particularly by our two Northern Ireland colleagues. The noble Lord, Lord Rennard, and I have sat on virtually every committee, if not every committee, related to voting and voting legislation since I have been a Member of this House. At no point in any debate has any contribution we have received from any person from Northern Ireland said, "Do not go for photo ID". There has been no such representation, nor any to say that we should revert to a position without photo ID, as was indicated previously. If there were problems in Northern Ireland, clearly we would have had representation from students, some civil community groups or whatever, saying, "Revert to the position we were at before". But in the seven years I have served in this House—and I believe I have served on every single review of electoral law—we have never had such a submission from Northern Ireland.

I move on to the observation by the noble Baroness, Lady Bennett, in relation to students. Oh, I feel so sorry for them. After all is said and done, we will have elections in May and there is the Easter holiday between now and then. In my former life I was chief executive of the British Beer & Pub Association. Noble Lords may wonder what on earth that has to do with this debate. My members operated late-night licensed locations. All people who attended were required to produce proof of ID. Ask any pub company how many managers are holding passports, driving licences and other forms of photo ID every Monday morning because clientele in pubs and bars have left them there. The reality is that students carry their ID with them on a regular basis, because they are used to producing them in very regular circumstances.

Both the noble Baroness, Lady Pinnock, and the noble Lord, Lord Rennard, said that the introduction was being rushed. In recent years we have moved from a rigid electoral roll system whereby the new election rolls were registered sometime between August and October to a system in which people can now register on a very rapid basis. I think the noble Lord, Lord Rennard, will agree that I have been a regular supporter of reducing the workloads of returning officers. As an event at elections, we now get a surge in registration by people who think they are not registered. Actually, two-thirds of them are registered and that workload could be removed with read-only access. That surge is because people are suddenly conscious of the upcoming election.

If you ask the relevant organisations—the AEA, the Electoral Commission—when they are going to launch their advertising campaigns in relation to the May elections, no sane marketer would say, "We are going to launch the advertising campaign in November or December", because people's minds are on Christmas and other similar arrangements. You launch an advertising campaign to make people aware that they need some form of ID—whatever it may happen to be—in January or February, which is what is actually going to happen. You do not spend millions in November or December. Therefore, it is not rushed to say that you are going to launch that campaign in a few weeks' time.

The noble Baroness, Lady Bennett, quoted from the Electoral Commission's comments. I would take a quote from the second paragraph rather than the first. Referring to the statutory instrument, it says:

> "This detail has enabled us to start developing the guidance that electoral administrators will need."

Start? We have had the example in Northern Ireland for 20 years, and there is barely a difference between the two in England and in Northern Ireland. Start? Even the difference of interpretation of the Tory party manifesto—whether it is an ID or a photo ID—indicates that it has been a policy of this Government for the last three years. Start? We passed the Elections Act some seven months ago, so in fact there is no reason why the vast majority of the paperwork—in preparation for distribution to everybody—to be used in the marketing campaigns that will be launched in January or February next year should not already be prepared.

This statutory instrument gives effect to something that was debated at length months ago. Many of the contributions that I have listened to this afternoon have repeated some of the arguments that were made then. In conclusion, I am going to cause embarrassment to the noble Baroness, Lady Hayman, by saying that I found many of her comments as constructive as some

of my colleagues did. As far as I am concerned, for the reasons I have identified, on this occasion I am going to disagree with the noble Lord, Lord Rennard. There is no reason for a fatal amendment at this stage; it is not justified—as my noble friend Lord Strathclyde identified—and we should be supporting the statutory instrument and vote for it this evening.

Lord Cormack (Con): My Lords, I entirely agree with what my noble friend just said. Almost every word that has been uttered during this interesting debate underlines the feeling that I have had for a long time that it would be a really sensible thing for us to go back and re-examine the case for an identity card. It would have many other uses. We are bedevilled by immigration problems. An identity card would be one document that everyone could carry, and I commend it most warmly to the House.

Baroness Fox of Buckley (Non-Afl): My Lords, the noble Lord, Lord Cormack, may well have done his side a disservice, in view of the fact that those of us who are opposed to voter ID warned that it was a slippery slope to the bringing in of national ID cards. I personally will oppose that. I actually did oppose, throughout the whole of Committee and Report stages, the introduction of voter ID. That side lost, and the policy is as such.

The one thing that I want to pick up on is that, after I argued and spoke many times on that issue, I was castigated by a lot of people outside of the House who told me that speaking on behalf of ordinary voters who might well be excluded from the franchise by having to show voter ID was patronising and that it treated those people as hapless and hopeless. Some of the comments about poor marginalised communities not being able to get access to photo IDs and the way that we have discussed the members of the BAME communities being unable to access or being unfairly discriminated against by photo IDs is in danger of being patronising.

But the most important thing at this stage, it seems to me, is that I do not think the Government have done enough—and this is what I would like—to reassure us that there will be huge publicity so that this is known about. That seems reasonable. I liked the anecdotes from Northern Ireland of vans going round. We know that this Government are not shy when it comes to nudging, nannying and telling everybody what to do on other issues, so I would not mind them doing it on this one to mitigate any possibility that anyone anywhere in the country would not know that they need ID. Helping them get it would be a great help.

5.30 pm

Lord Cromwell (CB): My Lords, I spent probably the last 30 years organising election monitoring missions around the world. At the Brexit vote, which some noble Lords may remember, I had a group of young Europeans from right across new and old Europe come to look at how we did that vote. When I asked them afterwards what they thought could be improved, unanimously they said that they could not believe that people could go and vote without some form of identification as to who they were.

I do not think that is the problem we are trying to solve. I think we should have to produce identification; the problem to solve is how we make sure that everybody has it. The Northern Ireland example has been extremely instructive in that regard, and I hope that the Front Bench and the Government will be listening to some of the things said about the need for advertising and the need for ensuring that there is no excuse for people not having an ID card.

If I may finish, I remember many years ago saying to some students I was talking to who had come from Greece—I was a student myself—that I was not sure that I was going to bother to vote. They had grown up with the memory of the colonels, with a military dictatorship running their country, and gave me hell for saying that I was thinking of not going to vote. Now, if we can get that sort of mentality, the thing of "Oh dear, I can't find my ID card,"—provided you had got one—would be a pretty lame excuse.

Baroness Scott of Bybrook (Con): My Lords, I thank noble Lords for their thoughtful contributions and say that I do not intend to rerun the arguments for voter identification. That argument has been won and it is now in legislation. But I will take a little time to further detail some of the points raised by noble Lords on the actual implementation, which is the important thing this evening.

I thank the noble Lords, Lord Browne of Belmont and Lord Weir of Ballyholme, for saying what it is like on the ground. These two noble Lords have lived with this over the last 20 years. They have seen it introduced. They have seen how it works for local authority and general elections and I thank them for that. I think the rest of us who are not living in Northern Ireland can never have that knowledge of how it works and how we can make it work in this country.

There was quite a lot of talk from the noble Baroness, Lady Pinnock, and others on support for local authorities to deliver this. Of course, we are aware of the pressures faced by local authorities—and the concerns that the Local Government Association brought up, I think, only yesterday—and their ability to deliver these changes. But we have been working very closely with them and, as I think my noble friend Lord Hayward said, this is not the beginning of it; this has been going on for a good seven months with the legislation there and they knew that this was coming along the line. We have been working with the sector. We have been planning the implementation of this policy and not only that we have been giving additional funds to local authorities so that they can carry out the new duties. The Government remain confident in their ability to successfully deliver these changes.

The noble Baronesses, Lady Pinnock and Lady Fox, and many others, said that the Electoral Commission's budget would be inadequate for communications. The Electoral Commission's budget for the January communications campaign is over £5 million, which will be supplemented by £4.75 million in funding for local communications—for local authorities to communicate in their own areas.

If this legislation goes through, the Electoral Commission will start its campaign in the middle of January. It will be national and across all types of

[Baroness Scott of Bybrook]
national media, but local authorities will also have the money to do local campaigns. Along with national government, they do local campaigns very well to get voters to register for voting. This will be added to those campaigns, and I have every confidence that with the money they have, local government and the Electoral Commission will be able to deliver that.

My noble friend Lord Strathclyde is absolutely right. As I said, these arguments have all been had, but, as it came up again, I will repeat the point about the manifesto commitment. Voter identification was in the manifesto, and photo identification became a government discussion because it was found in our pilots to be the only approach that increased voter trust and confidence, which are key aims for this policy. We talked about it a lot during the discussions on the Bill, and I reiterate it now in case noble Lords think that we got it wrong again. We know what we said, and we know why we put in photo ID.

Lord Rennard (LD): If it was clear what was in the Conservative manifesto and that voter identification meant photo identification, why did the noble Lord, Lord Pickles, who conducted a review of election law on behalf of the Conservative Government, conclude that photo ID was unnecessary and that voter ID in different forms, such as council tax bills or utility bills, would be acceptable? He said there was no need for the photo ID.

Baroness Scott of Bybrook (Con): I do not think my noble friend is in his place, but when I next see him, I will ask him.

The noble Baroness, Lady Lister, mentioned people in poverty finding it more difficult. I remember that discussion and I know that my noble friend Lord True wrote to her. I am afraid I do not know what the outcome was so, again, with apologies, I will write to her about that because I know that it was an important issue for her then.

Digital exclusion is a different thing. Noble Lords would be surprised how many people—even those we consider to be in poverty—have phones. You can go to many libraries in this country and get access online. We also know that it can be done over the phone and by going to your local council. Wherever you can get registered to vote, you can also get your identity. If people are managing to get registered to vote, they can get identity as well. However, I will come back to the noble Baroness on who we are consulting as we go forward.

Lord Stoneham of Droxford (LD): If registration is so important—I agree that it is—why did the Government not start this process when they started the campaigns for registration in September, rather than starting it in January?

Baroness Scott of Bybrook (Con): If the noble Lord remembers, we had the death of Her Majesty, and that put things back slightly, but we are doing it now, and people register continually, so that issue is not terribly important.

The noble Baroness, Lady Lister, also brought up the deadline for applying for the certificate. She is right that it has gone to six days before the poll; I remember that we talked about it being the day before. We have been working with stakeholders in the electoral sector. We are mindful of the impact on administrators during a busy period and, on balance, have decided that six days strikes an appropriate balance between accessibility and certainty for not only the elector but the electoral officers.

One noble Lord said that a national insurance number was required, but actually individuals do not need a national insurance number to vote. They will be able to apply using other documents or attestations where they can provide an explanation for why they do not have a national insurance number. Some people have lost it or cannot find it, so there are other ways of doing that to make sure that they can get those documents.

There was quite a lot of talk about putting it back to the next election. After May 2023, there is a possibility that the next election will be a general election. In May 2023, only about two-thirds of authorities will hold polls. That means there will be more opportunity for authorities to learn from and support each other if necessary. If we have a local authority that is not holding an election next to a local authority that is, if it needs extra help in this first period, that is a possibility. The system is not at full stretch, as it always is during a general election. This is not about testing or devaluing local politics. It is a sensible way to run any new process in a system, rather than running it when we are at full capacity.

My noble friend Lady Verma got involved in the Bill; I thank her very much for her support. Again, she is somebody who talks to people on the ground, as we all do, and who has an understanding of how people in all communities feel about the importance of a fair voting system that they can trust.

The noble Lord, Lord Wallace, raised overseas voters. I will take that back to the department, but if he does not mind, I do not intend to talk about that today. My noble friend Lord Cormack raised identity cards, but I will not get into that debate today either.

Publicity is absolutely critical. I do not think I have talked about this, but once the legislation goes through, we will start this in mid-January, so there will be four to five months of clear publicity. That is important.

I thank my noble friend Lord Hayward. He and the noble Lord, Lord Rennard, are the ones in the House who talk and know the most about elections and associated matters. He is absolutely right about students. They will be home for Easter and, by then, they will have seen the campaign over two to three months. They will get their driving licence or passport, or will go to get the identity documents required. As he said, the launch in January is the launch of the big national campaign, but this has been going on for a long time.

I will look at *Hansard*, but I think I have answered most of the issues that were raised. I return to the fatal amendment tabled by the noble Baroness, Lady Pinnock. I have already made it clear that we disagree with its substance. We are confident of electoral administrators' ability to deliver this important policy for the May 2023 elections. We have been working hard alongside

them to refine and develop these processes and are at present conducting extensive testing of the digital systems that will support them.

5.45 pm

I also cannot agree with the assertions made that the policy will prevent electors from voting. The overwhelming majority of electors already hold an appropriate form of ID, and the small proportion who do not will be able to apply for a voter authority certificate from their local authority free of charge. That will ensure that everyone eligible to vote will continue to have the opportunity to do so. I therefore again urge noble Lords across the House not to support this amendment.

I turn now to the regret amendment to the Motion, which the Opposition have indicated that they will not press. I thank the noble Baroness, Lady Hayman of Ullock, for bringing her concerns to me last week, and I am pleased that we have been able to agree on an excellent solution to them. We will ensure that the review of the policy, which will take place following the May 2023 local elections, involves an independent research agency and analysis of any impacts on voter turnout. We have requested that the review be scrutinised subsequently by parliamentary Select Committees—to whose chairmen I have already written. That will ensure a highly effective review and enable us to refine and improve the delivery of those vital new processes.

The noble Baroness raised some additional questions to which I will also respond. On expanding the list of accepted identification documents, the legislation was intentionally drafted to allow for that to be done via secondary legislation. We intend to monitor the list and will consider amending it in future if appropriate.

I have already said a bit about working closely with local authorities. To ensure that the voter card application process is launched as soon as possible and that we support local authorities as they implement those processes, I can confirm that we fully intend to work closely with them. We are currently carrying out considerable engagement with local authorities and other stakeholders to support implementation. The engagement will not stop; it will continue as we go live with the policy.

On ensuring that we make voters aware of the free voter authority certificate, the Electoral Commission, as I said, will lead the national communications campaign early in the new year—we think in mid-January, providing that we can pass the legislation. In addition to highlighting the need to show identification, the campaign will also inform the electorate of the free identification documents that will be available to them. Furthermore, as I said, we have also given £4.75 million to local government across Great Britain to support local communications campaigns.

On the noble Baroness's concern about polling station staff, we will of course work closely with local authorities to support them in ensuring that their polling stations are appropriately staffed. If there is a queue outside a polling station when it should close, legislation already provides that the polling station should remain open until those electors are able to vote. I know that there were issues with that, but that is the legislation, and we need to ensure that it continues to be implemented.

More broadly, the policy has a critical role to play in maintaining public confidence in our electoral system and reassuring people that their vote is theirs and theirs alone. It is also a natural and considered way of modernising our voting structures, and one that protects us all against the threat of impersonation. I hope that noble Lords will therefore join me in supporting the regulations.

Baroness Pinnock (LD): My Lords, I thank everyone for the very constructive debate we have had. I start by reminding noble Lords of my opening remarks: the fatal amendment to the Motion in my name is not about subverting or undermining photo ID; that decision, rightly or wrongly, has been made. The argument I am putting to the House today is about the implementation of those regulations.

There are 240 pages of regulations in this statutory instrument. They must have plenty of time to be introduced and understood so that, when it comes to elections, they can be done fairly. This is not just about communications to electors. It is about the training of the staff: how do you determine whether the likeness of a photo is acceptable? Those are decisions that polling staff will have to make, and they need to be trained properly so that there is consistency across the country. There is a lot more to it than communications.

I remind the House that those who do the practical delivery of elections are very anxious and concerned, and some of them are opposed to the implementation of these regulations for the May elections. The Electoral Commission has grave concerns: it wants six months and will get under four. The Association of Electoral Administrators—the returning officers and elections officers—is very anxious that it will not have time to properly prepare for delivery in May. From local councils, as we have heard, the Conservative chair of the Local Government Association gave a very strongly worded statement, unusually so, expressing grave concerns about the delivery of this measure fairly and equitably across the piece.

Other options were open to the Government for the introduction of photo ID. They could have chosen to introduce it in a by-election to test it out and see whether it works, or asked local authorities to be pilots, instead of trying to introduce it across a whole set of elections.

The example and argument that we have had from Northern Ireland is instructive. However, we perhaps ought to remind ourselves that the years following the initial introduction showed a fall in the number of voters. This was because they lacked the appropriate identification documents. It took a number of years before that number rose back to the same level. That underlines the argument that I am making.

The noble Baroness, Lady Hayman, spoke about having a close election review. That is already in the regulations. My concern is about the election itself. Yes, I am totally in favour of reviews and learning from experience, but I and many Members across the House are concerned that no elector should be turned away and denied the ability to vote—that is their birth-right—because of the implementation of these regulations in a rushed manner. That is the point.

[Baroness Pinnock]

Unfortunately, I have not heard anything from the Minister today to assure me that every voter will be able to vote in a fair way in the May elections. I will therefore test the opinion of the House.

5.54 pm

Division on Baroness Pinnock's amendment

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Amendment to the Motion disagreed.

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6.06 pm

Amendment to the Motion

Tabled by ***Baroness Hayman of Ullock***

At end insert "but that this House (1) regrets that the draft Regulations will be implemented for the Local Elections in May 2023 despite insufficient public awareness, guidance and time for preparation, which risks electors being wrongly refused their right to vote, (2) calls on His Majesty's Government to take an evidence-based approach to the implementation of voter identification, noting concerns raised by the Electoral Commission, Association of Electoral Administrators and the Secondary Legislation Scrutiny Committee, and (3) resolves that a select committee should be appointed to conduct a post implementation assessment of the impact of the Regulations on turnout in the Local Elections in May 2023."

Baroness Hayman of Ullock (Lab): My Lords, following the Minister's clarifications to the questions that I asked, her constructive approach to a review and the concessions given, I do not propose to move my amendment. However, I will be keeping a close eye.

Amendment to the Motion not moved.

Motion agreed.

NHS Industrial Action: Government Preparations

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 12 December.

"I am grateful to the honourable Member for his Question, which I am taking on behalf of the department as the Secretary of State is attending a COBRA meeting on contingency planning for industrial action in the NHS. He also came before the House on the subject twice last week: at departmental Questions and for the Opposition Day debate.

We are all hugely grateful for the hard work and dedication of NHS staff, so we deeply regret that some union members have voted for industrial action. Our priority must be to keep patients safe. That begins with keeping the door open. The Secretary of State wrote to the Royal College of Nursing on Saturday asking for further discussions as a matter of urgency. At the same time, we are working with the NHS to minimise the disruption to patients if the strikes do go ahead. We are engaged with providers, professional bodies and trade unions to agree safe levels of cover should any action take place.

In addition, this afternoon, Ministers—including the Secretary of State—are attending a COBRA meeting focused on our contingency plans. Our plans draw on extra support from a range of places, including service personnel and the private sector. While we aim to minimise disruption, with the NHS already under significant pressure from the Covid pandemic and winter pressures, we remain deeply concerned about the risk that strikes pose to patients.

I want to be clear that, even at this moment of uncertainty, people must keep coming forward to get the care that they need. People should continue to use NHS 111 if they need medical help and dial 999 in the event of an emergency. For more routine treatment, hospitals will do everything they can to ensure that planned procedures go ahead, but it is inevitable that any strike would mean some patients would have their treatment delayed. People will be contacted if their appointments need to be changed.

It is our hope that patients can be spared unnecessary and unjustified strikes. Industrial action is in no one's best interests, especially in this difficult winter. We have had constructive meetings with the leadership of several unions, including the RCN, UNISON, Unite and the GMB, and we look forward to further discussions to find a way forward together that is in the best interests of the patients we all serve."

6.07 pm

Baroness Merron (Lab): My Lords, the Royal College of Nursing and UNISON have said that they are prepared to call off strikes if the Government will negotiate with them seriously regarding pay. So the key question to the Minister is whether his Government will confirm whether they are prepared to do this in order to avoid disruption to patients in the NHS. As today's devastating King's Fund report on the state of the NHS, which was commissioned by the Government, so clearly shows, these strikes are not just about pay. Can the Minister give his view on the wider factors that have led to the strikes and give some commentary as to why the Government have not taken preventive action?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): I thank the noble Baroness. On the other actions, so to speak, we have already met a couple of times with the union and are very happy to meet to talk about other things we can do on terms and conditions. As regards the main element around pay, we are following the results of the independent pay review body, which, as the House will be aware, has been in existence since 1984. Parties from each side have taken its expert advice and followed it, and that is what the Government have done in this situation.

Lord Allan of Hallam (LD): My Lords, patients will naturally feel very anxious whenever there is disruption to services that they need, but this anxiety can be mitigated by effective communication. Many of us will have had experiences of great communication by the NHS, such as during the Covid-19 vaccination programme, but also of frustrations, where letters are lost or delayed or we are playing telephone tag with hospital administrative staff. What steps will the

[Lord Allan of Hallam]
Government be taking to ensure that patients receive clear, timely and relevant information during the forthcoming industrial actions?

Lord Markham (Con): I thank the noble Lord for the question. Clearly, we want to ensure that there is as little disruption as possible, and appointments will go on as normal where possible. The general advice is that, if you have not been communicated with, you should turn up to your appointment as normal. As ever, there is a bit of fluidity in the situation, because, as I am sure noble Lords are aware, a nurse does not have to give notice of whether they are going to be attending work that day, so there needs to be some fluidity. But the expectation is that, if you have not heard from us already, you should turn up to your appointment and, in all likelihood, you will receive your planned treatment .

Lord Robathan (Con): My Lords, if the military personnel are going to drive ambulances, for which they are paid less than the ambulance drivers and paramedics, will my noble friend ensure that all military personnel get paid a bonus for the work they do?

Lord Markham (Con): First, I will take the opportunity to thank the Armed Forces and anyone else who will be helping at this difficult time. I appreciate that that might cut into some of their plans for Christmas and I appreciate what they are doing in the circumstances. I cannot speak beyond that in terms of any financial support that they might be given, but they will definitely have our undoubted thanks.

Lord Balfe (Con): My Lords, does the Minister accept that many working families are much worse off because of inflation? The image given by the Government is that they have no coherent strategy. We seem to be in a sort of playground situation of shouting at each other, whereas what we need is understanding from the Government as to how they are going to tackle the inevitable fall in the standard of living caused by the excesses that happened during Covid. Will the Government try to get their act together, because the sympathy of the general public is not with the Government? It is not against the strikers. At best it is neutral and at worst it is moving the other way as we get nearer to Christmas.

Lord Markham (Con): We appreciate of course that these are difficult times. Unprecedented circumstances have caused the current inflationary environment, which we appreciate provides challenges to many people. We are trying our best to help them navigate through that. Obviously, the energy support package was a good example of where we are trying to make sure that probably the biggest component of inflation—the increased energy bills—is covered. We will seek to act and do what we can in all circumstances to help people through the crisis.

The Lord Bishop of Chelmsford: My Lords, even prior to the strikes, agency nurses were being brought in to ensure that shifts were safely staffed. I should be grateful if the Minister would set out what assessment the Government have made of the cost to the NHS of employing agency staff, compared with that of a pay rise that would work towards an arguably better and more stable workforce?

Lord Markham (Con): I do not have those figures to hand, but I believe there is a Question on this subject tomorrow, when we will be talking very much about the use of agency staff and bank staff. From memory—the right reverend Prelate will get the exact figures when I have done a bit more swotting up overnight—I think the cost of agency and bank staff work this year is around £3 billion. Clearly, the workforce strategy will be all about making sure we can recruit staff to minimise that.

Lord Lansley (Con): My noble friend referred to the NHS Pay Review Body. As Secretary of State, I thought it was rather important that I did not determine the pay of nurses, for example; the pay review body made recommendations and I adhered to them. Will the Government continue to explain that they are not refusing to negotiate on pay with the trade unions but adhering to a long-established principle? The trade unions appear to be seeking somehow to overturn last April's pay award, when they should be providing evidence to the pay review body on what the pay award should be next April, with the remit letter already published.

Lord Markham (Con): I thank my noble friend for his question. He is quite right. As mentioned before, this body was set up in 1984 and extended to other areas of the health service in 2007. Since then, Governments of all colours have followed its recommendations because, after all, it is the expert in this field. We have honoured that in full because it is right that the experts determine it. Working towards making sure that the next settlement in April—which, let us face it, is only three or four months away—covers the latest situation would be a good way ahead.

Lord Rooker (Lab): Is not the total silence of all members of the pay review body since it delivered its report to the Government remarkable? Has anyone asked them, bearing in mind that they delivered their report when inflation was about 3% or 4%, whether they believe the figures in their report are still relevant today? Forget last April or next April—we are talking about today. The pay review body has been loaded up with a responsibility by the Government which in a way is not solely its responsibility. The Government do not have to accept its recommendations, as the Scottish Government have not. Has anybody asked it whether, in the present circumstances and with inflation so high, it still stands by the report it delivered in the middle of last year?

Lord Markham (Con): My understanding, based on the long time that this has been in place, is that this is an annual review. April is now quite close; for that April review, it can take into account all the factors, including what happened to inflation during the year. I expect it will take all that into account, quite rightly,

in what it comes up with for that next pay review. It is a long-established principle that it is there to do this. I trust it to get the right answer in time for April.

Lord Deben (Con): Will my noble friend be very careful to stick by the case being put forward? We know that those arguing it want to hide behind some discussion of the mechanisms in order not to say what they really think about the pay rises. The Government have a responsibility to stick by the system. If we lose that, it will be the Minister who makes decisions always, which is what we have tried to avoid since the 1980s.

Lord Markham (Con): I agree. Clearly, there are difficult choices; if we changed the position, we would have to take money away from other parts of the system, such as the elective care fund and other front-line services, which we clearly do not want to do. It is absolutely right that we let the experts guide us in this, as all Governments have done for more than 30 years.

Public Order Bill

Committee (3rd Day)

Relevant document: 17th Report from the Delegated Powers Committee

6.19 pm

Lord Paddick (LD): My Lords, with the leave of the Committee, we told the Government Whips that I was going to intervene at this stage.

I wish to put on record the apology I gave in person and in writing to the Minister for suggesting at col. 1345 on 22 November that what he had said about the stop and search powers in the Bill not being exercisable unless an officer is in uniform was not true. I have read the *Official Report*, and it appears I became somewhat confused—probably after three hours on buffer zones.

The noble Lord, Lord Coaker, expressed concerns about the new offence of obstructing a police officer in the exercise of the new stop and search powers in the Bill, with reference to the Sarah Everard murder and police advice to challenge any officer who detained a lone woman, and whether such advice would amount to an offence under the Bill. In answer, the Minister said the power extends only to police officers in uniform, which I mistakenly took to mean both suspicion-led and suspicionless stop and search powers in the Bill. At that point the Minister was talking about the stop and search power without suspicion, which is restricted to uniformed officers only.

Although I was correct in my assertion that the suspicion-led power could be carried out by officers in plain clothes, the new offence of obstructing an officer applies only when the officer is exercising the proposed new suspicionless power to stop and search, for which he has to be in uniform. Nevertheless, my understanding is that Sarah Everard's murderer was in police uniform when he detained her, so the concerns that other noble Lords had about a lone woman resisting an officer exercising the new power to stop and search without suspicion, following police advice in the wake of Sarah Everard, remains.

However, I undertook to apologise to the Committee if I had misled noble Lords by suggesting that what the Minister said about officers having to be in uniform to exercise stop and search powers under the Bill was not true. When, in relation to the power the Minister was speaking about at that moment, he said:

"This power only extends to those in uniform",—[*Official Report*, 22/11/22; col. 1342.]

it was true. I therefore apologise for unintentionally misleading the Committee.

Amendment 117

Moved by ***Baroness Boycott***

117: After Clause 18, insert the following new Clause—

"Protection for journalists and others monitoring protests

A constable may not exercise any police power for the principal purpose of preventing a person from observing, recording, or otherwise reporting on the exercise of police powers in relation to—

(a) a protest-related offence,

(b) a protest-related breach of an injunction, or

(c) activities related to a protest."

Member's explanatory statement

This new Clause would protect journalists, legal observers, academics, and bystanders who monitor or record the police's use of powers related to protests.

Baroness Boycott (CB): I am delighted to move Amendment 117 and very grateful to be standing alongside the noble Baronesses, Lady Chakrabarti and Lady Jones of Moulsecoomb, and the noble Lord, Lord Paddick. I will also speak to the revised Amendment 127A in my name and that of the noble Baroness, Lady Chakrabarti. I thank the lawyers at Justice for their technical help with this speech, particularly Tyrone Steele.

These amendments seek to grant fuller protections to all those covering protests and reporting on the exercise of police powers in that context. I am completely confident that all noble Lords recognise the vital importance of journalists, legal observers and indeed the general public in being able to observe, report on and scrutinise what happens at protests and the actions of not only the protesters but, possibly, the police.

As many noble Lords will know, I have deep and vested interests in these amendments. I became a journalist more or less by accident at the age of 19. My first piece was on the left-handed shop in Beak Street for *Time Out* and was all of 189 words long. It was hardly earth shattering, but it did tell left-handed people where to buy a pair of scissors.

Trying to report stories and find out things that many people do not want known has been the whole obsession of my life. My second and third jobs were on an alternative newspaper and then on *Spare Rib*. Indeed, my second-ever piece was a report on an anti-Vietnam demonstration in the capital. I can confess quite freely that I was totally terrified to be in the middle of that demonstration, but I was not displeased to be part of it and I was very pleased to be able to go back and write about it. On *Spare Rib* we both marched and wrote about marching. We protested for equal pay, rights to abortion and rights to childcare, but we reported it; we were allowed to be there and to write about it.

[Baroness Boycott]

In my long journalistic career, I have edited many magazines and written for more. I have edited three national newspapers and, again, written for many more. I have publicised protests, including many that I vehemently do not agree with, because they are not only important events; they are about people doing something that matters a great deal to them and worth taking to the streets for—or even trying to climb Nelson's Column. People are on the streets because they do not know what else to do to make their voice heard and they have exhausted such routes as writing letters to MPs, Members of the House of Lords or, indeed, newspapers such as mine.

I have also sent reporters to countries where repressive regimes lock up journalists who are covering protests—think of the Arab spring, Myanmar and Hong Kong. As my friend and mentor, the late war reporter Martha Gellhorn, said, journalism is about bearing witness. We go to bring back the news, whether it is happening on the streets of Cairo or on the M25, to tell all of us, through words, images and sounds, what we have seen, what people are doing and what they care about. Journalists risk life and limb to do so. But, over my half-century in this profession, I have always believed that, at least in this country, we were able to go to a demonstration and then go back to our office and write about it. I also knew that, if a protest got too out of hand, plenty of laws were in place to deal with this—but never was a journalist told that they could not report on a story.

The arrest of Charlotte Lynch, the woman from LBC held for five hours for reporting on a Just Stop Oil protest—more about her later—has been referred to many times in this debate, but her story is extremely important. For me, it was as though one of the pillars of our democratic society had been kicked out from under my feet. She was held in a cell for five hours for reporting on a protest. It was peaceful, however bloody annoying people might find Just Stop Oil. Quite frankly, if a protest does not annoy someone, what is the point of it?

Sadly, I was wrong: this was not the first, and there had been previous attempts to curtail the reporting of protests. At 3.40 am on 30 November 1983, during strikes at the *Messenger* printers in Warrington, the police demanded that the television crews covering the dispute turned off the lights. After they complied, the police proceeded to charge at the picketers under the cover of darkness. In the words of Colin Bourne, the NUJ's northern organiser,

"police were running up to them and kicking them and hitting them with their batons".

It was reported that two police Range Rovers drove into the pickets. Today, with the vast majority of the public possessing smartphones equipped with high-quality cameras, it is thankfully much harder for abuse like that to go uncovered.

Last year, the Department for Digital, Culture, Media and Sport held a call for evidence on journalists' safety, and there were masses of respondents. One said that the police themselves contributed to threats or abuse towards journalists, which included physically restricting access to spaces and arresting journalists. As I said, many noble Lords have referred to Charlotte Lynch, who was arrested while reporting on Just Stop Oil. But, that very same day, two others, Rich Felgate and Tom Bowles, were also detained. Again, they peacefully asserted their status as journalists—they had press cards—but they were held for 13 hours.

Back in August, another journalist, Peter Macdiarmid, was also arrested and taken in a police van to Redhill police station. He has notably covered several historic, monumental events, such as the Arab spring, refugees fleeing Iraq during the first Gulf War, Black Lives Matter and the London riots. The award-winning reporter told the *Evening Standard*:

"It's the first time I've been in cuffs in the 35 years I have covered protests."

Something is fundamentally wrong with our justice system if police feel so empowered, under the vast array of existing legislation, to arrest and detain journalists first and ask the questions—or worse—later, ignoring the fact that they are from the press. Last week, the Minister said that the issue lies with the training of the police. I am afraid that that is an inadequate solution for the current situation, and it is no remedy for what the Government propose, in terms of expanding the powers in the Bill.

The Bill contains a vast array of measures that could severely and detrimentally impact journalists just doing their jobs. The offence of being "equipped for locking on" is so broad in its ingredients that an individual would only have to be carrying an object with the intention that it may be used. Taking a photo of someone who is locking on could inadvertently fall foul of this because the camera could feasibly constitute such an object.

Journalists are no safer with respect to offences covering the obstruction of "key national infrastructure" and "transport works" or

"causing serious disruption by being present in a tunnel".

On the latter, the BBC has reported from the tunnelling sites and even filmed the equipment and protesters inside the tunnels dug to disrupt the construction of HS2. The offence is engaged if you are "reckless" as to whether your presence will have the consequence of causing serious disruption.

Moreover, there is no explicit exemption for journalists. The only protection is the reasonable excuse. But as the noble Lord, Lord Paddick, said in Committee, since a defence is available only after arrest, journalists

"are still faced with the possibility of being arrested and detained for five hours by the police … It seems an onerous experience for a completely innocent person to go through"—[*Official Report*, 16/11/22; col. 948.]

The proposed, highly expansive stop and search powers would also offer journalists no relief from obstruction in performing their work. An officer who reasonably believes that an individual is carrying a prohibited object can conduct a suspicionless search. What worries me is the number of things—cameras, clipboards, microphones—that could conceivably constitute a prohibited object for use in connection with a protest. This would stifle the legitimate work of journalists and observers who monitor police powers.

6.30 pm

Finally, I should mention the most invidious new tool that the Bill proposes—that of serious disruption prevention orders, which many have dubbed the protest

banning orders. Under Clause 20, the police could apply to a magistrates' court to impose one of these orders on an individual without a conviction, including journalists, where they have, on two occasions in the past, I hear, merely

"contributed to the carrying out by any other person of activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals".

A court could use the civil standard of proof, and if a journalist has been to cover a protest, they will inevitably have racked up more than two events in five years. They might rack up two events in a week at the moment. If a journalist covers a protest, it is foreseeable that this coverage itself could contribute to protest-related activities. If imposed, a protest banning order could last for up to two years, be renewed and result in journalists being banned from attending protests, restrictions on their internet usage, potential ankle-tagging and, of course, if in breach, imprisonment.

We have established two important truths. First, the existing legal framework does not adequately protect journalists and others observing protests from spurious or speculative arrest. Secondly, the Bill's new offences and powers would make the situation all the more perilous. So I urge the Government to support this amendment, which would protect journalists, legal observers, academics and bystanders. Without this clause, this Bill could lead to a further increase in the arrests of those who cover or happen upon live protest sites. The enormous chilling effect on reporters and observers as a whole, who may consequently be afraid to continue their work, cannot be discounted. This is because there is no explicit provision in the Bill where existing legislation protects them prior to arrest. A reasonable excuse defence, absent from protest banning orders and available with respect to the other offences only once the individual has been arrested and detained and charged, simply does not cut it.

I strongly urge the Government to accept this amendment, which provides holistic protections to ensure that journalists, observers and bystanders continue to have access to protest sites in order to report on what happens and to monitor police powers. It is an essential part of our democracy. I beg to move.

Baroness Chakrabarti (Lab): The Committee will imagine the daunting privilege of attempting to follow that speech from one of the most senior journalists—and indeed one of the greatest environmentalists—in the Committee and your Lordships' House. I want to speak briefly to explain why we have Amendments 117 and 127A. The reason is my poor draftsmanship when we conceived Amendment 117, for which I apologise. Amendment 127A is an improvement on Amendment 117 because of a defect that was pointed out to me by the noble Baroness, Lady Boycott. Amendment 117 had protected journalists who were covering the policing of protests only, and, of course, we need to protect journalists who are covering protests as well as the policing thereof.

I would also like to take this opportunity to reassure the Minister that, notwithstanding my fundamental concerns about the Bill as a whole, and significant provisions within it, this journalistic protection in Amendment 127A—I am grateful to the other co-signatories and supporters across the House for understanding this too—notwithstanding our fundamental objections to various provisions that the noble Baroness, Lady Boycott, referred to, would not in any way wreck those provisions, objectionable though they may be for my part. All Amendment 127A would do is protect journalists where any police power, not just the police powers in this Bill but police powers more generally, are being used for the principal purpose of preventing their reporting.

I know that it is very hard in Committee to persuade a Minister to think again, but this is not a request to think again about the Bill in sum or in part; this is requesting a protection for journalists that is required in relation to even the police powers that currently stand. In the case of Charlotte Lynch, and other cases to which the noble Baroness, Lady Boycott, referred, journalists were arrested and detained under public order powers as they currently stand—not even the broader, blank-cheque powers to come.

So I hope that, in this Committee, those in the Box, and noble Lords and Ministers, will take pause for thought and think about whether we need a protection against current public order powers, and any to come, to ensure that the police are not using them to arrest journalists because they think that the reporting of protests per se gives the oxygen of publicity to protest and so on. Day after day, at Question Time in particular, Foreign Office Ministers stand at the Dispatch Box and—rightly and sincerely, in my view—criticise attacks on journalistic freedom across the globe. I think something like Amendment 127A would be a very important statement, putting that sincerity of Foreign Office Ministers into law in the home department.

So, I hope that noble Lords, Ministers, and Members of the whole Committee will really reflect on the noble Baroness's speech.

Lord Deben (Con): My Lords, I declare an interest as chair of the Environment and Climate Change Committee. I want to ask the Government to listen very carefully to this discussion. We have a very real issue when really serious matters, which threaten all of us, do not appear to some of us to be properly addressed. That is a very serious matter for any democracy, and those of us who are democrats do have to stand up for the rule of law and do have to say that extreme actions cannot be accepted.

But it has a second effect too, and that is that we have to be extremely careful about the way in which we deal with those extreme actions. I do beg the Government to take very seriously the fact that these extreme actions will continue, because people are more and more worried about the existential threat of climate change. The Climate Change Committee spends a great deal of its time trying to ensure that there is a democratic and sensible programme to reach an end that will protect us from the immediate effects of climate change, which we cannot change, and, in the longer term, begin to turn the tables on what we as human beings have caused.

It is not always easy to do that in the light of others who are desperate that we should move faster and that we should do more; who are desperate because they are seriously frightened and are not sure that those who are in charge have really got the urgency of the situation.

[LORD DEBEN]

It is very difficult to imagine that we are not going to have to cope with the uprising of real anger on this subject. As a democrat, I want us to cope. As a parliamentarian, I want us to be able to deal with these issues and ensure that the public are not threatened. I echo the Deputy Chancellor of Germany, a Green Member of Parliament, who makes it absolutely clear that the kinds of actions we have seen in this country from Extinction Rebellion and similar things in Germany are not acceptable in a democracy.

The other side of that argument is that we have got to be extremely careful about the way in which we enforce the law and how we deal with this issue. Journalists play the key part in this. They must be there to report on what happens. It is in our interest as democrats that that happens. If they are not there and cannot say what needs to be said without fear or favour, none of us can stand up and deal with the arguments of those who argue that democracy does not work and that somehow they have to impose their will.

I want the Government to recognise the importance of this. In this country, a journalist must have access without fear or favour. The police must not treat them in a way that has happened again and again, and which must stop happening. As the noble Baroness, Lady Chakrabarti, said, it is not happening because of what is in this Bill, which in general I do not have an objection to; it is what happens in any case. The fact that the police could hold a journalist for five hours knowing that they were a journalist is utterly unacceptable. You cannot do that in a democracy—and nor can we talk to other countries about these things if that happens here and we do not do something to enshrine in law the fact that it should not.

Earlier, I had to deal with the question of not opening coal mines in order to be able to stand up in the world and show that we too will carry out what we ask other countries to do. This is another, even more serious, case of that. We cannot talk about repression if we in this country can be shown not to have protected journalists in these circumstances.

It is a terribly simple matter. We must put on the face of the Bill, referring to all actions, that journalists should be in the position that the noble Baroness, Lady Boycott, suggests. It may be that her amendments could be better done; it may be that the Government have a different way of doing it. The only thing that I ask, in order to protect democracy and ourselves—those of us who are moderates and believe in the rule of law—is that we need to have this assertion.

Baroness Jones of Moulsecoomb (GP): What great speeches; I am almost embarrassed to follow them. I support Amendments 117 and 127A. I wish I had signed Amendment 127A. I speak as the mother of a journalist and as somebody who had misfortune to be on a panel with the PCC for Herts Police—the force that arrested the journalist and the cameraman. His name is David Lloyd. He was saying "Yes, yes, yes, I'm all in favour of free speech, but the media have to be careful that they are not inciting these protests". I pointed out that that was free speech on his terms, which is not actually free speech.

These amendments are crucial. I take the point made by the noble Baroness, Lady Chakrabarti, that if the Government do not want to accept any of them, they could probably accept Amendment 127A without too much pain. The noble Lord, Lord Deben, said that you cannot do this in a democracy, but actually the police did do it. They thought that perhaps they could get away with it, and that has happened before. So we really have to send out a signal that this must not happen.

It is crucial for people to be able to observe protests and see that the police and protesters are behaving properly and not inciting violence. Legal observers from organisations such as Green and Black Cross document police actions against protesters and provide support during any legal proceedings that follow. That is an incredibly important role. We need statutory protections to prevent police from harassing and arresting journalists, legal observers and others. This is extremely important.

6.45 pm

Lord Hope of Craighead (CB): My Lords, if I had to choose between the two amendments, I would choose Amendment 127A. It is quite important to understand why it is the better version. It is because, as the noble Baroness, Lady Chakrabarti, said, it not only covers the way the police exercise their powers, which is the main target of Amendment 117, but extends to people who are observing the protest itself. That is a very important and significant extension. The way the protest is proceeding is all part of the background against which the other part of the amendment has to be judged, so the broadening in Amendment 127A is rather important.

Another point worth noting is that neither of these amendments uses the word "journalist" in the main text. That is important too: protection is extended to allow other people, for whatever reason, to carry out the exercises referred to. To narrow this down to journalists, which neither amendment seeks to do, would be a mistake. It has to broadened out in the way that both do.

As I have said, however, my main reason for intervening was to explain why I would choose Amendment 127A if I had to choose between the two amendments.

Viscount Colville of Culross (CB): My Lords, I declare an interest as a series producer making a television series on Ukraine.

I was very moved by the speech of my noble friend Lady Boycott and the dedication to journalism that she has shown. I support both Amendment 117 and Amendment 127A. As a television journalist who has reported on protests across the country and the world, I have experienced protesters being suspicious of journalists for fear that their footage would be used by the police to identify and arrest people at a later date. As a result, I have been attacked by protesters and my cameramen have had their cameras grabbed and attempts made to take the tapes or cards.

In many of these cases, particularly in this country, the police have been there to protect us journalists and allow us to do our work reporting on demonstrations, so I am appalled and surprised to hear from my noble

friend Lady Boycott that, in recent years, the police in this country have been arresting journalists for doing their job: filming protests. I thought that ECHR Article 10 on the right to freedom of speech would be incentive enough for the police to leave them alone, but clearly not.

This amendment therefore seems necessary to protect journalists going about their business, reporting on protests and the disruptions that they may cause. The problem is that the powers in Clause 2 on locking on seem to be so broadly drawn. It is one thing to arrest people for locking on, but to arrest someone for carrying an object

"with the intention that it may be used"

in connection with that offence seems to give the police power that cannot be right in a democracy. I fear that the words will give them leeway to stop a journalist who is carrying a camera to film the lock-on. Surely even the threat of this happening cannot be allowed. It will have a chilling effect on free speech.

I understand that the police want to be able to arrest protesters who are locking on and filming themselves while doing it, but the wording in this amendment, that

"A constable may not exercise any police power for the principal purpose of preventing … reporting",

may be an important protection for camera people and journalists covering protests. It protects bona fide journalists.

Clause 11, allowing

"stop and search without suspicion"

in an area near a protest seems to stand against everything I thought Conservatives represented. I always thought it was a driving force behind Conservatism that they wanted to take the state off the backs of individuals. This clause does the opposite. When I talk to people about the possibility of their being stopped without suspicion just because they unwittingly wandered near to a protest, they are aghast. When this possibility is extended to journalists being stopped for going about their business, the threat against free speech posed by this Bill is compounded.

The Government are usually eager to protect journalists and journalism. I suggest to the Minister that, by accepting this amendment he will be striking an important blow for freedom of speech, which is so sorely missing in much of the Bill.

Baroness Symons of Vernham Dean (Lab): My Lords, I had no intention of speaking on this amendment, but I feel I must, because my late husband, Philip Bassett, was an industrial journalist who covered many strikes, most significantly, I suppose, given what we are discussing, the miners' strike, which the whole team of industrial journalists on the *Financial Times* covered. If this legislation stands the way the Government have drafted it, people like my late husband, and indeed the team with whom he worked, which included the very eminent journalist, John Lloyd, would have been open to prosecution. As it is, for their coverage of the miners' strike they won journalist of the year.

Baroness Fox of Buckley (Non-Afl): My Lords, the speech from the noble Baroness, Lady Boycott, really was excellent, and I hope it gets a wide hearing beyond this place and the numbers here.

When I have discussed this, I always hear the argument from people who are opposed to Just Stop Oil that the people we are talking about are not real journalists. There is something about the concentration on Charlotte Lynch from LBC that somehow says that the other people who were arrested on the same day did not really count, and I want to address that briefly.

There is no doubt that, when the protests that we are seeing at the moment are so performative, activists may well film what is going on, often because they want records of what they are doing to put out on social media. It is tempting, therefore, to treat them differently from journalists. However, I would urge against that and have argued against that. In the end, who decides who is the journalist and who is not? As the noble Baroness, Lady Boycott, said, the whole act of bearing witness and truth has nothing to do with views on the protest. Whether you are enthusiastic about the protest or hostile about it is irrelevant to those of us who want to know what has happened on the protest. Sometimes, even activists with a film camera are valuable for truth. The argument that it will incite more protest is misguided, because it treats those who are viewing these films as though they are just automatons who will see them and immediately rush out and protest. You might well see the film intended to illicit your support and think what idiots they are. That is not the point. The truth is what we should be concerned with.

I just say to the Government that I am concerned in particular about the serious disruption prevention orders. I have said throughout the discussions on the Bill that there are so many unintended consequences. I have no doubt that the Government are not intending to use serious disruption prevention orders to stop journalism in its tracks. I think the orders are a terrible blight, by the way, and should be removed from the Bill, but that is not the point I am making. The consequences of them could well be that they thwart journalism. That is the point. I urge the Government to consider that they can support their own Bill and accept these amendments in good faith—I thought the noble Baroness, Lady Chakrabarti, explained this well—because they are trying to ensure that what they do not intend to happen, which is that journalistic freedom is compromised, will not happen and that journalists will not get caught up in this. We know that they will. That is the reality. It is a danger and a threat that the Government should get rid of.

Lord Faulks (Non-Afl): My Lords, I have been following this Bill carefully but have not been able to take an active part in it so far. It is difficult not to agree with what the noble Baroness, Lady Boycott, said about the importance of journalism, and I am sure the whole House agrees. I declare an interest as the chairman of the Independent Press Standards Organisation.

Of course, a good and accurate record or recording of what takes place at a demonstration is important for all parties, whether they be demonstrators, the police or the public. What concerns me a bit about the amendment is what it actually does, apart from sending a very important message. That may be enough; I do not know. It seems to me that in fact it would not be lawful for a constable to arrest anybody anyway for

[Lord Faulks]
observing, recording or reporting a protest, and nor would the exercise of police powers in relation to those matters or indeed any other matter, but I will listen carefully to what the Minister says.

I would also be grateful for some clarification of how this might interrelate to the reasonable excuse defence that exists in various parts of the Bill. I know that there is some uncertainty at the moment about its scope, where it features in terms of the definition of the offence and whether simply saying—understandably, as the noble Lord, Lord Deben, said—that this an incredibly serious cause, ie, climate change, and therefore justifies all the potential offences here. This is a fascinating and important amendment, and I seek clarification in due course from the Minister as to its scope.

Lord Paddick (LD): My Lords, we wholeheartedly support Amendment 117 in the name of the noble Baronesses, Lady Chakrabarti, supported by the noble Baroness, Lady Boycott, and signed by me for the reason so effectively introduced by the noble Baroness, Lady Boycott.

We have seen some very worrying developments. I remember that when I was serving, the police, following criticism, made strenuous efforts to work with journalists, in particular photographers, to ensure that their work was facilitated during protests. A colleague of mine who became chief constable of British Transport Police, Andy Trotter, made great strides in building a good rapport between journalists and the police. Recently, however, there is evidence of disregard for press cards—for example in a briefing from the National Union of Journalists on the arrests of journalists by Hertfordshire Police and other police forces. This seems to be going completely in the opposite direction to the progress made when I was serving.

As others have said, if journalists and photographers are afraid to do their jobs of being at protests and reporting on them, that is very dangerous for our democracy and the right to protest, having a chilling effect, as the noble Baroness, Lady Boycott, put it, on journalism in relation to protests.

As other noble Lords, such as the noble Viscount, Lord Colville of Culross, said, it points to the overly wide offences in the other parts of the Bill, for example, "being present in a tunnel".
As the noble Baroness, Lady Boycott, said, journalists have reported from inside these tunnels and could be guilty of those offences. It points not only to the importance of these amendments in protecting journalists but to the overreach of the offences in other parts of the Bill.

As the noble Baroness, Lady Chakrabarti, and the noble and learned Lord, Lord Hope of Craighead, said, Amendment 127A is an important extension of the original Amendment 117, extending the protections beyond journalists to legal observers, academics and even innocent members of the public watching what is happening and recording it on their smartphones.

However, other noble Lords have not mentioned that it is also damaging to the police. The noble Baroness, Lady Boycott, talked about a dispute where the police asked journalists to turn off their lights and, under cover of the darkness that ensued, engaged in violence towards the protesters. In the situation the police service now faces of ever-diminishing public trust and confidence in it, stories of the police arresting journalists at protests could easily be hijacked and used by anti-police activists further to undermine public trust and confidence in the police.

7 pm

These are very important amendments, which should give reassurance to journalists and observers of protests. This points out just how bad the Bill is as far as journalists are concerned, as opposed to how bad it is for everybody else who might be subjected to these offences. The noble Lord, Lord Faulks, talked about the reasonable excuse defence. All the reasonable excuse defences in this Bill are post-charge defences and would not prevent journalists and others who have a reasonable excuse being arrested and detained for five hours, as the LBC reporter was. This really highlights the debate we have had today. The dangers this over-reaching, overbroad legislation poses for journalists shine a light on the dangers it poses for protesters generally.

Lord Coaker (Lab): My Lords, it is a privilege to speak to these important amendments in the name of the noble Baronesses, Lady Boycott and Lady Jones, my noble friend Lady Chakrabarti and the noble Lord, Lord Paddick. The way they spoke to the amendments, particularly the noble Baroness, Lady Boycott, was not only moving but challenging. I want to say something more generally, as other noble Lords have, about what happened to Charlotte Lynch.

Every now and again, something occurs in our society and our democracy which should act as a wake-up call. We all speak here and say that we are proud of our democracy and of our freedoms and traditions. Of course we are. I do not believe that we live in a totalitarian country, but even in a democracy things occur that are totally unacceptable. Such things require the state to act and respond, require Parliament to take action, and require a Minister of the Crown to look at what has happened, listen to what is being said and respond in the way that the noble Baronesses, Lady Boycott and Lady Jones, my noble friend Lady Chakrabarti and the noble Lords, Lord Deben and Lord Paddick, mentioned.

The Minister's brief will probably say that the amendments are not necessary, that we have ways of dealing with this and that it is an isolated incident that means that no action is required—we can condemn it and say it should not happen, then move on. It is too serious to do that. You cannot do that with certain things that occur. This is not a weakness; it is a strength when a democracy responds in this way. It is a strength when a democracy shines a light on things that have happened. This is not to blame an individual officer or circumstance; it is to say that, for whatever reason, something happened in our democracy—this was about a journalist—and the police operated unacceptably.

That is what the amendments seek to do. They ask the Government, "If these amendments are not the right way of solving the problem, what are you going

to do, other than say warm words, to ensure that it will not happen again?" That is what Parliament wants to hear and what all of us here expect from the Government. We do not want a massive condemnation of the country's police or a massive assertion that every time you go out on a protest, people are arrested. But Charlotte Lynch, as well as the other two that the noble Baroness, Lady Boycott, mentioned, Felgate and Bowles, were reporting on a protest and were arrested. That is astonishing. It is incredible, quite frankly, when you go through the actual events. Despite producing a card, they were arrested, handcuffed, taken away and detained for hours.

That cannot just be explained away. How on earth did it happen? Where was the senior officer? Where was the very senior officer? Where was even somebody saying, "Hang on a minute. What is actually going on?" That happened in our country in 2022. Let me repeat: nobody is saying to the Minister that we live in a totalitarian state, but you cannot have a situation like that occurring without the Government of our country responding in a way that is appropriate and reflects the seriousness of it. That is why the amendments have been put forward. I do not know whether the noble and learned Lord, Lord Hope, is right that Amendment 127A is better because it talks about observing as well and has a broader scope, or whether the Government's lawyers could come forward with an amendment, but something needs to be done that addresses something that has really occurred.

We talk about other countries where this happens, and ask why they do not do something about it. Actually, we need to look in the mirror and reverse it on to ourselves and say, "Why don't we do something about it?" I repeat, because it is so important, that the Government's defence mechanism—and I have been in government and know what happens—will be: "It's a very serious matter, but, of course, it's not the normal state of affairs.". That is absolutely not the point.

I was rereading the briefing we have had from the NUJ, from Amnesty and from other people. It is just words sometimes, because words and principles matter. Principles that underpin out democracy are important, particularly when it comes to the freedom of the press, freedom of expression and freedom of journalists, broadcasters or whoever to go and do their business and report on demonstrations or protests. The Government's own statement on 3 November said:

> "Media freedom is an essential part of a healthy information ecosystem. The free flow of independently generated and evidence based information is the scaffolding for building democracy."

That says it all.

Warm words matter, but so does policy and so does government reaction. It was a terrible situation that occurred with Charlotte Lynch. There are other examples where that has happened, and I cannot finish without responding to my noble friend Lady Symons. I played all sorts of roles during the miners' strike. I was in Nottinghamshire as a local councillor representing and, by and large, working alongside miners who were on strike in a community where the vast majority were working. People know—and the noble Lord, Lord Murray, will also know the situation in Nottinghamshire with his background—the important role that journalists and broadcasters of all sorts played, including by my noble friend's late husband, in reporting that. That is the strength of democracy. It is a crucial series of amendments, and if the Government are not prepared to accept what the noble Baroness, Lady Boycott, has said, what are they going to do about it?

Before I forget—I just got carried away with my own rhetoric—I want to ask one simple but important question. The Hertfordshire police did an inquiry into what happened in respect of Charlotte Lynch. They published five recommendations on 23 November. Given the importance of this, they made all sorts of recommendations about training and guidance. They also said:

> "Hertfordshire Constabulary should consider ensuring that all officers engaged with public order activity complete the NUJ package and identified learning is shared."

That means shared with other forces across the country. That is really important. If something good can come out of what happened to Charlotte Lynch, surely it is an improvement in police practice. It is also about the Government themselves considering whether something needs to be said in this Public Order Bill that strengthens and underpins the right of journalists to go about their business. Sometimes it is action that is needed as well as warm words.

Lord Paddick (LD): Before the Minister responds, I have to say that, while I do not often take issue with the noble Lord, Lord Coaker—normally we are on the same side—I am more concerned than he appears to be about what happened in Hertfordshire. That is because, when somebody is arrested and taken to a police station, a sergeant or a custody officer has to satisfy himself or herself that there are grounds to detain that individual. I cannot believe that the journalist did not say to the custody officer, "I'm a journalist". Yet a sergeant or above—as a custody officer has to be—authorised the detention of that journalist. That does not sound like officers on the front line getting a bit overenthusiastic and not having the right training; that was a sergeant in a controlled environment who was not at the scene of the protest and who authorised the detention of somebody he or she knew to be a journalist. That sounds more like something systemic than something unusual.

Lord Coaker (Lab): I will respond to the noble Lord. If I, in any way, gave the impression that I underestimated the significance or seriousness of what happened to Charlotte Lynch, that was certainly not my intention. I hope that most noble Lords can see the vehemence with which I support doing something about what happened to Charlotte Lynch and using that—if that is the right way of putting it—as a way of ensuring that the Government respond in a way that protects journalistic freedom across our country, whatever the circumstances.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, before I begin responding to the debate, I start by thanking the noble Lord, Lord Paddick, for his most gracious apology, which I am obviously very happy to accept. I also acknowledge that the debate in question was long, free-ranging and somewhat tortuous.

[Lord Sharpe of Epsom]

I thank all noble Lords for their contributions on Amendments 117 and 127A. I completely agree with much of the sentiment that has been expressed when speaking to the amendments, tabled by the noble Baroness, Lady Chakrabarti, and to which the noble Baronesses, Lady Boycott and Lady Jones, and the noble Lord, Lord Paddick, have added their names. As I made clear during the debate on the first day in Committee, I share the concerns about the recent arrest of journalists reporting on the Just Stop Oil protests on the M25. The Government are absolutely clear that the role of members of the press must be respected. It is vital that journalists can do their job freely and without restriction, so I agree completely with the noble Baroness, Lady Boycott, and my noble friend Lord Deben, that it is a vital part of our democracy that journalists must be able to report without fear or favour.

On the specific case of the arrest and detention of the journalists at Just Stop Oil's M25 protest, I was pleased to see the independent review into the arrest and detention of the journalists that concluded on 23 November. The statement issued by Hertfordshire Constabulary confirmed that the arrests were not justified and that, going forward, changes in training and command would be made. It acknowledged that it was the wake-up call to which the noble Lord, Lord Coaker, referred. The review has proposed a series of recommendations which Hertfordshire Police has confirmed it is acting on. They include:

"A further review to ensure that any Public Order Public Safety officers and commanders who have not yet carried out the College of Policing National Union of Journalists awareness training are identified and do so within 30 days; Directions to ensure that all commanders have immediate access to co-located mentors",

to the policemen who are logging activity,

"and public order public safety tactical advisors throughout operations"

and:

"An immediate operational assessment of the number and experience of the Constabulary's cadre of Public Order Public Safety commanders."

I hope that the noble Baroness was somewhat reassured by that statement and the confirmation from the constabulary that it clearly got it wrong in that case, as well as the mitigations in place to ensure that it does not happen again.

In answer to the noble Lords, Lord Faulks and Lord Coaker, the police make mistakes. We agree that it was wrong, but we do not legislate for instances where it was clearly a false arrest and, therefore, unlawful.

More widely, I seek to assure noble Lords that the police cannot exercise their powers in any circumstance unless they have reasonable grounds to do so. It is highly unlikely that simply recording a protest creates sufficient grounds for the use of powers. The College of Policing's initial learning curriculum includes a package of content on dealing effectively with the media in a policing context. In addition, the authorised professional practice for public order contains asection on the interaction of the police with members of the media, including the recognition of press identification.

Both the noble Baronesses, Lady Fox and Lady Boycott, referenced SDPOs, to which we will return later. The noble Baroness, Lady Boycott, specifically asked whether attending two or more events might give cause to one. The answer is no, because they would not be causing or contributing to serious disruption. However, as I said, that is a debate to which we will return.

Therefore, I support the sentiment behind the noble Baroness's amendment, but I do not think that it is necessary and respectfully ask her to withdraw it.

7.15 pm

Baroness Chakrabarti (Lab): Before the Minister sits down, and with my real thanks for the sentiment that he expressed, does he concede that public order powers in general are cast in broad terms? Charlotte Lynch was arrested for the offence of conspiracy to cause a public nuisance—a fairly broad concept—and a number of broad police powers and offences in the Bill are triggered by an undefined concept of serious disruption.

Does the Minister also concede that senior voices in policing have said that journalists who give the oxygen of publicity to protests are part of the problem? By giving publicity, they are feeding the fuel of serious disruption. I know that the Minister disagrees with that proposition but, given that there has been so much performative legislation, and that there is apparently disagreement in the policing world about what is and is not feeding a serious disruption, why would the Government not take this modest step to ensure that no one should be arrested for the primary purpose of preventing their reporting of protest?

As a point of clarification, the difference between Amendments 117 and 127A is not the class of people they cover; it is the class of activity that is being reported on. Amendment 127A is an improvement on my poorer drafting of Amendment 117 because it refers to reporting protests themselves and not just the policing.

Lord Sharpe of Epsom (Con): I agree with the noble Baroness that I do not agree with the proposition she just outlined from senior police officers. Having said that, I have not read those particular comments and cannot comment on the specifics. I go back to what I was saying earlier: it is not lawful to detain journalists simply there monitoring protests; it is against the law. The police made mistakes in these cases. As I said earlier, we agree it was completely wrong.

Lord Deben (Con): Before my noble friend sits down, the fact is that what he says is true, but something has happened and therefore we have to react to it. For the Government to say that it is not necessary to do this does not mean that they need not to do it, if noble Lords see what I mean. It does not help for the Government to say that it is all okay because it was illegal. It happened and we know that it has happened on several occasions. It is also true that there appears to be among sections of the police a feeling that journalists make things worse rather than do their job. In those circumstances it is no skin off the Government's nose just to say, "Right, we will put this in and that will make people feel happier and it will make us able to say to foreigners, 'Look, we actually got this in the law. Not generally, but particularly, because it happened. Why don't you do the same thing?'"

I do not understand this Government not taking easy steps that do not harm anybody. Just do it and do not constantly say, "Oh well, it's all right." It is not and we should do it.

Lord Sharpe of Epsom (Con): I have to say to my noble friend: I hope I was not giving the impression that I was saying that it was all right, because it was not. I have acknowledged that it was wrong and the police made mistakes in this particular case. But, to go back to the point I made in response to the noble Lord, Lord Coaker, we do not legislate for instances where it was clearly a false arrest and therefore unlawful.

Lord Paddick (LD): Will the Minister confirm that neither in his remarks nor apparently from what he said was the response of Hertfordshire police, was there any reference to the unauthorised detention of the journalist at the police station? The first thing that would have happened at the police station is that the journalist would have been asked to turn out their pockets, including their press pass, and yet they were still detained for five hours. What do Hertfordshire police and the Government say about a sergeant not at the scene of the protest authorising the detention?

Lord Sharpe of Epsom (Con): Obviously, I defer to the noble Lord's expertise on matters custodial, but—I am flying solo a little bit here—I imagine that, whatever the erroneous reasons given for the arrest, the custodial sergeant or whoever was in that position felt that some investigation was required.

Lord Coaker (Lab): Does the noble Lord not realise how disappointing his response is in many ways? As the noble Lord, Lord Deben, just said, what happened in Hertfordshire was a real challenge to us to respond to something which seems to threaten journalistic freedom to report on protests. All of us are saying that, for the Government to turn round and say, "Don't worry: it was a rare occurrence and it won't happen again—no need to worry" with a shrug of the shoulders is just not the sort of response that one would hope to get from the Government. As I said, I do not believe we live in a totalitarian state, but every now and again a challenge emerges which threatens to undermine aspects of our democracy, and in this case it is journalistic and broadcasting freedom.

I think that we, certainly I, would expect the Government to reflect on what the movers of the amendment said and on some of the many moving speeches, including from my noble friend Lady Symons, and whether there is a need for the Government to act in order to protect one of the cherished freedoms that we have. I think that is what people in this Chamber—if I read again what the noble Lord, Lord Deben, said; the noble Baroness, Lady Boycott, made the point through her amendment; and I have tried to do it through the words that I have said—are expecting from the Minister, rather than simply, "Well, it was just one of those things that happened and it won't happen again."

Baroness Jones of Moulsecoomb (GP): Very briefly, what concerns me about this—well, lots of things concern me—is that the police, including the custody sergeant, should have known it was an illegal arrest, but they must have thought they could get away with it. That really irks me. It is the thought that the police were so high-handed, and that is why it has to be explicit so that they cannot in any sense claim ignorance of the law.

Lord Sharpe of Epsom (Con): My Lords, in answer to the noble Lord, Lord Coaker, I am getting a strong sense of how disappointing I am being, but it is also very fair to say that I have been completely unequivocal in sharing completely his concerns about the protection of our democracy and institutions. As I said earlier, it is a vital part of democracy, and I would expect and also demand, that protests are reported on fairly and freely. Of course I am sorry that the noble Baroness is irked, but I cannot second-guess what the police were thinking and I will not stray into that territory.

Baroness Boycott (CB): My Lords, I thank the Minister for his reply to all the wonderful speeches, and I thank many noble Lords for speaking tonight in support of the amendment that the noble Baronesses, Lady Chakrabarti and Lady Jones, and the noble Lord, Lord Paddick, and I put forward.

What I want to say very much reflects what the noble Lord, Lord Coaker, was saying. I would call this the Government's "bad apple" defence, which at the moment gets deployed all over the shop, whether we are talking about a single police officer who accosts a young woman at night with bad consequences or about a single police station in Hertfordshire. This is not about a bad apple; as the noble Lord, Lord Paddick, said, this is about a systemic situation, and as the noble Lord, Lord Deben, said, this has happened and it is now happening a lot more.

I suspect, although I am quite happy for your Lordships to disagree with me, that this is a lot to do with the climate and the feeling of people in a desperate situation who do not know what else to do. They end up gluing themselves to the road and they are seen as something extreme. That does not matter: it is still a protest, however annoying and nuisance making it is, and we can all debate that—but it is another debate. This is about the right to protest and the right of journalists to go to that protest and report on it. Journalists report on what human beings do. They report on people, what motivates them and what they care about, and what people are prepared to glue themselves to a road for or to padlock themselves to, or to climb Nelson's column or whatever it happens to be.

The noble and learned Lord, Lord Hope, made the point about monitoring things across the world. We send journalists to monitor whether African countries are having free elections. How can we stand here and say that that is a good idea if, at the same time, someone reporting on a climate protest is chucked in jail? She was in a cell with a tin bucket as a lavatory for five hours. We are not talking about a quick slap on the wrist and "I'll write you a letter later and send you a 30 quid fine". This was a serious thing and it happened. We are therefore obliged to do something about it.

I come back to the "bad apple" defence. It is used by this Government over and over. They cannot use it in this instance and hope to hold their heads up high,

[Baroness Boycott]
or for people in this House to let them get away with it—we will not. I, the noble Baroness, Lady Chakrabarti, and others will bring this back on Report. We will work on the amendment, but it will fundamentally be the same. I am very grateful to all noble Lords who supported it. I beg leave to withdraw the amendment.

Amendment 117 withdrawn.

Amendment 118

Moved by ***Baroness Jones of Moulsecoomb***

118: After Clause 18, insert the following new Clause—

"Repeal of section 73 of the Police, Crime, Sentencing and Courts Act 2022

In the Police, Crime, Sentencing and Courts Act 2022 omit section 73 (imposing conditions on public processions)."

Member's explanatory statement

This amendment is intended to remove the noise "trigger" that empowers senior police officers to impose conditions on public processions.

Baroness Jones of Moulsecoomb (GP): My Lords, I was very excited when I saw this grouping: I thought that I had got my own group to myself. However, I am afraid that others have butted in. I am very grateful for that, obviously.

The noble and learned Lord accused me of trying to waste a lot of time on this—he is not listening—but I promise I will not. My aim here is to highlight the fact that, when we pass all these things in a Bill, is it sometimes very easy to miss their cumulative effect. For me, there is a slippery slope of anti-protest laws under this Government. It will not play very well with the public, or with them when they are out of government.

Each Bill that we pass diminishes our rights, little by little. We tend to see each of these measures in isolation because that is how we deal with them, so it is easy to lose track of the cumulative effect of the Government's anti-protest agenda. I really hope that the opposition Front Benches can join me in committing to repeal these anti-protest laws when we finally get this Government out of power. I have merely highlighted the parts of the Bill that are the most egregious from the Police, Crime, Sentencing and Courts Act 2022, and I am pointing out that they should not have been in there and we really ought to have struck them out.

Lord Paddick (LD): My Lords, it is difficult to argue with the point made by the noble Baroness, Lady Jones of Moulsecoomb: if the Government, as they have, bring back those parts of the Police, Crime, Sentencing and Courts Bill that they want to reinstate, why can she not ask this House to remove those parts of Police, Crime, Sentencing and Courts Act 2022 that she does not want retained? The noble Lord, Lord Coaker, has adopted a less provocative approach in his probing amendment, Amendment 127, to establish how often the new noise trigger powers have been used by the police in relation to protests outside buildings—with or without double glazing.

We on these Benches vehemently oppose the provisions in the Police, Crime, Sentencing and Courts Act that the noble Baroness wishes to repeal, although we subsequently and reluctantly accepted the usefulness of Section 80. But that was then, and this is now. I believe that the Committee should perhaps operate on the basis of appeals in criminal trials and ask this: what new evidence is there to persuade Parliament that we should now reverse the decisions that it made a year ago?

Lord Coaker (Lab): Before I forget, I thank the noble Lord, Lord Paddick, for signing Amendment 127, which deals specifically with noise. I have a lot of sympathy with much of what the noble Baroness, Lady Jones of Moulsecoomb, has said about many of the powers, but I will concentrate specifically on noise, so may disappoint her.

7.30 pm

As the noble Lord referred to, we had many debates during the passage of what is now the Police, Crime, Sentencing and Courts Act. I will reflect on the noise provision, which particularly exercised me, but one of the themes throughout those debates was what is practical, what will work and what difference it will make. We accused the Government—I still do—of knee-jerk reactions to the latest protest in both that Bill and many of the public order Acts we now see. No doubt we will soon have a third public order Act in response to something, and then a fourth. Our argument all along, as I will mention on a later group, has been that we should enforce existing laws as effectively as we can; I think we would be surprised at quite how well they deal with some of these protests.

The noise provisions commenced on 28 June 2022. I and your Lordships' House were told at the time what a crucial change to the legislation this was, so I know that the Government will have been carefully monitoring its impact since. The Minister's officials will no doubt have prepared for this; can he tell us how effective it has been with respect to noise? How many times has it been used? Why has it not stopped any of the protests we see now? Are they not noisy enough? What is going on?

How many police forces have used the power? What impact assessment have the Government made so far and, if it is too early, when can we expect one? What guidance has been given to officers on what constitutes a noisy protest? How noisy does it have to be? I did ask all these questions. These noise powers were never asked for by the police. Have they now recognised that they were wrong and the Government were right, and that these new noise powers have meant that protests that were too noisy are now fine and we are all sleeping more comfortably in our beds?

I congratulate the Government on their latest fact sheet; I could not believe it. Had I been a Minister, I would have deleted this but—full credit to them—the Government must fully believe that this is a crucial part of public order legislation. The latest edition of the Home Office fact sheet explaining public order provisions from 20 August, an update of the one we used during the police and courts Bill, says that

"a noisy protest outside an office with double glazing may not meet the threshold"

for a noisy protest. The noble Lord, Lord Paddick, will be really pleased with that. The Government have kept it in. Given the embarrassment they caused

themselves with this, I would have ensured that it came out. A Minister of the Crown signed off that updated guidance. I am not sure that the noble Lord, Lord Murray, was here, but perhaps he could ask his noble friend Lord Sharpe when he returns whether he was responsible for ensuring that the noise provisions were retained with respect to double glazing.

Given that it is in the Government's official guidance, has the double-glazing noise provision ever been used by a police officer to determine whether a protest will be too noisy or not? This is a question to which the whole nation is waiting for an answer. I certainly am. I am also, along with organisers of many protests, waiting to find out whether the Government have yet done any analysis of which streets have lots of double glazing, as protesters need to avoid them for fear of falling foul of the noise threshold.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): I thank noble Lords. The public order measures in the Police, Crime, Sentencing and Courts Act 2022 have only just come into force, so, in the Government's view, it is far too early to consider whether they should be repealed. These measures were debated at length during the passage of the Act, and the police have barely had the opportunity to make use of these new powers to manage public processions, assemblies, single-person protests and protests in the area outside Parliament. I therefore ask the noble Baroness to respect the democratic process and allow these measures to continue to be part of the statute book. It is no doubt clear that, as we have seen, the public continue to be able to protest as before since the commencement of the Police, Crime, Sentencing and Courts Act 2022.

I will not dwell long on the amendment lowering the maximum penalties for wilful obstruction of the highway. This House was clear in its position that the increase in sentences was appropriate, and I doubt that that position has changed in the last six months.

Amendment 123 would repeal the statutory offence of public nuisance and reinstate the common-law offence. In doing so, it would allow courts to place custodial sentences beyond the current 10-year maximum in the statutory offence. This would also have the effect of removing the reasonable excuse defence. I worry that this amendment undermines the benefits of the statutory offence, as recommended by the Law Commission.

I turn to the question asked by the noble Lord, Lord Coaker, on double glazing—I want to say, "for complete transparency", but perhaps I should not. Parliamentarians asked for practical examples of when the power would and would not be used. This example is in the guidance to illustrate that the threshold is subjective, depending on its impact on people or organisations, which is why there is no decibel threshold.

When debating the measure covered by Amendment 123 during the passage of the PCSC Act, Parliament spoke at length about the meaning of "annoyance". The Law Commission's written evidence to the Public Bill Committee on this said:

"Annoyance in the context of nuisance is a legal term of art that does not connote merely feeling annoyed. It requires 'a real interference with the comfort … of living according to the standards of the average man'".

In common law, "annoyance" and "inconvenience" were already within the consequence element of the common-law offence.

Amendment 127, tabled by the noble Lord, Lord Coaker, probes the use of the powers to prevent noise from public processions, and presumably assemblies and single-person protests, from causing harm. I am sure that the noble Lord is aware that the Government are legally required to table a report on the operation of these new powers to manage public processions, assemblies and single-person protests by 28 June 2024. In the meantime, I can inform him that I am not aware of the new powers relating to noise being used—but I remind the House that the use of conditions on protests and other gatherings is relatively infrequent. The noble Lord, Lord Coaker, asked about instances of the noise provision being used. As I say, there is no record of the police using this power.

For the reasons I set out, I invite the noble Baroness to withdraw her amendment.

Baroness Jones of Moulsecoomb (GP): Did the advice's definition of "discomfort" really use the word "man", so it does not apply to women? Is that real?

Lord Murray of Blidworth (Con): I was quoting from the Law Commission's written evidence, which referred to the

"standards of the average man".

In that context, as in many legal documents, the word "man" implies "mankind".

Baroness Jones of Moulsecoomb (GP): I suggest that legal sources need to brush up on equality these days—that is ridiculous.

With my amendments, I was trying to give the Government the opportunity to see that the legislation they have brought in is extremely unpleasant and repressive. I wish I had done a little more homework, like the noble Lord, Lord Coaker, and highlighted some of the ridiculous things in the Act. He highlighted a real deficit in the Government's reading of legislation and their concentration on these things, which let such things through. There was a lot of laughter in the Chamber when the noble Lord, Lord Coaker, presented that part of the Bill, as it was. I argue that the drafting of some of these Bills is absolutely appalling, and that highlights it. I will of course withdraw my amendment, but this Government are awful.

Amendment 118 withdrawn.

Amendments 119 to 125 not moved.

Amendment 126

Moved by ***Lord Coaker***

126: After Clause 18, insert the following new Clause—

"Consolidated public order guidance

(1) Within three months of the day on which this Act is passed, the College of Policing must, with the approval of the Secretary of State, publish consolidated guidance on public order policing.

(2) Guidance under this section must consolidate into a single source—

(a) the College of Policing's authorised professional practice for public order, and

(b) the National Police Chiefs' Council and College of Policing's operational advice for public order policing.

(3) The Secretary of State must require the College of Policing to annually review its guidance under this section.

(4) The College of Policing may from time to time revise the whole or part of its guidance under this section.

(4) The Secretary of State must lay before Parliament any guidance on public order policing issued by the College of Policing, and any revision of such guidance.

(5) Guidance under this section must include—

(a) legal guidance on existing public order legislation and relevant human rights legislation;

(b) operational guidance on best practice in public order policing, including how best practice should be shared between police forces;

(c) specific operational guidance in addressing techniques for locking on;

(d) minimum national training standards for both specialist and non-specialist officers deployed to police protest-related activity;

(e) guidance on journalistic freedoms and the right of journalists to cover protests without interference."

Member's explanatory statement

This amendment probes the need for public order policing guidance to be consolidated into one accessible source and regularly updated, as recommended by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. It would require guidance to include minimum training standards, clear information on relevant law, and operational guidance on best practice.

Lord Coaker (Lab): My Lords, I emphasise my Amendment 126 in this group, which probes the need for public order policing guidance to be consolidated into one accessible source and regularly updated, as recommended by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. It would require guidance to include minimum training standards, clear information on relevant law and operational guidance on best practice.

Throughout the Bill we have argued that this legislation does not answer the actual issues. Rather than layer upon layer of new legislation, we need to use the powers the police already have. Police need clarity, excellent training and robust and up-to-date guidance on how to use the powers they have, what the rights of the British people are and what best practice is out there. Our officers need the support and resources to be confident in what their powers are and to use them effectively and proportionately, not be left to interpret broadly defined new powers every few months. As we have just been debating, we have seen stark examples of what happens when this goes wrong.

My Amendment 126 reflects issues raised by His Majesty's inspectorate in Matt Parr's report on public order policing, *Getting the Balance Right?*, published in March 2021. On guidance, the report found:

"The College of Policing's 'authorised professional practice' … is out of date: it does not include recent relevant case law, or information on certain new and emerging tactical options. The College is planning a review."

Has this review taken place?

The report welcomed work by the National Police Chiefs' Council and College of Policing to put together operational guidance for protest policing, but

"found problems with some of its legal explanations, particularly how it sets out the police's obligations under human rights law."

This document was being revised in light of the inspectorate's concerns. Has that taken place?

Crucially, the inspectorate recommended that it would be beneficial to consolidate relevant guidance into one source, as my amendment seeks to do, with arrangements to keep the guidance current and regularly revised as is necessary. My amendment provides for that, as I said, but what action have the Government taken on this with the police?

Noble Lords have experienced how difficult it is to find a comprehensive summary of the existing powers that the police have to manage protests. We have asked the Government whether it would be possible to publish a comprehensive guide to all the powers available to the police so that we can see for ourselves whether there are any gaps.

On training, can the Minister provide information to us on what national training standards are in place for the police on their protest powers? One issue picked up in Matt Parr's report and reflected in the amendment is the deployment of non-specialist officers to protest sites. The report found

"a wide gap between specialist … officers and non-specialists when it comes to understanding and using existing police powers. Non-specialist officers receive limited training in protest policing, and lack confidence as a result … In every force we inspected, interviewees told us that some of these non-specialist officers do not have a good enough understanding of protest legislation."

What changes to training will be required as a result of the Bill, when it becomes an Act, or Acts that have preceded it? How many specialist officers are available for deployment and how often are non-specialist officers being deployed out of necessity, with the obvious potential consequences?

7.45 pm

On best practice, what arrangements are in place for the sharing of best practice on protest policing? This was one of the recommendations for Hertfordshire police following the Charlotte Lynch case. When we get things right or get things wrong, how is that being shared and reflected? How effectively are forces collaborating to learn from experience? The inspectorate found

"many examples where debriefs weren't being done when they should have been".

Though there were some excellent examples of practice, too often learning was not taking place from debriefs. The debriefs themselves were not leading to any actual change, such as revised training. Does the Minister have any update for us on that?

I thank the noble Lord, Lord Paddick, for signing Amendment 144, our other amendment in this group. It speaks to the issue of how specialist officers are deployed and planned for. The amendment would require a national monitoring tool to be established to monitor requests for and the use of specialist protest officers to allow us to evaluate the capacity of capacity and demand for the specialist teams. Can the Minister

explain what arrangements are currently in place to monitor the capacity of specialist officers and how they are deployed across different forces?

I look forward to hearing from my noble friend Lord Rooker on his amendments to Clause 30. These reflect concerns raised by the Delegated Powers and Regulatory Reform Committee, and also reflect our concerns over serious disruption prevention orders. We will discuss these concerns in more detail in the next group.

I hope the Minister realises that that is a helpful series of questions, which seeks to build on the inspectorate's report on what should be happening to improve the policing of protest in our country. I look forward to the Minister's response.

Lord Rooker (Lab): My Lords, for the avoidance of doubt, I say to the Minister that I will not be deviating into policy regarding the Bill. I am going to stick to the 17th and 19th reports of the Delegated Powers and Regulatory Reform Committee. I have served on this fascinating committee since January and I want to test how deeply the Government consider the reports from the committee.

Memory tells me that when I came into the House—it was around 20 years ago; I was Home Office Minister in 2001—being new to the House and the department, I was advised that, in the main though not exclusively, the Government tended to accept the advice of the Delegated Powers Committee. I am not complaining; on this, it is the Government's choice, but the way they have gone about it is what I want to test.

It is only Clause 30. In the history of this Bill, earlier this year a similar power was in a previous Bill. The *13th Report of Session 2021–22* raised the same points about the power in Clause 30. The report drew this to the attention of the House, repeating the concerns expressed in an earlier report.

Clause 30 is on the power to issue guidance. It gives the courts a very broad discretion to impose on a person—but I will not go over all the detail of that. In its 17th report, at paragraph 10, the committee said:

"As we stated in our 13th Report … we consider that the SDPO"—

the serious disruption prevention order regime—

"places considerable power in the hands of the police—first, any decision of a court as to whether to make an SDPO—and as to the restrictions to be imposed under one—is likely to be heavily influenced by what the police say about whether the conditions for making one are met … second, SDPOs can be applied in a broad range of circumstances: they are not limited to the prevention of criminal conduct but can be imposed for such vague, and rather open-ended, purposes as preventing people from 'contributing to' the carrying out by others of activities that 'are likely to result in' serious disruption to as few as two people".

The report went on to say:

"Clause 30 allows the Secretary of State to issue guidance to chief officers of police and chief constables in relation to SDPOs, including, in particular, on—the exercise of their functions in relation to SDPOs; identifying persons in respect of whom it may be appropriate for applications for SDPOs to be made; and providing assistance to prosecutors in connection with applications for SDPOs."

That is the Secretary of State issuing guidance on what appear to be quite detailed operational functions of the police.

Paragraph 12 of the report said:

"A chief officer of police or a chief constable 'must have regard to' such guidance."

The guidance is not subject to any consultation requirement at all. The Government stated, in a memorandum they supplied with the Bill, that the guidance should be subject to parliamentary procedures only in exceptional circumstances. In other words, Parliament is not really bothered about this. It said the guidance in question merits this,

"given the extensive parliamentary and public debate about the appropriate balance between the rights of protesters to exercise their freedom of speech and assembly".

The report said this was unchanged from the view expressed by the Government in the memorandum accompanying the power to which the committee drew the attention of the House in its 13th report. The whole point about this is whether the affirmative procedure might or might not be appropriate—which the committee drew to the attention of the House—so that Parliament at least has a role.

Paragraph 17 of the report said that

"we considered that guidance issued by the Secretary of State on the exercise of police functions in relation to serious violence reduction orders should be subject to the affirmative procedure because the exercise of those functions could prove to be highly controversial. We indicated that such scrutiny would benefit the police by whom the functions would be exercised".

In the second part of paragraph 17, the committee said that

"we considered that proposed revisions to an existing code of practice on the exercise of statutory stop and search powers were sufficiently significant to merit affirmative procedure scrutiny. We noted that the Act governing that code gives Ministers a choice as to whether to make revisions by affirmative procedure regulations".

At the end of the day, the committee concluded that Clause 30 contains an extreme example of a power to issue guidance on the exercise of statutory functions. It allows the Secretary of State to influence the exercise, by the police, of functions that could prove highly controversial, including identifying persons against whom the courts may make serious disruption prevention orders. The committee then said:

"Accordingly, we consider that guidance under clause 30 is sufficiently significant to merit affirmative procedure scrutiny."

The point is that, when the Government published the Bill and the delegated powers memorandum, they gave examples of previous cases where such scrutiny was not required. Commenting on the 16 examples, paragraph 20 of the 17th report says

"of the 'examples' given … 10 are not comparable as they do not require anyone to 'have regard to' the guidance; … a further 2 concern guidance that has a much narrower focus (as to 'the effect' of statutory provisions); … another relates to functions (exercisable by a constable) that appear to be much more limited; … 4 concern guidance to which a requirement to consult applies; and … the most recent one we reported to the House. In addition, the 'examples' relate to … the prevention of harm that is much more specific".

So the examples set out in the delegated powers memorandum, published by the Government and given as part of their reason for it, did not apply; the Delegated Powers Committee made it clear that they were not relevant. To be honest, I never expected to be speaking on or tabling amendments to this Bill, because it drifts along, as it were, but the great thing about the

[Lord Rooker]
delay is that I have the opportunity. Last week, we had the Government's response to the 17th report, which we published in the 19th report on 5 December—a few days ago.

I do not have the letter with me, and I do not know which Minister signed the response to the Delegated Powers Committee, but I can remember my 52 weeks' experience at the Home Office like it was yesterday. I had a private office of seven, and my day job was immigration, nationality and asylum. My other job was coming here and doing police, prisons and everything else—of course, we had the 9/11 legislation. I have to say that I cannot conceive of anybody in my then private office suggesting that I ever sign a letter such as that which has become the Government's response to the 17th report.

The reason is this: in response to our conclusion, the Government said:

"The Government does not agree that clause 30 contains 'an extreme example of a power to issue guidance'."

They went on to talk about provisions in other Bills, including domestic abuse protection notices and domestic abuse protection orders, and said:

"As the table below shows, the Committee took a similar position in relation to previous Bills providing for very similar statutory guidance. Given this, we remain of the view that the negative procedure is appropriate in this case."

My initial reaction to that was, "Blimey, they've come up with some new examples of where we got it wrong". But they did not, because the table of examples supplied by the Government—table 1 in the 19th report of the Delegated Powers Committee—is exactly a repeat of what they said in the delegated powers memorandum. Every single example is repeated, one after the other, which the 17th report said was not relevant.

My question is: did the Minister who signed the letter on the Government's response realise that the examples they were giving to the committee in justification were the exact same examples—no new ones—that had been given in the delegated powers memorandum, which the 17th report listed in the main as not relevant? How can this happen? Did anybody read the 17th report?

No committee is more important than another, but this House has the Delegated Powers Committee, and the other place does not. It is a very important issue as Ministers accrue powers. In this case, they want the power to give guidance to chief constables on controversial matters without any parliamentary scrutiny or consultation whatever. Therefore, it is just one clause in the Bill that the Delegated Powers Committee drew attention to.

8 pm

There seems to be a lack of attention to detail in the Home Office—I do not blame the Minister for this, because I know how busy Ministers dealing with this House are. Did nobody say, "Minister, as you sign this letter with these examples, rubbishing the Delegated Powers Committee and telling them you're not interested and they got it wrong, you're giving them the same examples we gave before, which they said, in detail, were not relevant."? I would love an answer, as I am sure would the Delegated Powers Committee.

Counsel to that committee would also like to know the Government's response, because we still have all these Bills coming along, which have been drafted by parliamentary counsel, removing powers from Parliament and giving them to the Executive. They are doing it more and more. In this one, they have been caught out. It is quite clear that nobody is paying attention to the detail. While that continues, I and others will continue to push to see why that is the case. Hopefully, Ministers will be seized of the fact that it is an important parliamentary aspect that we do not just for this House but for both Houses together.

Baroness Meacher (CB): My Lords, I support Amendment 142A from the noble Lord, Lord Rooker, and his Clause 30 stand part. He has set out the concerns of the Delegated Powers and Regulatory Reform Committee pretty clearly. Noble Lords will be pleased that I will therefore speak briefly, but I will consider Clause 30 in the political context.

Having been a member of the Delegated Powers Committee for a full term, I am acutely conscious of the increasing tendency of the Government to avoid adequate parliamentary scrutiny of powers delegated to Ministers. Clause 30 is of particular concern, because the delegated powers enable Ministers to increase the already unacceptable police powers under SDPOs. I am very interested in this Bill, even though I have not been able to be involved until now.

As has been extensively debated in this House, it is extraordinary that these orders can apply to people who have not been convicted of any offence and who are not considered to be at risk of offending; that orders can last for up to two years and be renewed; and that a breach of any requirement under an SDPO can lead to six months in prison—for somebody who has not been convicted of an offence. As things stand, such powers do not sit comfortably in a democratic state, in my view. But with Ministers able to extend those powers and further interfere with citizens' liberties, with only minimal parliamentary involvement—and if, as the noble Lord, Lord Rooker, said, they stick with the negative procedure—this Bill feels much more suited to a country such as Iran or China. I have never said such a thing about a piece of legislation in this House before, but this goes way beyond the pale. A few years ago, Clause 30 would not have been included in this Bill; I just do not think it would have happened.

In the DPRRC's recent report, *Democracy Denied?*, we express our concern about

"an increase in the number of occasions on which ministers have been given power to supplement primary legislation by what is, in effect, disguised legislation"

—things such as guidance, which is not a delegated power in the normal sense—that is,

"instruments which are legislative in effect but often not subject to parliamentary oversight",

being, as in this case, subject only to the negative procedure. That is one way of doing things.

Democracy Denied? expresses further concern about guidance where there is a requirement "to have regard" to it, which the noble Lord, Lord Rooker, also referred to. Although there is an element of choice, a requirement to have regard to guidance carries with it an expectation that the guidance will be followed unless there is a cogent reason for not doing so. In the context of this Bill, such guidance is completely unacceptable.

I very much hope that this House will deal with Clause 30 on Report. Our Delegated Powers Committee recommends that the guidance should be subject to the affirmative procedure. It would probably have been ultra vires for the committee to have gone further than that, but speaking personally, and not in the context of being a member of the Delegated Powers Committee, I really hope that the House considers removing Clause 30 from the Bill at the next stage.

Lord Beith (LD): My Lords, the noble Lord, Lord Rooker, has done a service to the House in focusing such clear attention on the Delegated Powers Committee report, and the issue that it raises. I simply want to pursue one of the points that he mentioned, which is one of the features of the guidance to which this power relates:

"guidance about identifying persons in respect of whom it may be appropriate for applications for serious disruption prevention orders to be made".

What does the Secretary of State know that the police do not know about who it would be appropriate to make serious disruption prevention orders about? On what basis does the Secretary of State know what the police do not know and therefore have to be advised about?

The only basis I can think of is not a helpful one for the Government. It is that there is a political reason here and that what the Government want to do is say, "Never mind those people who are protesting about this, go after those people who are protesting about that." This is the very kind of power which we have always tried to avoid giving, in the form of direction to the police, to anybody, including police and crime commissioners. There has been a very necessary reluctance to have the police directed in a way which could become political, and in which the choice of where to deploy resources was based on whom the authority concerned—in this case, the Government—disliked and wanted to see penalised in some way.

I cannot see any respectable argument for the Secretary of State saying to the police "You do not realise what I realise; this is the guidance I am giving you about identifying appropriate persons." It is the sort of thing that even the affirmative procedure would not give us a very good chance to deal with, because you cannot amend statutory instruments, even under the affirmative procedure. But to leave it simply to the negative procedure, which is so limited and so inadequate, particularly in the other Chamber, is simply not satisfactory. The Government's response to the Delegated Powers Committee has been wholly inadequate so far.

Lord Thomas of Cwmgiedd (CB): My Lords, I wish to make one or two brief observations in respect of the way these amendments tie together. The amendment in the name of the noble Lord, Lord Coaker, which I support, sees a good precedent in what Parliament sometimes does, which is to pass successive pieces of legislation without having in mind all the complexities of the earlier legislation. We saw this most clearly in my experience in relation to search warrants of premises, and I will come back to that in a moment. There is a huge advantage in having up-to-date guidance, and the best people to produce it are those who have practical experience—namely, the police institutions—so I warmly welcome that.

But its importance goes to Clause 30, because the question I ask myself is: why is Clause 30 there? Why can it not be dealt with in two other ways? One is the use of guidance given by independent police to other police, to get uniformity; and secondly, do not forget these are applications to a court, so can we not do what we did in relation to search warrants? That is, to provide in detailed form, through the Criminal Procedure Rule Committee, working closely with the police and other organisations, the information that needs to be put before a court to make the decision on the order. Now, if the Home Secretary feels that there are areas that you need to specify—for example, about the kind of person who should be asked to supervise or do something—why can the detail of what is required, the kinds of considerations, not be put properly and openly through an independent process of rules and forms? This worked for search warrants.

We ought to bear in mind the experience of ASBOs. It is not the time at this hour of night to go back to that rather unhappy chapter, but trying to supplement un-thought-through legislation of this kind with guidance is not the way forward; there are better mechanisms.

It seems to me, when one looks at Clause 30, one asks oneself, "What is it for?" In Clause 30(2)(c), the guidance is about

"providing assistance to prosecutors in connection with applications for serious disruption prevention orders."

Is the intention that somehow the Home Office believes that the police do not help prosecutors? What guidance do they need? These are independent people and their independence should not be called into question. In most countries, the independence of the prosecution service, as in our country, is critical, and so is the independence of the police.

I do not want to go into the constitutional points under Clause 30, because I entirely agree with what has been said. I think one ought to look at this from a practical experience point of view to say that the clause is completely unnecessary. It should be possible to deal with the practical consequences of these orders in a way that takes into account experience. This is a criticism of the way in which the modern Civil Service is structured. There are probably few people in the Home Office who remember what I have just gone through. I thought a few grey hairs might remind people that there is a better way forward than this constitutional aberration, constituted by Clause 30.

Lord Paddick (LD): My Lords, we support Amendments 126 and 144 in the name of the noble Lord, Lord Coaker. As recommended by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, consolidated public order guidance should be published, to include minimum training standards, clear information on relevant law and operational best practice. We must ensure that existing law and practice are used effectively and that police can then be held to account against that consolidated guidance.

The noble Lord, Lord Coaker, talked about ensuring that the police had excellent training. I go back again to my own experience: the Metropolitan Police were

[Lord Paddick]
world leaders in public order policing and the training was extensive and excellent. Other forces used to come to the Metropolitan Police and engage in training with it and in that way good practice was shared.

Does the Minister know what the impact of cuts to police budgets has been on the quality and amount of training in public order policing—the involvement of other forces in training with the Metropolitan Police, for example? My understanding is that special constables, who are part-time volunteers, are now being trained as public order officers. This is a very difficult, sometimes dangerous, skilled area of policing. One would question whether part-time volunteers are the right officers to be used in that sort of situation, requiring knowledge of public order legislation that is getting longer and more complex as we go on.

What has been the impact of the police cuts on the number of public order trained officers? Before the Minister stands up and talks about the uplift in the number of officers, I point out that across 16 constabularies, the number of police officers over the last 12 months has gone down rather than up and the Metropolitan Police has given notice to the Government that it will not reach its target of the uplift of an additional 30,000 officers.

HMICFRS talks in its public order report about the lack of regular officers volunteering to be public order officers because it involves increased weekend working—which is not popular—an increased risk of complaints, and the increased risk of being verbally and physically abused. What steps are the Government taking to mitigate these factors, which are working against having highly trained, highly skilled public order officers in sufficient numbers to be able to handle protests?

8.15 pm

We support Amendment 142A, in the name of the noble Lord, Lord Rooker, and I echo the comments of other noble Lords on the importance of the Delegated Powers and Regulatory Reform Committee. I am not sure that I subscribe to the rather sinister implication that the Home Secretary might give guidance to the police on what sort of people should be made the subject of serious disruption prevention orders. But we are putting the cart before the horse a bit here, since we are talking about guidance on SDPOs before we have discussed and debated SDPOs themselves.

This smacks to me of cut and paste from other legislation. For example, on Police and Criminal Evidence Act guidance to the police on matters such as stop and search, it is established practice that the Home Office publishes after consultation; as the noble Lord, Lord Rooker, said, there is no requirement for consultation here. It is the case that the Home Office gives guidance on the Police and Criminal Evidence Act to the police on the way they should apply stop and search, for example. But when you cut and paste that and put it into serious disruption prevention orders, you open up a Pandora's box with the potential for the guidance to say, as my noble friend Lord Beith pointed out, that this is suitable for this type of protester or this political issue but not for that one. Then you get into very dangerous territory as a consequence.

As the noble and learned Lord, Lord Thomas of Cwmgiedd, has said, there are better ways of approaching this—established ways of dealing with it—such as the example he gave of search warrants to ensure that we maintain the political independence of both the police and the Crown Prosecution Service, which will be the two main agencies involved in deciding whether unconvicted people should be made the subject of SDPOs, as we will get on to in the next group.

Lord Sharpe of Epsom (Con): My Lords, I thank noble Lords for the amendments in this group. I turn first to Amendment 126, which would require the College of Policing to publish guidance consolidating the public order authorised professional practice and NPCC and college operational advice for public order policing. The Government would be required to lay the consolidated guidance before Parliament and the guidance would need to be reviewed annually and updated when appropriate.

The noble Lord's explanatory statement clarifies that this builds on a recommendation from His Majesty's Inspectorate of Constabulary and Fire & Rescue Services to the College of Policing. For the benefit of the House, when giving oral evidence to the Public Bill Committee, His Majesty's Inspector Matt Parr has said of policing's response to the report that it was

"the most professional and thorough response"—[*Official Report*, Commons, Public Order Bill Committee, 9/6/22; col. 55.]

he had seen to a report that he had done.

The college has drafted a new public order public safety authorised professional practice that is in the final stages prior to consultation, which precedes publication. A draft version will be published for consultation by public order practitioners by the end of December and the college plans to publish the final version in early 2023.

To provide further reassurances to all those present who have shown interest in public order guidance, noble Lords will perhaps allow me to detail some of the work that the college has undertaken beyond the authorised professional practice to improve public order training.

On guidance, the college publishes regular bulletins, including on changes to processes, legislation and new training products. Its summary guide to the Police, Crime, Sentencing and Courts Act has been circulated to all forces and widely shared with officers involved in policing public order and protest. This guidance reiterates the need for a balanced approach with a reminder of the recent HMICFRS conclusion that

"the police do not strike the right balance on every occasion. The balance may tip too readily in favour of protesters when – as is often the case – the police do not accurately assess the level of disruption caused, or likely to be caused, by a protest."

In April, the college drafted the National Police Chiefs' Council's *Protest Operational Advice Document*, which reiterated the need for a rapid response to disruptive disorder. The document aims: first, to support consistency of decision-making and engagement with stakeholders; secondly, to signpost guidance, legislation, key legal decisions, policies and practice which may assist in the policing of protest, thereby promoting public safety, preventing or reducing crime, disorder

and/or terrorism to support overall public safety; and, thirdly, to assist decision-makers in achieving outcomes which support the exercise by peaceful protestors of their rights under Articles 8, 9, 10 and 11, while striking the appropriate balance between those rights and the rights of others affected by protest. This is being reviewed by the college, which aims to publish the revised version in February 2023.

On training, over the last six months the college has rolled out significant changes to protestor removal training. This used to be a very niche skill with very few people trained to a high level, but this meant the response was slow. The college has since developed new, quicker training for simpler lock-ons, which has meant a substantial improvement in the speed of the police response to these. I could go on, but I think I have made the point. The college is a professional organisation that is proactive in response to protests to ensure that officers are trained to the highest possible standards. It does not need a legislative stick to make them do so. That is why the Government do not support this amendment.

I thank the noble Lord, Lord Coaker, for specifying that Amendment 144 is a probing amendment to query the demand for, and the capacity of, specialist protest officers across police forces. I presume by "specialist protest officers" the noble Lord is referring to both public order trained officers and officers trained in the removal of protesters who lock on. For the benefit of the House, it is worth clarifying that, for the most part, protests are non-violent and are managed effectively by general patrol officers. When there is a risk of violence, officers with additional specialist public order training are deployed.

On specialist public order trained officers, the NPCC has set a national requirement of 297 police support units across England and Wales, alongside 75 in London. A police support unit consists of one inspector, three sergeants and 18 constables as well as three drivers. On level 3, which is basic public order training, the NPCC has set a requirement for 234 basic deployment units.

On the question from the noble Lord, Lord Coaker, on specialist officers, the NPCC has identified a national requirement for 108 officers trained in debonding protestors, 189 officers trained to remove protestors and another 189 who are trained to remove protestors from complex environments such as height. The noble Lord also asked about non-specialist officers. They are deployed to respond to peaceful protests and all have level 3 public order training.

The noble Lord, Lord Paddick, asked me about specials. Peaceful protests would seem to me to be well within the abilities of volunteer police officers—indeed, I have seen it in my own service overseas. He also mentioned cuts. I am afraid I am going to disappoint him by saying that we are well on the way to the 20,000 police uplift that was promised. I will also of course say that the nature of protests has changed and, therefore, so has the nature of policing, as reflected in much of this Bill.

Lord Paddick (LD): I am sorry to interrupt the Minister and am grateful to him for giving way. I have seen evidence that special constables are being trained to level 2 and being issued with specialist equipment, so I am not talking about special constables trained to level 3, as the noble Lord suggested.

The noble Lord gave a whole series of numbers. The National Police Chiefs' Council has decided that there should be specified numbers of level 3 and level 2-trained units of one, three and 18—one inspector, three sergeants and 18 constables—as the requirement nationally. To what extent have police services fulfilled those requirements? The indication that the Minister gave was that that is the target that the National Police Chiefs' Council has given, but to what extent have police forces been able to fulfil that target?

Lord Sharpe of Epsom (Con): I am afraid that I do not know the answer. I will write to the noble Lord with the detail. Regarding the specials, as long as they are trained, surely that is the point.

Chief officers are responsible for demonstrating that they can appropriately mobilise to a variety of public order policing operations at a force, regional and national level in accordance with the national mobilisation plan. The College of Policing sets consistent standards across England and Wales to ensure consistency across forces, allowing officers from different forces to operate in tandem when deployed to other force areas.

The required capacity for public order capabilities is informed by the assessment of threats, harm and risk from the National Police Coordination Centre, as agreed by the National Police Chiefs' Council. Officials and Ministers in the Home Office regularly probe the National Police Coordination Centre on its confidence that forces can respond to disorder. At present, it assesses that forces are able to meet current protest demands. Forces have been able to use public order resources to respond to incidents including the awful disorder in Leicester in August and September, as well as Just Stop Oil's recent disruptive campaign on the M25.

Amendment 142A seeks to ensure that statutory guidance issued under Clause 30 is subject to the affirmative scrutiny procedure, rather than the negative procedure, as the Bill currently allows. This follows a recommendation from the Delegated Powers and Regulatory Reform Committee, as explained by the noble Lord, Lord Rooker, and the noble Baroness, Lady Meacher. I thank the committee for its consideration of the Bill. I hope, but am afraid I doubt, that noble Lords will forgive me for echoing the arguments made in the Government's response here. SDPOs do not represent a new concept. Successive Governments, dating back at least to 1998 and the creation of anti-social behaviour orders in the Crime and Disorder Act, have legislated for civil preventive orders of this kind, which can impose restrictions on liberty, backed by criminal sanctions. Many of these preventive order regimes include similar provision to that in Clause 30 for the Secretary of State to issue guidance which was not subject to the draft affirmative scrutiny procedure. Guidance issued for serious violence reduction orders is subject to the negative scrutiny procedure. Having said that, I listened very carefully to the speech by the noble Lord, Lord Rooker, and I will write to him with an attempt to unravel some of the discrepancies that he mentioned.

[Lord Sharpe of Epsom]

We therefore see it as entirely appropriate that the guidance is subject to the negative scrutiny procedure and respectfully encourage noble Lords not to press their amendments.

Lord Coaker (Lab): My Lords, the last remark the Minister made, about writing to my noble friend Lord Rooker, was useful. Reflecting in the letter on the comments by the noble and learned Lord, Lord Thomas, might be helpful as well.

I will focus on my own amendment. I thank all noble Lords who contributed on it. The reason for it was the need for co-ordinated and updated guidance. I am grateful to the Minister for saying that the updated guidance will come at the beginning of 2023.

You can see why there is a need for clarification. An article in the *Daily Telegraph* just yesterday, quoting the chief constable of Greater Manchester, Stephen Watson, said:

"criticism of officers by the public for being too slow to clear the protesters was 'not an unreasonable judgment'."

He went on to say:

"The public has seen us reacting too slowly, less assertively than they would have liked."

That is the second-most senior police officer in the country saying that the police should have acted more quickly with respect to the protesters. He goes on—and I am not a trained police officer, just reflecting on what the chief constable said in a national paper:

"I think fundamentally, if people obstruct the highway they should be moved from the highway very quickly. The so-called five stage process of resolution can be worked through"

quickly. He goes on, and here is the point that the guidance needs to clarify. Is the chief constable of Greater Manchester right, or are the other officers? The article says that his argument is that

"officers spent too much time building a 'copper-bottomed' case for prosecuting people for offences such as public nuisance rather than arresting them for the lesser crime of obstruction."

I do not know whether that is right or wrong, but somewhere along the line there needs to be clarification through the guidance package, which we hope will come at the beginning of 2023. It should say that, to deal with protests quickly and robustly but according to the law, these are the options available in coming to any decision. The chief constable of Greater Manchester is clearly saying that the police could have done better by using the lesser offence of obstruction. Is he right or wrong? The guidance may be able to sort that out for us. I beg leave to withdraw the amendment.

Amendment 126 withdrawn.

Amendments 127 and 127A not moved.

Schedule agreed.

8.30 pm

Clause 19: Serious disruption prevention order made on conviction

Amendment 128

Moved by ***Lord Paddick***

128: Clause 19, page 22, line 8, leave out "on the balance of probabilities" and insert "beyond reasonable doubt"

Member's explanatory statement

This amendment raises the burden of proof for imposing a serious disruption prevention order to the criminal standard.

Lord Paddick (LD): My Lords, Amendment 128 is in my name, supported by the noble Lord, Lord Skidelsky, the noble Baroness, Lady Fox of Buckley, and the right reverend Prelate the Bishop of St Albans. I will also speak to Amendments 129, 130, 133 to 136, and 139 to 142 in my name and to the other amendments in the group; and I will oppose Clauses 19 and 20 standing part of the Bill.

Serious disruption prevention orders are modelled on the orders given to terrorists and knife carriers, with similar draconian provisions, yet these are to be imposed on peaceful protestors, some of whom will never have been convicted of a criminal offence and some of whom will have never even attended a protest. These orders will effectively prohibit British citizens from exercising their human rights of free expression and assembly. They include the possibility of electronic tagging and restricting people's use of the internet.

Liberty gives an example, which, in my own words is of someone who could be subjected to an SDPO, who has never been convicted of an offence, who attended two protests in the last five years and who, at those protests, based on inadmissible hearsay and on the balance of probabilities, contributed towards someone else doing something that was likely to result in serious disruption. The purpose of the order would be to prevent the person subject to the SDPO from contributing towards another person doing something that was likely to result in serious disruption at some point in the future.

HMICFRS says of serious disruption prevention orders:

"Such orders would neither be compatible with human rights legislation nor create an effective deterrent. All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, a banning order would completely remove an individual's right to attend a protest. It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order".

In the same report, senior police officers are quoted as saying that SDPOs would

"unnecessarily curtail people's democratic right to protest";

that such orders would be a "massive civil liberty infringement"; and that,

"the proposal is a severe restriction on a person's rights to protest and in reality, is unworkable."

That is the police's view. They added that it appeared unlikely that the measure would work as hoped, because a court was unlikely to impose a high penalty on someone who breached such an order if the person was peacefully protesting, to which HMICFRS said:

"We agree with this view and that shared by many senior police officers."

It is what we would expect in Russia or Iran, not in the United Kingdom.

These orders can also be imposed on those convicted of public order offences, and although we impose their imposition on anyone, it cannot be right that a person can be convicted of a criminal offence of

breaching a serious disruption prevention order and sentenced potentially to a term of imprisonment, on the basis of an order imposed on the balance of probabilities, potentially based on evidence such as hearsay that would not be admissible in a criminal trial. I have rehearsed these arguments time and again in relation to similar orders in the past.

The origins of this type of order are to be found in anti-social behaviour orders—ASBOs—another order imposed on the balance of probabilities but with criminal sanctions for a breach, which Parliament decided was unfair and unreasonable, and so replaced with an entirely civil-based, non-criminal approach. In the case of knife crime prevention orders, the Government used the argument that the police had advised them that knife carriers would not take the orders seriously if no criminal sanctions were attached to them. Even if noble Lords had some sympathy with that approach in relation to the potentially fatal consequences of knife crime, surely serious disruption prevention orders are far closer to ASBOs than to knife crime.

The noble Baroness, Lady Fox of Buckley, and the right reverend Prelate the Bishop of St Albans have added their names to my Amendments 128, 129 and 130; and the noble Lord, Lord Skidelsky, has also added his name to my Amendment 128. The amendments require a court to be satisfied "beyond reasonable doubt" —the criminal standard of proof—before imposing a serious disruption prevention order, rather than depending on the civil standard of "on the balance of probabilities".

We support Amendment 131 in the name of the noble Lord, Lord Hendy, which states that participation in a lawful trade dispute should not result in the imposition of a SDPO. I can see what the noble Baroness, Lady Jones of Moulsecoomb, is doing with her Amendment 132, and, if she were here, I would have looked forward to her explanation of it to the Committee.

Although electronic tagging is limited to 12 months, serious disruption prevention orders can be imposed for up to two years—but they can also be renewed indefinitely. That means that someone who has never been convicted of an offence can be prohibited from being in or entering a particular area indefinitely, prohibited from being with particular people indefinitely, prohibited from engaging in particular activities indefinitely, and prohibited from using the internet for particular purposes indefinitely. Can the Minister explain how that provision would be enforced, if they could use the internet for some purposes and not others? My Amendments 133, 135, 136, 137, 138, 139, 140, 141 and 142 would prevent serious disruption prevention orders being renewed, effectively placing a maximum limit of two years on their imposition.

Someone who breaches a serious disruption prevention order can be sentenced to a maximum of 51 weeks in prison and an unlimited fine. My Amendment 134 questions whether an unlimited fine is appropriate for such an offence, for the reasons I have argued in previous groups.

Most of those amendments should be redundant, because I urge all noble Lords on all sides of the House to join me and the noble Lords, Lord Ponsonby of Shulbrede and Lord Anderson of Ipswich, and the noble Baroness, Lady Chakrabarti, in opposing the proposition that Clauses 19 and 20 stand part of the Bill. I beg to move Amendment 128.

Lord Skidelsky (CB): My Lords, I enthusiastically support the amendment moved by the noble Lord, Lord Paddick.

I agree with the noble Lord, Lord Coaker, that we are not living in a totalitarian state, but George Orwell also warned of the slide from democracy to despotism: it becomes invisible so that, in the end, you cross a border without really knowing that your freedom has been taken away because you do not want to do anything that might lead to anyone wanting to take it away. We have not got there yet. Nevertheless, it seems that we are discussing areas of legislation in which we find, as the noble Lord, Lord Paddick, said, blocks of words being transferred mindlessly from one set of offences to another set of offences, rather like prefabricated hen houses. One has to guard against that, because the offences are of very different gravity and one must not use the same language when talking of one rather than the other.

Part 2 introduces the serious disruption prevention order, described by Liberty as a protest banning order, which gives police the power to ban a person who has not been convicted of any offence for up to two years from attending any protest, together with extraordinary powers of surveillance, including electronic surveillance. Now I am against prevention orders on the whole, because they tread the path of stopping the liberties of people who have not been convicted of any offence. That is the road down which they lead, so I am suspicious of that in principle.

Here, we have a penalty which can be imposed on a civil standard of proof, meaning that the conditions needed for being given an SDPO need to be proved only on a balance of probability. That compounds the offence. The Government are not only taking powers to inflict extraordinary penalties on someone who has not been convicted of anything, they are also claiming the power to do that on a balance of probabilities, rather than on having reasonable suspicion. That is what this amendment wants to remove and there are subsequent amendments to which the same logic applies. We need to put in a requirement of reasonable doubt into the whole series of these preventive disruption orders.

Lord Anderson of Ipswich (CB): My Lords, I gladly put my name to the stand part amendments on Clauses 19 and 20, which of course stand for Part 2 as a whole, not because I am temperamentally inclined against compromise but because these clauses are so breath-takingly broad that I am not sure I would know where to begin the process of amendment.

Seeking perspective, I turned to the civil orders with which I am most familiar, terrorism prevention and investigation measures, or TPIMs, the replacement for control orders, mentioned by the noble Lord, Lord Paddick, which are currently being copied, I think reasonably, for hostile state actors in the National Security Bill. These are the most extreme forms of restriction known to our law, short of imprisonment. In a rational world, were measures such as these

[Lord Anderson of Ipswich]
considered necessary in the completely different context of public order, they would be considerably lighter—but, in no less than six respects, the reverse is true. I shall briefly explain how.

The first respect is the trigger. TPIMs can be imposed only when it is reasonably believed that the subject is or has been involved in terrorism-related activity and that the TPIM is necessary to protect the public. An SDPO can be imposed under Clause 19 on someone who twice in the past five years has been convicted of something as minor as obstructing the highway, if an order is thought necessary to prevent them doing so again. Under Clause 20, the person need never have been convicted of anything, though of course if they breach any provision of their SDPO then, just like the suspected terrorist, they can be convicted and sent to prison.

The second respect is content. The range of TPIMs is limited to the specific measures specified in the Terrorism Prevention and Investigation Measures Act 2011. The Bill, by contrast, makes a virtue of the fact that the range of SDPOs is completely unlimited—a point emphasised in Clause 19(6), Clause 20(5) and again in Clause 21(7). Notification requirements seem to be envisaged as routine—as, remarkably enough, is electronic tagging—but these orders can require the subject to do, or prohibit the subject from doing, anything described in them. The extensive list of prohibitions in Clause 21(4) is for some reason not considered sufficient. The right to peaceful protest is not even referred to in the Bill as a consideration to which those imposing the orders must have regard, despite the obvious potential for these orders to inhibit the exercise of that right.

8.45 pm

The third respect is imposition. TPIMs can be imposed only by the Secretary of State, after obtaining both the permission of the High Court and the confirmation of the CPS that it was not feasible to prosecute the subject for any criminal offence. It used to be my job to review those decisions of the Home Secretary, and meticulously thought out and prepared they were too. SDPOs, by contrast, will be imposed by magistrates on the application of police or prosecutors, who may be subject to guidance—provided for by Clause 30—

"about identifying persons in respect of whom it may be appropriate for applications for serious disruption prevention orders to be made".

I echo the noble Lords, Lord Rooker and Lord Beith, the noble Baroness, Lady Meacher, the noble and learned Lord, Lord Thomas, and other noble Lords who, in the last group, characterised that provision for guidance as an astonishing and excessive interference with the operational independence of the police and prosecutors.

The fourth respect is duration—this point has been made. TPIMs are renewable up to a maximum of five years, but SDPOs can be renewed indefinitely.

The fifth respect is oversight. TPIMs must be the subject of quarterly reports, and the whole operation of the system is reviewed by the Independent Reviewer of Terrorism Legislation in a report that the Home Secretary is required to publish. There is nothing equivalent for SDPOs.

The sixth respect is numbers. Numbers of TPIMs have always been very low, reflecting their impact on liberty and the safeguards in place to prevent their abuse. The total number in force is published quarterly, and I believe it currently stands at two. By contrast, the impact assessment for the Bill assumes that around 400 SDPOs will be imposed each year: 200 on conviction and another 200 otherwise than on conviction. The relative absence of safeguards is illustrated by the fact that the TPIM Act extends to 69 pages, whereas Part 2 of the Bill occupies a mere 15. A simple comparison between our treatment of terrorists, or suspected terrorists, and those suspected of protest-related offences should surely suggest that Part 2 of the Bill, even more than the provision for no-suspicion stop and search, is an extraordinary overreaction.

I felt strongly enough about this issue to send the Bill team a draft of these remarks well in advance, so I look forward to hearing what the Minister has to say. What do the new orders add to the injunctive powers that are already available and that the Bill proposes to extend? The Minister may wish to assure us that these extraordinarily broad powers will be responsibly used, but he is in no position to do so, because they will be placed in the hands of thousands of magistrates—they are fine public servants, but, with respect, many of them will not be as well informed or alert to the civil liberties issues as the noble Lord, Lord Ponsonby of Shulbrede. Even if the powers were in the hands of Ministers, assurances of good will and moderation can be no substitute for proper legal guarantees.

The Joint Committee on Human Rights recommended the removal of Part 2 of the Bill—Clause 19 as well as Clause 20. I understand that, in areas such as this, the Government will often come to Parliament with a so-called concession strategy. If that is the case here, I can only hope that it is an extremely bold one and that the Minister will own up to it as soon as possible. Otherwise, I am sure that many of us will be driven to follow the Joint Committee's recommendation.

Lord Brown of Eaton-under-Heywood (CB): My Lords, at this late hour, I will say just a very few words. I start, rather tiresomely, with a pedantic legal point. The explanatory statements for the first three numbered amendments in this group suggest that they relate to the "burden of proof", but they do no such thing. As I say, somewhat pedantically, I point out that the burden is unquestionably accepted to be on those who wish to pursue this supposed remedy, but these amendments are directed to the standard of proof, which is so critically important here.

As the noble Lord, Lord Skidelsky, said, this is no place for balance of probabilities; it is for the criminal standard of beyond reasonable doubt. That is assuming that anything stays in this part at all. Having just listened with my usual awe and admiration to my noble friend Lord Anderson of Ipswich, and having been conducted down memory lane—TPIMs were a significant part of my past when I was here in a judicial capacity—let me say that his attack on Part 2, on the whole concept of SDPOs, is devastating and unanswerable, and hopefully, at some point, the Government, will recognise that if they have not done so already.

In case the Government have not the good sense and courage to abandon entirely this whole group of provisions, I say that the balance of probability has absolutely no place here at all. Of course, it is the standard by which we determine civil disputes and claims, but, as has already been pointed out, ASBOs—which were given to anti-social people who were being very tiresome with no sort of justification towards their neighbours—were initially put on a balance of probability basis and even that was regarded as unacceptable. But how much more unacceptable is it when, as here, fundamental civil liberties are at issue. To suggest that the touchstone for deciding whether people should be barred from exercising their historic rights should be the balance of probabilities—"Well, perhaps it is just more likely that he did or didn't do whatever it is"—is a nonsense. Again to revert to legalese: "a fortiori" means if it is a nonsense for one thing it is particularly so for something else; and it is particularly so here, in the circumstances where one contemplates making these draconian orders even when there has been no conviction whatever.

I shall support those who I hope will pursue the stand part provisions here, but, failing that, it is unthinkable that this Bill could go through on a balance of probability basis.

The Lord Bishop of Chelmsford: My Lords, I intend to be brief, but I wanted to speak in favour of Amendments 128, 129 and 130, addressing the Bill's provisions on serious disruption prevention orders, adding my support to the noble Lord, Lord Paddick, and others, and in particular my friend, the right reverend Prelate the Bishop of St Albans. SDPOs are particularly hard-line and risk undermining people's fundamental rights to protest, and they risk subjecting individuals to intrusive surveillance—methods that, as we have heard, are not typical in this country, and nor do we want them to become typical. The terms used to define who they can apply to are worryingly broad. The definition of "protest-related offence" as

"an offence which is directly related to a protest"

leaves the door far too open to interpretation. It therefore seems appropriate that the burden of proof for imposing SDPOs to the criminal standard should be raised as set out in Amendments 128 to 130.

Baroness Blower (Lab): My Lords, it is a pleasure to follow the right reverend Prelate the Bishop of Chelmsford. Noble Lords will recognise this speech in style and content as the work of my noble friend Lord Hendy, of Hayes and Harlington, who is unable to be in his place this evening. I speak in his place on Amendment 131.

Clause 20 is wholly objectionable because it enables the imposition of criminal penalties in respect of conduct for which the defendant has not been convicted of any criminal offence, as we have heard from all around the Chamber. However, assuming the clause is to stay in the face of opposition from various parts of the Chamber, there is another defect.

The conduct at which it is aimed clearly comprehends picketing in the course of an industrial dispute. There will not be much effective picketing in the course of a trade dispute which does not offend against the description in Clause 20(2)(a)(iii), which refers to

"activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales".

The very purpose of picketing, as legitimated in Section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992, is to attend a workplace for the purpose of "peacefully persuading any person" not to work. If effective, this will seriously disrupt those so persuaded and their employer and will render nugatory the right to picket

"in contemplation or furtherance of a trade dispute",

contained in Section 220 of the 1992 Act. That right has been statutory in this country since the Conspiracy, and Protection of Property Act 1875. The right was subject to offences created by the 1875 Act such as "watching or besetting" and an array of other potential offences such as obstructing a public highway or an officer in the exercise of his duty, or more serious offences.

Since 1875, the right to picket has been regulated and restricted by many amendments to the relevant law, the latest being several requirements imposed by the Trade Union Act 2016, now found in Section 220A of the 1992 Act. Yet the right remains. This clause would destroy it altogether. It is also a right protected by Article 11 of the European Convention on Human Rights, the right to freedom of association, and, in particular, the right to be a member of a trade union for the protection of one's interests. It is likewise protected by ILO Convention 87, Article 6(4) of the European Social Charter, and many other international instruments that the UK has ratified.

What is needed is protection against this provision for those who are acting

"in contemplation or furtherance of a trade dispute",

to use the time-honoured phrase, which is now found in Section 244 of the 1992 Act. The Government have used this protection in relation to Clause 6 to provide such protection against the offence there created. This modest amendment seeks its protection in relation to this new provision.

Lord Thomas of Cwmgiedd (CB): My Lords, I entirely support the analysis so eloquently made by the noble Lord, Lord Anderson of Ipswich, and supplemented by the points made by my noble and learned friend Lord Brown. It is easy to think of ways of making these clauses, chipping here and chipping there. However, the approach of the noble Lord, Lord Anderson, was plainly correct. The Government have got themselves into the mess of putting this into legislation without understanding the context of where these orders were made in the past and what they are seeking to do now.

Being a lawyer, I always go back to precedent. You look at it and copy it all out, but at the end of the day you have to sit in your chair and think. There are two things the Government ought to think about. First, can they achieve what they want to do by something that is much more sensible?—to which the answer is plainly yes—and, secondly, what is the consequence of what they are doing? When you are dealing with people who carry knives, with terrorists, or with people who engage in activities that disrupt neighbourhoods, people gathering together, and violence in a social

[Lord Thomas of Cwmgiedd]
context, that is one thing. But here we are dealing with people who genuinely believe that they are fighting the existential threat to the planet—or they may be fighting for trade union rights, or for liberty. If you treat those people, who have a noble cause as they see it, in the way that you treat terrorists, what do you do for justice? You can only damage it severely. I therefore humbly ask the Minister to sit back in his chair and have a good think about the wisdom of this.

9 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I have not been present for earlier proceedings on this Bill because of other commitments, for which I apologise. For that reason, I will say only a very few words. With everyone else who has spoken, I completely oppose Clauses 19 and 20 and support the amendments in this group restricting their ambit and the ambit of SDPOs, for all the reasons considered and voiced by my noble friend Lord Paddick in opening and all other noble Lords who have spoken.

The so-called serious disruption prevention orders amount to punishment that does indeed involve serious disruption: serious disruption of individual citizens' liberties, imposed without a criminal conviction and on proof to the civil and not the criminal standard, and which can last indefinitely. These proposals are entirely inimical to principles deeply embedded in our law and to notions of crime and justice that we all hold so dear. They are an insidious attack on civil liberties. They threaten a gradual, incremental encroachment on civil liberties—the very type of encroachment that can ultimately lead to the destruction of those liberties themselves.

Baroness Chakrabarti (Lab): My Lords, I declare a historical if not a current interest as a Home Office lawyer from January 1996 until the autumn of 2001. I was occasionally and habitually a happy and unhappy inhabitant of the Box.

I agree with—I think—every speech so far in this significant debate. I would go further than some in saying that I was always against this blurring of civil and criminal process from the beginning when, I am sorry to say, Labour did it. I was against ASBOs, CRASBOs, control orders, TPIMs, football banning orders and all the rest, because they were always about lessening criminal due process. That is always the intention when you blur civil and criminal process by way of these quasi-injunctive orders. Whether it is minor nuisance or suspicion of being associated with terrorists, whatever the gravity of the threat, you will catch behaviour without proper criminal due process and then prosecute people for the breach.

Although we do not always agree, I must commend the noble Lord, Lord Anderson of Ipswich, in particular on a devastating critique of this use of copy and paste in my former department. Computers are wonderful things—until they are not. I will not labour the point, save to quote the right honourable Member for Haltemprice and Howden, who has done his best on this Bill in the other place along with Sir Charles Walker, from the *Times* this morning:

"Serious disruption prevention orders, or SDPOs"—

protest banning orders—

"can be given to anyone who has on two previous occasions 'carried out activities related to a protest' that 'resulted in or were likely to result in serious disruption'"—

which is not defined—

"or even 'caused or contributed to the carrying out by any other person' of such activities. This is drafted so broadly so as to potentially include sharing a post on social media or handing out a leaflet encouraging people to go to a protest—even if you did not go on to attend that protest. Those issued with an SDPO can face harsh restrictions on their liberty, including … GPS tracking and being banned from going on demonstrations, associating with certain people",

et cetera—and the orders are renewable indefinitely, as we have heard.

I am sorry if I have made noble friends feel uncomfortable. Do not think about these measures as they would be employed today. Think about how they could be used on the statute book by another Government, not of your friends and not of your choosing, in 20 years' time. That is why, in a terrible Bill, Clauses 19 and 20 should not stand part.

Lord Ponsonby of Shulbrede (Lab): My Lords, I open by echoing what the noble Lord, Lord Paddick, said: all the arguments in all the amendments could become redundant if we support not putting Clauses 19 and 20 in the Bill. The strength of feeling demonstrated through this short debate leads me to believe that that may well be what we vote on when we come to Report.

I forget whether it was my noble friend Lady Chakrabarti or the noble Lord, Lord Skidelsky, who referred to this as copy-and-paste legislation. I think it was the noble Lord, Lord Skidelsky, who gave the analogy of chicken coops being moved around to replicate these civil injunctions. But perhaps the most powerful speech we have heard was from the noble Lord, Lord Anderson, who gave six examples of SDPOs being tougher than TPIMs, which really caused me to sit back and reflect on the meat of what we are dealing with here today.

My noble friend Lady Chakrabarti said she has always been against what she called quasi-injunctive orders—civil orders—going all the way back to ASBOs. This caused me to reflect, as a magistrate, on which of those orders I deal with when I sit in courts. I deal with some of them: football banning orders, knife crime prevention orders and domestic violence protection orders—I think most noble Lords who have taken part in this debate think DVPOs are an appropriate use of civil orders. But, of course, the list goes on. That is really the point my noble friend makes: there are a growing number of these civil orders that, if breached, result in criminal convictions.

To repeat what I said, here we are meeting a very extreme situation in which people planning to get involved in protest or to help people do so can potentially be criminalised for that activity. The nature of the potential offence being committed is different.

The noble Lord, Lord Paddick, went through in detail, for which I thank him, the nature of the injunctions in Clauses 19 and 20, so I will not go through all that again, but I will make one point that he did not make. We are concerned that there does not seem to be any requirement for the person involved to have knowledge

that the protest activities were going to cause serious disruption. That lack of a requirement of knowledge is a source of concern for us.

In the debate on the previous group, my noble friend Lord Rooker and the noble Baroness, Lady Meacher, spoke about the comments of the Delegated Powers and Regulatory Reform Committee, and my noble friend quoted from them. The noble Lord, Lord Beith, spoke about the Secretary of State issuing guidance to chief police officers and how that could go down a road whose potential political implications, in a sense, I prefer not to think about.

I will quote briefly from other committees which have reflected on this legislation. First, the Joint Committee on Human Rights has said:

"Serious Disruption Prevention Orders represent a disproportionate response to the disruption caused by protest. They are likely to result in interference with legitimate peaceful exercise of Article 10 and 11 rights. The police already have powers to impose conditions on protests and to arrest those who breach them. Other provisions of this Bill, if passed, will provide the police with even greater powers to restrict or prevent disruptive protest."

Another committee, the Constitution Committee, said:

"The purposes for which a Serious Disruption Prevention Order can be issued are broad. They can be issued not only to prevent a person committing a protest-related offence but also to prevent a person from carrying out activities related to a protest. Such a protest need cause, or be likely to cause, serious disruption to only two people. This gives the orders a pre-emptive or preventative role. Furthermore, 'protest-related' offence is not adequately defined in this part of the Bill nor … is 'serious disruption'. This undermines legal certainty. We recommend that the meaning of 'protest-related offence' is clarified more precisely."

The Minister has a big job on his hands to try to convince any Member of this Committee that he is on the right track. The amendments in my name—the clause stand part amendments—are the quickest way to put this part of the Bill out of its misery.

Lord Sharpe of Epsom (Con): My Lords, there are notices to oppose within this group, so it may help if I start by addressing serious disruption prevention orders as a whole, before turning to amendments to the clause. SDPOs will target protestors who are determined to repeatedly inflict disruption on the public or those who simply wish to go about their daily lives. Our experience at recent protests has shown that many police are encountering the same individuals, who are determined repeatedly to inflict disruption on the public.

It cannot be right that a small group of individuals repeatedly trample on the rights of the public without let or hindrance. Yes, many are arrested, but after paying small fines or serving short or suspended sentences, they are free to reoffend. This measure would, following the consideration and permission of the courts, allow for proportionate and necessary restriction or requirements to be placed on individuals to prevent them causing harm.

Additionally, in some cases, individuals choose to not get their hands dirty. They go around the country speaking to young people who are determined to make the world a better place—not to encourage them to study and seek out a career to better the planet, or even to enter politics to enact change; instead, they encourage them to commit criminal offences, alienate the public from their cause and jeopardise their opportunity for a career that will actually make a difference. Why should these individuals, who contribute to serious disruption, be permitted to behave as they do without consequence?

This is why SDPOs are needed, as drafted. They will provide an alternative, non-custodial route to prevent those who have a track record of trampling on the rights of others from doing so. The threshold for the imposition of these orders is appropriately high and I trust our courts to impose them only where necessary.

The noble Lord, Lord Paddick, asked about the HMICFRS conclusion. The report from the policing inspectorate considered only orders which would always ban an individual from protesting. SDPOs grant the courts discretion to impose any prohibitions and requirements necessary to protect the public from protest-related crimes and serious disruption. Depending on the individual circumstances, this may mean that the court will not consider it necessary to stop individuals attending protests.

Amendments 128, 129 and 130 would raise the evidential threshold for SDPOs to the criminal standard. I am sure that many who support these amendments also support the civil courts approving injunctions against protesters. These are made on the civil burden of proof against large numbers of people, including "persons unknown". SDPOs are made against single known individuals.

A number of noble Lords asked why SDPOs can be granted using a civil standard of proof, including the noble Lords, Lord Paddick and Lord Skidelsky, the noble and learned Lord, Lord Brown, and the right reverend Prelate the Bishop of Chelmsford, among others. The use of the civil standard of proof is not a novel concept for preventive orders. Football banning orders, for example, use the same standard of proof to help prevent violence or disorder at or in connection with any regulated football matches. By using a civil standard of proof, courts will be allowed, following due consideration, to place prohibitions or requirements they consider necessary to prevent an individual causing disruption.

9.15 pm

Finally, for the avoidance of doubt, the offence of breaching an SDPO must be proven to the criminal burden of proof.

To reassure the noble Lord, Lord Paddick, on his internet-related question, it will be for the courts to place necessary, proportionate and enforceable conditions and for the police to enforce the order.

I turn to Amendment 131, which specifies that an SDPO may not be made if the activities were undertaken in furtherance of a trade dispute. Some noble Lords may have read my letter to the noble Lord, Lord Coaker, and the noble Baroness, Lady Blower, where I detail why such a defence exists for the infrastructure offences but not the others. Legitimate and lawful industrial action, such as going on strike, will inevitably cause such interference or obstruction. This activity would likely fall within the protection provided by the

[Lord Sharpe of Epsom]
general reasonable excuse. But to provide reassurance and clarity to those who may consider lawful industrial action, this was made explicit on the face of the Bill.

For the sake of clarity, this reasonable excuse does not extend beyond lawful activity. Other offences covering unacceptable behaviour do not contain this excuse and doing so would legitimise such tactics for a single type of protest but not others. As with the infrastructure offences, lawful industrial action should not be a contributing factor to an SDPO, but any behaviour that steps beyond that absolutely must be.

Turning to Amendment 132, which prevents police forces which are subject to special measures by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services from applying for serious disruption prevention orders otherwise than on conviction, I note that the noble Baroness, Lady Jones, is not in her place. Although I agree that forces in engage should be subject to scrutiny and supported to eradicate causes of concern, I do not believe we should strip them of their powers as that would ultimately result in the public suffering.

I turn to Amendment 133 and related Amendments 135 to 142, which focus on the renewal of SDPOs. Amendment 133 would create more bureaucracy. If it is made part of the Bill, when an SDPO expires, chief police officers could still apply for a new SDPO to be made and courts will approve it if persuaded of its necessity. Why not simply allow for the relevant force to apply for one to be renewed? All this amendment achieves is the creation of the risk for a lapse in an SDPO when it is proven that it continues to be needed. A renewal of an SDPO is not automatic; the courts would need to be satisfied that it continues to be necessary. If a person subject to an SDPO has adhered to their restrictions and requirements and there is no new evidence to suggest they will return to their old ways, I struggle to see how a renewal would be granted.

I turn finally to Amendment 134, which seeks to reduce the maximum fine for breaching an SDPO. I thank the noble Lord, Lord Paddick, for specifying that this is a probing amendment. Unlimited fines will allow for fines in excess of £2,500, which is currently the maximum value of a level 4 fine, the next rung down on the standard scale. However, this does not mean that all financial penalties must be above £2,500. Ample guidance is published by the Sentencing Council which details how courts should approach the assessment of fines. An unlimited fine is appropriate; the entire purpose of SDPOs is to prevent and deter people from disrupting the public. Therefore, it makes sense for the maximum sentences available to be in line with the sentences available for those offences.

The noble Lord, Lord Anderson, very eloquently asked the Government how we can justify SDPOs when they impose tighter restrictions and have less oversight than terrorism prevention and investigation measures. SDPOs would improve the police's ability to take a proactive approach to policing protest by preventing prolific protesters who are hell-bent on causing chaos time and time again doing so in the first place. Having said that, the Government thank the noble Lord for his comparison of SDPOs with TPIMs. Without wishing to—or committing to—own up to anything, we will reflect on his views. I would also like to reassure the noble and learned Lord, Lord Thomas, that that does mean a proper think. For the reasons I have outlined, I ask all noble Lords not to press their amendments.

Lord Paddick (LD): My Lords, I am grateful to all noble Lords for their contributions to this debate. As many noble Lords have said, this is about restricting the human rights and civil liberties of unconvicted people on the basis of the balance of probabilities. The noble Lord, Lord Anderson of Ipswich, described the "breathtakingly broad" provisions, more draconian than those imposed on terrorists, that the Government propose to impose on peaceful protesters.

I am grateful to the noble and learned Lord, Lord Brown of Eaton-under-Heywood—of course it is the standard of proof, not the burden of proof—and to the right reverend Prelate the Bishop of Chelmsford, for pointing that these orders will be imposed on activities in relation to a protest. As the noble Baroness, Lady Blower, described on behalf of the noble Lord, Lord Hendy, not only would lawful picketing be included but somebody who organised or chipped in to pay for coaches to bus people down to London to take part in a protest would be covered by these provisions.

The noble and learned Lord, Lord Thomas of Cwmgiedd, hit the nail on the head: quite clearly, there has not been enough thinking. I cannot believe that we have got to Committee in the House of Lords, having gone all the way through the process in the House of Commons, before a Minister agreed to start thinking about the consequences of these provisions. In defence of the Home Office and its officials, we should remember that Home Secretary Priti Patel was facing a potentially hostile Conservative Party conference in the wake of Insulate Britain protests and demanded an immediate, draconian response. That is how we have come to copying and pasting terrorist legislation and applying it to peaceful protesters without a second thought.

I agree with the noble Lord, Lord Ponsonby of Shulbrede, that we should support civil orders to protect victims of domestic violence, for example, but with civil sanctions. That is why anti-social behaviour orders are now anti-social behaviour injunctions, with civil penalties, which can include contempt of court and imprisonment. We are not talking about soft options here.

I could not believe the description of the sort of person on whom the Government think these orders are designed to be imposed. It was the most outrageous and extraordinary description of people going around telling young people all sorts of things. I have never heard or experienced anything like it in my life. If it is true, I am glad that the Government will now think about what has been said as a result of noble Lords in this Committee, whom the House has the utmost respect for and will listen very intently to when we come, as we inevitably will, to vote that these clauses do not stand part of the Bill. The Government need to do some long and hard thinking about these clauses because, with the support that we have seen across the House for these provisions to be taken out of the Bill, we will carry the House if the Government do not see sense on these measures. In the meantime, I beg leave to withdraw my amendment.

Amendment 128 withdrawn.

Amendment 129 not moved.

Clause 19 agreed.

Clause 20: Serious disruption prevention order made otherwise than on conviction

Amendments 130 to 132 not moved.

Clause 20 agreed.

Clauses 21 to 24 agreed.

Clause 25: Duration of serious disruption prevention order

Amendment 133 not moved.

Clause 25 agreed.

Clause 26 agreed.

Clause 27: Offences relating to a serious disruption prevention order

Amendment 134 not moved.

Clause 27 agreed.

Clause 28: Variation, renewal or discharge of serious disruption prevention order

Amendments 135 to 141 not moved.

Clause 28 agreed.

Clause 29: Appeal against serious disruption prevention order

Amendment 142 not moved.

Clause 29 agreed.

Clause 30 agreed.

Clause 31: Guidance: Parliamentary procedure

Amendment 142A not moved.

Clause 31 agreed.

Clauses 32 to 34 agreed.

Amendment 143

Moved by ***Lord Ponsonby of Shulbrede***

143: After Clause 34, insert the following new Clause—

"Review of sentencing for protest-related offences

(1) Within three months of the day on which this Act is passed, the Secretary of State must publish a review into sentencing for public order and protest-related offences.

(2) "Public order and protest-related offences" include, but are not restricted to, offences for protest-related activity under—

(a) the Criminal Damage Act 1971;

(b) the Highways Act 1980;

(c) the Public Order Act 1986;

(d) the Criminal Justice and Public Order Act 1994;

(e) the Police, Crime, Sentencing and Courts Act 2022; and

offences charged following breach of an injunction against protest-related activity, granted under the Protection from Harassment Act 1997.

(3) The review must include—

(a) the average sentence given where a person commits a public order or protest-related offence, and

(b) the proportion of cases in which the maximum available sentence is given for a public order or protest-related offence.

(4) The Secretary of State must lay a copy of the review before each House of Parliament."

Lord Ponsonby of Shulbrede (Lab): My Lords, this amendment is in the name of my noble friend Lord Coaker and the noble Lord, Lord Paddick. It would require the Secretary of State to publish a review into sentencing for protest-related offences within three months of the Act passing. The review must include the average sentence given for any protest-related or public order offence, and the proportion of cases in which the maximum available sentence is given. This will be a quick introduction to the amendment and a series of questions to the Minister.

First, what work has been done to look at current sentencing practice for public order offences before this whole tranche of possible new sentences is introduced? Hundreds, if not thousands, of Just Stop Oil and other protesters have now been arrested and given sentences. Do the Government have any view on the longer-term outcomes of those arrests and sentences? What is the average sentence or fine given for the activity which is already considered unlawful? How often has an existing available maximum sentence been used? What assessment have Ministers made of the impact of the Bill on the number of cases which need court time and how will this be managed, given the extensive backlogs in the existing criminal justice and court system?

The amendment covers a variety of legislation in which relevant powers can already be found, including the Criminal Damage Act 1971, the Highways Act 1980, the Public Order Act 1986, the Criminal Justice and Public Order Act 1994, the Police, Crime, Sentencing and Courts Act 2022, and offences charged following breach of an injunction against protest-related activity, granted under the Protection from Harassment Act 1997. The point is that we have layers and layers of new and old laws on our statute book, and we are yet to be convinced that these additional powers are necessary. It is for the Government to show how much the existing powers are being used and whether there is a real case for adding new powers through this Bill. I beg to move.

9.30 pm

Lord Paddick (LD): My Lords, we support Amendment 143 in the name of the noble Lord, Lord Coaker, to which I have added my name. We on these Benches believe that the prison service is overwhelmed. As a result, prisoners have no real opportunity for rehabilitation, and this can lead to a revolving door of offending, conviction and imprisonment. Liberal

[Lord Paddick]

Democrats want to reduce the number of people unnecessarily in prison by introducing a presumption against short prison sentences and including the use of tough community sentences and restorative justice where appropriate. We want to transform prisons into places of rehabilitation and recovery by improving the provision of training, education and work opportunities.

That cannot be done against a background of an ever-increasing prison population. In particular, custodial sentences should be restricted to the most serious types of offending that place public safety at risk. We believe that peacefully exercising basic human rights of freedom of expression and assembly are not included in the types of offending warranting a custodial sentence in most cases. That it is why it is important to review sentencing for public order and protest-related offences to ensure that the right balance is struck between the right to protest and the disruption such protests may cause. If the balance is wrong, it is an indication of a repressive regime that seeks to stifle the democratic right of citizens in a free society to gather and express their concerns about the way the Government and Parliament are operating. We therefore support the proposed review.

Lord Davies of Gower (Con): My Lords, I thank the noble Lords, Lord Coaker and Lord Paddick, for tabling this amendment. I empathise with the importance of understanding sentencing for criminal offences. However, the Government do not feel that it is necessary to accept this amendment. There are already adequate mechanisms in place to scrutinise sentencing. The Sentencing Council for England and Wales exists to promote greater transparency and consistency in sentencing. It issues guidance on sentencing and is responsible for monitoring sentencing. Its objectives are to promote a clear, fair and consistent approach to sentencing, to produce analysis and research on sentencing and to work to improve public confidence in sentencing.

As a result of the delegation of these functions, it is felt that the Government are not best placed to undertake such a review. I therefore respectfully ask that the amendment be withdrawn.

Lord Ponsonby of Shulbrede (Lab): Well, the Minister did not make any attempt to answer any of the questions I asked. I do not know whether he would undertake to guide me to some government documents that may answer those questions. I think that may be useful, to see whether we might come back to this matter at a later stage.

Lord Davies of Gower (Con): My Lords, in respect of the specific questions, which are more or less covered by the Sentencing Council for England and Wales, I think we will commit to write to the noble Lord, Lord Ponsonby.

Lord Ponsonby of Shulbrede (Lab): I beg leave to withdraw the amendment.

Amendment 143 withdrawn.

Amendments 144 and 145 not moved.

Clause 35: Extent, commencement and short title

Amendment 146

Moved by ***Baroness Chakrabarti***

146: Clause 35, page 36, line 25, at end insert—

"(4A) No other provisions of this Act may be brought into force until a report by His Majesty's Chief Inspectorate of Constabulary and Fire Services on improvements to the vetting, recruitment and discipline of specialist protest police officers is laid before and debated in each House of Parliament."

Member's explanatory statement

This amendment, and another in the name of Baroness Chakrabarti, require parliamentary debate of a report by HMCI on improvements to the vetting, recruitment and discipline of specialist protest police officers before most provisions of the legislation may be brought into force. They further prohibit the bringing into force of the provisions in any police area under HMCI special measures.

Baroness Chakrabarti (Lab): My Lords, I congratulate those still here. We end, of course, with commencement, because that is the tradition. In moving Amendment 146 I will speak also to my Amendments 147 and 149. I also support Amendment 148 from the noble Lord, Lord Paddick, and Amendment 150 from the noble Lord, Lord Paddick, and my noble friend. We are dealing with the tension between ever more police powers on the one hand and the lack of equivalence in resources, training and vetting for policing on the other hand. This tension has been more and more exposed in graphic terms in recent months and years.

We began this evening with the eloquent speech from the noble Baroness, Lady Boycott, who spoke powerfully about incidents of abuse of police power in relation to journalists. We were assured, I think sincerely, by the Minister that it was far from the intention of the Government that those things happened. The Government apparently agreed with me that those were wrongful arrests, yet they have happened more than once. There are some in the police community who hold the view that this is a legitimate thing to do to prevent serious disruption, which is undefined in statute. So, with the amendments, we are seeking to ensure that there is some check on the new blank cheque that we are putting on the statute book, in addition to blank cheques that have already been put there by broad concepts such as conspiracy to cause a public nuisance, et cetera. That is what we are trying to get at.

Amendment 146 prevents the commencement of most provisions of the Bill until there has been

"a report by His Majesty's Chief Inspectorate of Constabulary and Fire Services on improvements to the vetting, recruitment and discipline of specialist protest police officers".

In another group, the Minister said, "If they're trained, they're trained". So this is about ensuring that that is the case before additional power is granted. Amendment 147 is consequential to that.

Amendment 149 is crucial at a time when more than one police force is in special measures. It provides that provisions should

"not be brought into force for any area in which the police service is under special measures, the engage phase of monitoring, or other unusual scrutiny … by His Majesty's Chief Inspectorate of Constabulary and Fire Services."

That seems to be a perfectly reasonably check on the new powers and a perfectly reasonable request to make of Ministers, so I beg to move.

Lord Paddick (LD): My Lords, I have tabled Amendments 148 and 150 in this group, and will speak also to Amendments 146, 147 and 149.

My amendments would mean that the new offences in the Bill—the delegation of functions and serious disruption prevention order provisions—could not come into force until the Government have laid before Parliament a report assessing the current capability of police services to use the provisions in those sections. Most of the 10 police forces inspected by HMICFRS said that the limiting factor in the effective policing of protests was a lack of properly trained and equipped police officers, not gaps in legislation. If that is already the limiting factor, what assessment have the Government made of the additional strain that the new provisions will have on already-stretched police officer numbers? What is the point of new legislation if the police do not have the resources to use it effectively—or, indeed, to use existing legislation effectively?

I can understand the principle behind Amendments 146, 147 and 149 tabled by the noble Baroness, Lady Chakrabarti; the right reverend Prelate the Bishop of Manchester has added his name to Amendments 146 and 147. Were it to be within the scope of the Bill, I too would support a moratorium on giving the police any further powers unless and until Parliament had a chance to consider a report by HMICFRS into the vetting, recruitment and discipline of all police officers, not just public order officers—particularly in forces that are subject to the "engage phase" of scrutiny by HMICFRS, commonly understood to be "special measures". With so many forces requiring intensive scrutiny and intervention by HMICFRS, and public confidence in the police being so low, the police should not be given further powers until HMICFRS has reassured the public that they can have confidence in the police use of existing powers, let alone new ones.

The Lord Bishop of Chelmsford: My Lords, I add my support to Amendments 146 and 147, to which my right reverend friend the Bishop of Manchester added his name—I know he regrets that he is unable to be here today. I thank the noble Baroness, Lady Chakrabarti, for bringing these important amendments forward. Throughout the debate on the Bill, it has been clear that there are many justified and genuine concerns about provisions and the expansion of police powers laid out in it. I believe that it is therefore appropriate that further reflection should take place, and these amendments would provide for exactly that opportunity, requiring parliamentary debate of an HMCI report concerning improvements to the vetting, recruitment and discipline of protest police officers. In recent years, we have arguably seen an accelerated decrease in trust in the police, and it is critical that any expansion of powers such as those set out in the Bill does not occur without regard for the real implications of such measures.

Lord Coaker (Lab): My Lords, I thank noble Lords who have spoken in this debate. I will make a couple of brief comments in support of the amendments. The noble Lord, Lord Paddick, forcefully made the arguments for Amendment 150, and I will not repeat them. I also support my noble friend Lady Chakrabarti's amendments—she also made the arguments.

I will add one thing to the amendments of my noble friend Lady Chakrabarti and the right reverend Prelate the Bishop of Manchester—obviously spoken to by the right reverend Prelate the Bishop of Chelmsford. Amendment 147 talks about the "vetting, recruitment and discipline" of specialist officers. It is especially important that these amendments have been tabled. I know that the Government will be as worried, concerned and appalled as the rest of us in the week where we have seen the resignation of Michael Lockwood as the director-general of the Independent Office for Police Conduct due to a criminal inquiry. My noble friend Lady Chakrabarti made a point about vetting. I have no idea what the process or procedure was when Mr Lockwood got the post, but one wonders about the vetting that took place, and this raises the question yet again. We will not have a big debate about all this, but I think that what my noble friend Lady Chakrabarti's amendments get at is that, if we are to restore public confidence, we have to address some of these issues. Unfortunately, at the moment, we seem to have one thing after another which undermines the valuable work that so many of our officers do.

I will raise one other point about commencement. The noble Lord, Lord Carlile, raised the issue of Section 78 of the Police, Crime, Sentencing and Courts Act 2022. Talking about the commencement of the Bill, he was worried about Section 78's definition of

> "Intentionally or recklessly causing public nuisance"

and how it related to the provisions in Bill. Before the commencement of the Act, as it will be, some clarification of how it relates to Section 78 of the Police, Crime, Sentencing and Courts Act 2022 would be helpful for our police forces as they interpret the law.

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Paddick, for tabling their amendments; I absolutely understand the sentiment behind them. It is obviously important that the measures passed in the Bill are continually subject to inspection, reporting and scrutiny by the relevant bodies, such as HMICFRS. However, I remind noble Lords that the use of police powers is already carefully scrutinised by public bodies such as HMICFRS and the Independent Office for Police Conduct. The noble Lord, Lord Coaker, will forgive me for not referring to the ongoing case against the departing chief.

9.45 pm

In its March 2021 report, HMICFRS recognised the need for the police to be granted more powers. It is therefore not necessary to accept this amendment. We have been working with the NPCC and the college to prepare for these new powers and that has involved ensuring capacity and capability. As noble Lords will be aware—I have referred to it earlier—the Government are well on the way to meeting their commitment to recruit 20,000 new officers. Beyond this, our expectation is that the provisions in this Bill

[Lord Sharpe of Epsom]
will improve the ability of the police to remove and deter protesters from engaging in criminal acts, thereby alleviating some pressure on the police. As I have said, and as is standard, legislation will be reviewed after implementation.

The noble Baroness, Lady Chakrabarti, mentioned that some police forces are in special measures. Obviously, there was an amendment in the previous group that dealt with this to some extent. Something I did not say but could have is that forces engaged by the inspectorate should not be painted with a broad brush and deemed unable to be trusted with the use of certain powers. Some of the reasons why forces are currently engaged include the need to review and monitor call-taking capacity, capability and processes; having an inadequate strategic plan; or the poor recording of crimes. I am not for a moment suggesting that these issues are benign. Like noble Lords and the public, I would expect the best from our police forces, but I do not believe that being engaged is a legitimate reason to withhold powers from forces. As I said before, doing so would be counterproductive, as it would undermine their ability to prevent crime.

The three speakers all mentioned vetting. I have to restate the case that I have put many times from this Dispatch Box: that each police force is responsible for its own vetting decisions but should take them in accordance with guidance from the College of Policing. The Government are disappointed that, despite some progress, previous warnings about vetting have not been acted on. Chiefs must be clear to their vetting units about the high standards they expect from them; there is no excuse for poorly recording the rationale for vetting decisions.

It is our conviction that these measures should come into force as soon as is reasonably practicable. For that reason, I respectfully ask that the amendment be withdrawn.

Lord Paddick (LD): Can the Minister clarify what I thought I heard—noble Lords know what I am like with making mistakes about what a Minister actually said and what I heard. Did he say that the provisions in the legislation are designed to "deter protesters" and therefore relieve pressure on the police? Can he just clarify what he meant by that?

Lord Sharpe of Epsom (Con): What I hope I said is that our expectation is that the provisions in the Bill will improve the ability of the police to "remove and deter protesters", thereby alleviating some pressure on the police.

Baroness Chakrabarti (Lab): That is very helpful. I agree with the Minister that police officers—we have a fine one in this Committee—and police forces should not be treated with a broad brush, but, and noble Lords will perhaps forgive me if I say it, nor should peaceful protesters. Hence, the question raised by the noble Lord, Lord Paddick, and hence the bulk of criticism of this entire draft legislation in this Committee. It is an unhappy privilege to be perhaps the last speaker in this Committee; I think I was the first. I am grateful to the Minister for his fortitude and courtesy. He wants to rise again.

Lord Sharpe of Epsom (Con): I just want to clarify that I mean criminal protesters.

Baroness Chakrabarti (Lab): I am grateful to the Minister but, of course, if the Government are able to keep expanding the definition of criminality, that does not give much cause for comfort about protecting peaceful dissent. I am none the less grateful to the Minister for his fortitude and courtesy throughout this three-session Committee. I hope that he and his colleagues will understand that what he has heard over these days and hours is very serious cross-party concern about these measures, reflected in vast sections of the country. I have no doubt that, after a good break and, I hope, a happy Christmas of reflection, colleagues will be back and some of these matters will definitely be put to the vote. With that, I beg leave to withdraw the amendment.

Amendment 146 withdrawn.

Amendments 147 to 150 not moved.

Clause 35 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 9.50 pm.

Grand Committee

Tuesday 13 December 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, 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.

Parliamentary Works Sponsor Body (Abolition) Regulations 2022

Considered in Grand Committee

3.45 pm

Moved by ***Lord True***

That the Grand Committee do consider the Parliamentary Works Sponsor Body (Abolition) Regulations 2022.

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee

The Lord Privy Seal (Lord True) (Con): My Lords, these regulations were laid before the House on 22 November and, if agreed, will give legal effect to the decision of both Houses, taken in July of this year, to pass Motions endorsing the House commissions' report for a revised mandate for the restoration and renewal programme.

Since the sponsor body was established by the Parliamentary Buildings (Restoration and Renewal) Act 2019, concerns have been raised about the conclusions reached in the initial assessment of the emerging costs and timescales. The House of Lords Commission, alongside the House of Commons Commission, expressed concern about the costs and timescales presented by the sponsor body, and I shared some of these concerns. That is why the Government, with the commissions in both Houses, have supported the development of a revised mandate. I am grateful for the collaborative way in which Speaker's Counsel in the House of Commons has worked with officials in both Houses, including the deputy counsel to the Chairman of Committees, to draft these regulations and for the ongoing advice we have received from the R&R directors.

The new approach to the parliamentary building works will continue to ensure that, as provided for in the Parliamentary Buildings (Restoration and Renewal) Act 2019, Members of both Houses will be consulted. Peers and all those who work in this place will have a chance to express their views on the works. When making critical strategic choices relating to restoration and renewal, the R&R client board will keep in mind the principles agreed by both Houses to deliver a new value-for-money approach that prioritises safety.

The commissions, in a March 2022 meeting, agreed a new approach to the restoration and renewal programme, guided by the principles of prioritising health and safety, ensuring maximum value for money and integration with other critical works on the estate. It is important that all members of the parliamentary community feel that they are engaged on the parliamentary building works, and I am confident that these new arrangements will deliver the required step change in engagement.

In 2018, both Houses agreed that major works to the Palace of Westminster would be essential in order to ensure that this historic and iconic building remains for generations to come. It was decided that the project should be undertaken by a delivery authority and overseen by a sponsor body. The Parliamentary Building Works (Restoration and Renewal) Act 2019 set out the governance arrangements for the project by creating these bodies and conferring particular functions on them. However, earlier this year, the two House commissions recommended a new approach to the programme whereby a new two-tier in-house governance structure would be established.

These regulations, which are made under Section 10 of the Parliamentary Buildings (Restoration and Renewal) Act 2019, will abolish the sponsor body, which will be replaced with an in-house governance structure. The statutory responsibilities and other functions of the sponsor body will transfer to the corporate officers of the House of Commons and the House of Lords—in other words, the clerks of each House.

The Leader of the House of Commons and I have consulted the corporate officers and the commissions of both Houses, in accordance with Section 10(8)(a) of the Act, and both corporate officers have consented to the transfers to them effected by this instrument, in accordance with Section 10(3) of the Act. Ultimately, both corporate officers will have joint responsibility for the parliamentary building works and will, at least once a year, prepare and lay a report before Parliament about the carrying out of the parliamentary building works and the progress that has been made towards completion of those works.

I am aware that Peers have previously raised concerns that without the sponsor body in place, the project may not have sufficient expertise. First, the Houses will not lose the expertise gained by the sponsor body, and the team of staff with that expertise will be brought in-house, as a joint department, and be accountable to the corporate officers. I also emphasise that the delivery authority will not be affected by the regulations; its role is unchanged, although it will now be closer to the Houses. This ensures that the programme retains its valuable experience and expertise. These regulations will allow for greater co-ordination and engagement between the Houses and the delivery authority, which could in turn allow for the delivery of restoration works much sooner. Similarly, the regulations will not alter the role of the Parliamentary Works Estimates Commission; it will remain in place and will scrutinise the delivery authority's estimates.

This statutory instrument is vital to ensuring that this historic building is restored, while making sure that we deliver for the British taxpayer. Our commitment

[LORD TRUE]
to ensuring good value for money is reflected in Section 2(5) of the restoration and renewal Act, and it is an approach that I will prioritise.

I would like to reassure colleagues that the House's important role in this project is not diminished by the regulations. Under Section 7 of the 2019 Act, no restoration works, other than preparatory works, can be carried out until Parliament has approved the delivery authority proposals for those works. In addition, further approval is required for any proposals that would significantly affect the design, timing or duration of the parliamentary building works. Bringing this project in-house is an opportunity, as an in-house governance structure should improve accountability and engagement with Parliament by allowing a close interaction with and accountability to the commissions of the two Houses. I beg to move.

Lord Best (CB): My Lords, I thank the Lord Privy Seal for his opening remarks. Alongside the noble Lords, Lord Carter and Lord Deighton, and the noble Baroness, Lady Doocey, I am a member of the board of the restoration and renewal sponsor body, which is now to be abolished under the terms of this statutory instrument. We were charged with implementing the Parliamentary Buildings (Restoration and Renewal) Act 2019, and I have been acting as the spokesperson responsible for reporting to your Lordships' House on behalf of the board.

Before we go, the board has bequeathed to its successors a synopsis of the lessons we have learned from our experience over the last two and a half years. Our letter to the chairs of the new client board and new programme board will be publicly available on Monday. Perhaps I can draw out that letter's three interconnected conclusions. First, the governance structure devised by the R&R Act was flawed. The theory was that creating an autonomous arm's-length sponsor body would mean freedom from political interference and would expedite swift progress after years of delay. This was naive. The reality was that the relevant parliamentarians retained a controlling role. The work of the sponsor body was constantly held back and confused by the views of parliamentarians, particularly those on the House of Commons Commission who were not committed to the large-scale R&R programme envisaged by the 2019 Act.

In particular, there was antipathy towards a full decant of the Palace. We believed this to be necessary if the essential works, most notably to sort out the horrendous underground labyrinth of pipes and cables in the basement, were to be carried out expeditiously and safely. Indeed, a decant was part of the legislative framework we were obliged to follow. Lack of agreement on this fundamental part of the R&R process highlighted the inherent conflict built into the governance arrangements for a supposedly independent sponsor body.

Under the new arrangements, the work of the sponsor body, with its oversight of the delivery authority, is to be taken in-house, with its functions transferred to the corporate officers: the clerks of the two Houses. Hopefully, this means that an in-built source of disagreement and crossed wires will now be removed. Our successors will be able to act as a single, united client speaking with one voice in championing the programme and progressing the works—I hope.

However, this leads to a second conclusion. There has never been clarity on the budget, timescale or scope of the R&R exercise. That clarity is now needed if our successors are to avoid endless delays and a waste of public funds, with the delivery authority instructed to undertake unnecessary work. If there are maximum or minimum levels, for example of accessibility in the Palace or of its energy efficiency and sustainability, these need to be stipulated. If Parliament is never going to accept a total cost for the whole project of more than X pounds or a decant period of more than Y years, that needs to be crystal clear up front and as soon as possible.

Thirdly, and finally, the outgoing board accepts with the wisdom of hindsight that we should have recognised that the sudden changes to the country's fortunes meant a course correction was inevitable. It is obvious in retrospect that when the Covid pandemic struck, followed by turmoil in the economy, a retreat from the measures envisaged by the 2019 Act was going to be called for. Our successors and our colleagues in the delivery authority need to be ready for changes of direction and be prepared for fresh thinking as external circumstances alter.

At the end of this frustrating experience, I remain of the view that, although it will cost a fortune and will need everyone to move out of the building for a prolonged period sooner or later, none the less, the restoration and renewal of Parliament is an incredibly worthwhile initiative. Research shows that the wider public hope for and expect a full refurbishment of this much-loved building. Investment in this great endeavour will support skills, crafts and businesses throughout the UK. A proper R&R programme would not only render the building safe from fire, asbestos, the breakdown of services, falling masonry and the rest but actually save money, and possibly save lives, over the years ahead.

However, I recognise the constraints for elected Members of Parliament. I do not face constituents who may well say, "While we're struggling through a cost of living crisis, Parliament is spending billions on its own comfort". Also, the dark cloud of moving out for several years to a less amenable base elsewhere colours everybody's judgment. Nevertheless, although the process may have lost two or three years, I hope that our successors will have the courage and determination to see it through.

What has been achieved will provide a solid basis for the next stages. Most of the excellent staff in the sponsor body and the development authority will carry on, and their work to date, despite operating throughout the Covid pandemic and through times of political and economic turmoil, has produced a vast quantity of data and physical survey work that will now make possible a clear plan. This plan may mean a succession of more modest mini-programmes stretching into the indefinite future, rather than the single major programme that we pursued, but, if the big issue of the basement renewal can be sorted, all is not lost.

In concluding our work today, we all wish our successors well. We hope that, despite the failure of the 2019 Act, progress will now be made in restoring this internationally recognised and iconic Palace for which the nation is right to feel huge pride and affection.

4 pm

Lord Forsyth of Drumlean (Con): My Lords, this is not an area that I have looked at very carefully but, when I looked at these regulations, I was rather puzzled by what we hope to achieve by them. The Lord Privy Seal, in his opening remarks, told us that we would not lose the existing expertise and that the delivery authority would be unchanged. So it is not clear to me why transferring responsibility to a corporate body, which is undefined but I assume is the two clerks of the respective Houses, will alter the proposal that was going to cost £13 billion or £14 billion—whichever it was—which, as the noble Lord, Lord Best, just pointed out, is pretty unaffordable in the current climate. Whether you need to be elected or not, spending that kind of money is simply not possible in the current climate. The money is not there. I am worried by exactly what the benefit of this will be, because it looks like the same people are confronted with the same problem, which they have to take forward.

The noble Lord, Lord Best, talked about the belief, which he described as "naive", that it would be possible to do this without political interference. The reason I want to speak on these regulations is to express frustration at the way projects are carried out in this place, without proper consultation with the Members. In the other place, Members are responsible for voting the means of supply. In this place, to some degree, we are responsible for explaining why these sums of money are being spent.

I can give a more recent example. The decision to alter the security arrangements at Carriage Gates results in traffic going in a one-way system along what is called Chorus Avenue at the front of the House of Lords. That will cost £70 million and, in the process, will put pedestrians at considerable risk. A number of colleagues have argued that there should be a perimeter fence around the House and that that area should be closed to pedestrians. It is very dangerous, and one person lost their life crossing the road. When colleagues make these remarks and talk to the authorities—the corporate body, as it exists—they are ignored.

There is huge opposition to the creation of a new front door to this House. The cost was £2.5 million and it is now £3 million—for a front door. One worries about value for money. The argument put forward is security but, at the end of the day, it is up to Members to discuss these ideas instead of them being imposed on us. We are told that the changes to Carriage Gates and their effect on us are going to happen, that we have no say in the matter and that considerable sums are being spent.

I want to ask my noble friend the Lord Privy Seal a number of questions. First, how much have we already spent on deciding what to do? I understand it runs to hundreds of millions of pounds. Secondly, why is it going to be any different and where is the accountability? The only thing I can see in these regulations is that there is going to be an annual report:

> "At least once in every calendar year, the Corporate Officers must prepare and lay before Parliament a report about the carrying out of the Parliamentary building works and the progress that has been made towards completion of those works."

There is nothing about the expense, estimates or accountability. I find it difficult to accept the idea that an annual report will provide accountability to Members of this House or the other place.

In short, I look at these regulations and it seems to me that nothing is actually going to change and that the fundamental, systemic, strategic problem remains. The noble Lord, Lord Best, said he thought that we might end up doing a series of small projects, perhaps concentrating on the problems in the basement, if indeed that is practical. I may be a Peer, but I do not have a stately home. However, if I imagine for a moment that I have a huge stately home on the scale of this place and I have to be involved in restoration and renewal, if a bunch of consultants came to me and said, "The cheapest way to do this is for you to move out and for the whole thing to be done in one go", if I were spending my own money I would almost certainly say, "Not on your life." I would say, "Why don't we do it a bit at a time over the next 30 years, because that way I might be able to afford it?" To try to do everything in one go is unaffordable. Of course it is always possible to argue that the costs will be less if you do it all in one go, although the experience of building this place in the 1850s was that it did not quite work out that like.

I say to my noble friend that I worry about these regulations. I understand what they do, but I am not sure that they will deliver for the taxpayer what the taxpayer might expect or what the Members of this place might expect in carrying out their duties.

Baroness Doocey (LD): My Lords, this building is like a patient held together with bandages and sticking plasters when only serious surgery can restore it to health. Advice from a range of experts makes it clear that the best way forward is for Members to move to temporary accommodation while the intrusive and very disruptive work is carried out.

It was precisely because making this happen would be so difficult and controversial that Parliament put into statute a sponsor body for the project to act independently and supposedly free from political interference. However, ever since the ink was dry on the Act of Parliament, the sponsor body's work has been sabotaged by powerful Members of the Commons who want the Palace to be restored and made safe only so long as it causes no inconvenience to them personally and they can remain in the Palace while the work is carried out. Meanwhile, the functions of the delivery authority, which needed to undertake extensive surveys, have also persistently been held back by restrictions on access. So short-term expediency and convenience have won, while the longer-term interests of this Parliament have lost.

So what now? We now have to examine the new arrangements and ensure that they are fit for purpose. If we are no longer to have an independent sponsor body and the project is to become the province of Parliament, it follows that the new arrangements should at the very least be more accountable, but I worry that

[Baroness Doocey]
the new structure will not live up to that ambition. There is to be a programme board with day-to-day responsibility for the project. It is to be

"as small, as senior and as stable as possible to support its effectiveness, but as large as necessary to reflect the range of key stakeholders that need to be represented."

Meanwhile, the client, in theory replacing the sponsor body and instructing the programme board, will be the two commissions of the Commons and the Lords sitting together. Having been a member of the commission in this House for four years, I say with great respect to its individual members that I am not confident that those arrangements will result in accountability either. Each commission is a large, opaque body and is noted for neither its transparency nor its swift decision-making. So I worry that this structure loses the independence the sponsor body set up but gains us nothing in accountability.

This is important, because Parliament's in-house record of managing very large- scale projects on time and on budget is dismal. Every very large project, from Westminster Hall to the Elizabeth Tower, has run vastly over budget and miles behind the original timescale. Unless there is very careful oversight, there is no reason to believe that the limited restoration and renewal now on offer will not suffer the same fate.

We have to ask whether the commissions as client of the programme board will really devote the necessary time and be sufficiently independent to scrutinise this project. Of course, the Public Accounts Committee in the Commons will do its best to keep an eye on progress, but it already has an incredible workload. The National Audit Office will likewise continue to conduct its in-depth analysis of whether what has been spent provides value for money for the taxpayer, but both bodies have the whole gamut of public spending to look at, and their accountability mechanisms rely entirely on very busy Members of the Commons. Meanwhile, they both act retrospectively, blowing the whistle after vast sums of money have been spent rather than identifying problems coming down the track and raising the alarm.

I wish the commissions, the programme board and the delivery authority well, but I have very serious reservations about whether today's SI really leads us to a better, more robust and more accountable means to achieve restoration and renewal. Regrettably, I fear that we are setting up overlapping echo chambers that, despite the best of intentions, will result in less transparency, less accountability and ultimately less chance of delivering a successful project. I very much hope that events will prove me wrong, but I am not holding my breath.

Lord Newby (LD): My Lords, the very fact that we have to contemplate a new structure for undertaking this work shows what a dismal period we have been through, lasting many years, with huge amounts of work, vast expenditure and virtually no output. Although everybody agrees that major works are indeed essential, we just cannot carry on as if things will carry on.

The three issues that this proposal attempts to deal with have been aired by a number of speakers. Until the structures are set up and operating, the jury will necessarily be out as to whether they will be successful.

The first issue, which the noble Lord, Lord Forsyth, raised, is: what is the prospect of this body being any better than its predecessor in actually taking any decisions? The answer is that the previous structure was prey to the whims of one or two powerful people in the Commons. The decision-making structure here, being vested as it is in both commissions sitting jointly, at least means that we will not be subject to whimsical decision-making. That might be a modest expectation and aim, but frankly, given the history of this project, if we can avoid that it will be a major step forward.

The second issue relates to the cost and scope of the project. As the noble Lord, Lord Best, said, there has been a lack of clarity on budget, scope and timescale. In asking for a prospectus that is crystal clear on all those fronts, he is slightly crying for the moon, because, as anyone who has ever done anything in an old building knows, once you start you find that there are problems that you did not know existed. Saying, "We know this is going to cost £X billion and that's the cash limit", would be a rather unsatisfactory way of proceeding. We need to know what we want to achieve and the process for getting there, because everything else flows from that. That is what the current process seeks to achieve.

On cost, I completely agree that the original approach is unsustainable in the current climate. The original approach, which we saw in most detail in the plans for decanting your Lordships' House, was almost on the basis that money was no object. It was terrific: in some of the options we would have had a roof terrace and all these wonderful things, and offices for everybody—far more than there are now. That was unaffordable then in reality, but it is doubly unaffordable now.

4.15 pm

However, you must think about the period over which this work will happen. There is no way, with a dictator in charge of this project, that you will spend huge amounts in the next two or three years. Therefore, when we say that we do not want to be seen to be spending billions of pounds in the middle of a recession, frankly, chance would be a fine thing. There is no way this project will get into its major expenditure phase during this recession. It will take a minimum of 18 months to decide what we want to do. We then must start doing it, and it will take another year or two before the operation gets into motion. Unless you are extremely pessimistic about the Government's plans for growth—or lack of them—you would hope that by the time we get round to spending any decent amount of money, the economic position will be considerably different from that of today.

It is possibly a cheap political point, but if the Government are prepared to throw away £35 billion on a failed track-and-trace system, they should be prepared to spend a fraction of that restoring a building which the whole country values and wishes to see in good order. I hope the proposals we adopt will be practical and not seen as extravagant, but, equally, that we will not delay implementation because "the nation cannot afford it", as that is not the case.

The final issue that the new process must deal adequately with, and which was raised by the noble Lord, Lord Forsyth, and my noble friend Lady Doocey,

is accountability. The SI talks about an annual report. I think it fair to say that the team coming across from the sponsor body has a significant comms component and a comprehensive series of plans for consulting Members. I agree that this is essential, but it cannot be a block. We must make progress, because this lack of action is costing hundreds of millions of pounds and threatening the entire physical integrity of the building. This is the last best chance to sort it out.

Lord Collins of Highbury (Lab): I agree with all the comments so far, but I repeat the words of my noble friend Lady Smith when we debated the report the SI has come out of, to end the previous structure. She emphasised that this

"is not our building. It belongs to the nation as the home of Parliament, and we have a responsibility as custodians of this building for future generations."—[*Official Report*, 13/7/22; col. 1542.]

It is not about what we want but about protecting something that has been the symbol of democracy for hundreds of years. That is my starting point.

Whenever I hear the phrase "we want to avoid political interference", I know that it will lead to political interference, as opposed to what this project needs more than anything: political buy-in. How do we ensure that when decisions are made, those with the responsibility for funding will support it? There is no point having grand plans if, at the end of it, people say that it is not affordable. We must have political buy-in—

Lord Forsyth of Drumlean (Con): The noble Lord said that it is not our building. Who, then, is the client? Who is responsible for deciding what happens if it is not the Members of this House and the other place? Who is the client?

Lord Collins of Highbury (Lab): We clearly are. I am not saying that we are not. I was hoping to make the case that our responsibility is not limited simply to what we want for now. Our responsibility is to look to future generations as custodians of this place and not simply managers. Even more importantly, we talk about accountability, but I want to keep using the words "political buy-in", because at every stage of this project we have to ensure that there is consensus and political buy-in. When we start making party-political points, we will fail.

When the noble Baroness, Lady Doocey, was Chair of the Finance Committee and I was a member of it, we had regular discussions about this. There is perhaps a wider assumption in the world outside that this building needs restoration and that we are planning a restoration programme, but this building is like the Forth Road Bridge: we have not stopped restoring it. We have spent hundreds of millions of pounds a year to restore the fabric of this building. The problem, as we all know, is that when this building was built by the Victorians it was full of shortcuts and making do. Since then, we too have been making shortcuts and making do, which has added to the problem. A lot of the difficulties we face are from periods when we have made this innovation here and developed something else there. The mechanical and engineering problems we face downstairs did not start with the Victorians; they have been going on since the place was built. How do we address that?

I agree that we can all be frustrated by decisions being made without proper consultation. When I was on the Finance Committee, what I found most frustrating was trying to pin down the people making the decisions and make them responsible for those decisions. We do not make them accountable by taking responsibility away from them; we have to do the opposite. Making them responsible and accountable means that we, as the custodians, should set clear objectives and policies, so that when they are managing the programme, we can ask whether they have met those objectives and whether they have been successful. Those objectives may be cost objectives or other objectives.

The Clerk of the Parliaments has heard me say many times that I want to ensure that he can measure his activity against the clear policies we set. The arguments against decanting are about the big costs and that, in decanting, we are being too extravagant. Actually, one can make the case that decanting could save money. The QEII Centre was built some time ago and its own mechanics and electrics are in desperate need of renewal. That has been postponed, because we may move in and help it to do the work, so the process that we immediately think could cost a lot of money could save the public and the taxpayer a substantial amount of money. The issue is how we define those objectives and look at what we are doing as a whole.

One other thing that the noble Lord, Lord Forsyth, said was absolutely right. When we look at R&R, we must integrate properly what we are doing now in restoring this building. When I was on the Finance Committee, I thought, "Do we delay that to fit it in with R&R? Do we move forward on it? Is it taken into account in R&R?" All these issues have not been properly addressed.

We all have a responsibility—in particular, for the new governance structure, which I support. I should declare an interest, because I am going to be a member of the programme board; hopefully, I will be able to keep expressing the opinions I am expressing today. I will not be saying, "Tell me to make this decision". I will be saying, "I want you to make the decision, but based on the clear policy objectives set by both the programme board and the two commissions". That is what I hope to see but I am not fixed, by the way. If someone can persuade me that not decanting fully could work, I will go with it, but I like the idea that setting clear objectives, budgeting properly for them and having proper buy-in is a better way of doing this.

I support the regulations. We have made the decision anyway; we have already had a debate. I think that we will make this project more transparent with more accountability. I support that.

Lord True (Con): My Lords, I am grateful to all those who have spoken in this debate. I must say, as a fairly recent tenant of the office of Leader of the House of Lords—it is a tenancy—I am finding it interesting trying to find out why and where things happen. Having experienced the horror of a powerful earthquake, as I have in my life, I sometimes feel like the little boy trying to find the butterfly that flapped its wings to cause all these things to happen in the first place.

However, we are where we are. As all those who have spoken in the debate have said, this is an extraordinarily important building. It is a palace of the people. As Leader

[Lord True]
of your Lordships' House, I submit that its most fundamental importance is that it provides a place, and should provide an environment, in which Members of Parliament can carry out their fundamental democratic duties to hold Governments to account, consider legislation and discuss both between themselves and across the two Houses how things should be accomplished in the best place and in the best way. However we take this project forward—having listened to this debate, I know that an enormous amount of expertise and thought has been and will be given to this, and I pay tribute to the members of the sponsor body—we must never forget that this is a House of Parliament, and one that cannot simply say, "We can send these people away".

I note what was said by the noble Lord, Lord Best, whose work on this and contribution to our House have been outstanding. We cannot avoid interference in a House of Parliament, as it was put by parliamentarians. That is why we are here: to make judgments and choose priorities. It may well be true that talk of a decant—the noble Lord was right in what he said on this—did cause some people to be troubled by what was proposed. But I assure your Lordships that the commissions have asked for a wider range of options to decant as we go forward, with Members and staff from areas of the building affected by the works being considered. The House will have future opportunities to take decisions, and it will be informed by full analysis and wide consultation and engagement. As someone said—perhaps it was my noble friend Lord Forsyth—it is important that Members feel engaged and informed as we go forward. The word "transparency" was also used by the noble Baroness, Lady Doocey.

4.30 pm

Work will continue. I assure the noble Lord, Lord Best, and others that the work that has already been done is still valuable and valued and will inform the decisions the commissions and the Houses make. It is true that the decision of the commission to review the programme, in March, incurred some cost. I am informed that it resulted in the delivery authority incurring £70,000 of expenditure, mainly associated with withdrawal of job offers and cancellation of supplier engagement events.

I repeat: a large amount of valuable and necessary work has already taken place on requirements, standards, intrusive surveys and all the material to which the noble Lord, Lord Best, referred. This is not wasted work; it is being used to understand the condition of the building and inform better decision-making, and it will be utilised in the revised programme. Having said that, I agree that value for money and ensuring we deliver for the British taxpayer must be key priorities, although measured against other needs, as we were advised by the noble Lord, Lord Newby.

The process for shortlisting the options currently being prepared by the delivery authority is designed to elicit the very clarity that a number of Members asked for—on scope, budget and timescale. The client board and the new programme board will consider all the options between now and the summer; then, both Houses will have the chance to debate and vote on the proposals at the end of 2023, on current expectations.

I am always nervous when my noble friend Lord Forsyth speaks, because I know it will not be easy, but that is right for your Lordships' House. He asked about the total cost of the work to date. The sponsor body and delivery authority were created in May 2020. The actual and projected spend of the sponsor body for 2020-23 was £31.4 million, comprising £12.3 million in 2021 and an estimated spend of £19.1 million in the subsequent two years. The overall cost of the delivery authority and sponsor body together was £299 million. I reassure my noble friend that a lot of this work will be maintained and will inform the process going forward.

My noble friend and the noble Baroness, Lady Doocey, asked how the future situation will be different and how the costs will be properly scrutinised. I am assured that the scrutiny of costs will be robust, not least in the light of the response of both commissions to the emerging costs that the sponsor body presented at the start of 2022. The noble Lord, Lord Newby, is right to say that the programme must clearly remain in step with the expectations of both Members and the wider public.

Under the new system, there will be additional layers of scrutiny and challenge. The new in-house client team will be required to hold the delivery authority to account for the costs it presents, and the new head of that team is aware of the need to boost capability on that front to ensure it meets this important objective. Costs will be presented to the programme board, which will benefit from the input of parliamentary and external members with particular expertise in programmes of this scale and complexity. That expertise will provide additional challenge and scrutiny. Furthermore, all costs will be presented to the client board, comprised of the two commissions, ensuring valuable political leadership and the scrutiny of proposed expenditure. All these steps will be undertaken before estimates are submitted to the estimates commission. Taken together, they represent significant and robust controls.

My noble friend and the noble Baroness, Lady Doocey, challenged whether the House authorities would, frankly, have the capacity to manage the project and the structure that goes forward. I say openly as Leader of the House that I would certainly wish to see greater transparency and more advance advice in some of these things. My noble friend mentioned the New Palace Yard project. I also learned very recently about this proposal, at a time when it was already all agreed and after all the contracts had been let and decided. So I share my noble friend's concern about some aspects of the decision-making—and, indeed, about the costs of a project of over £70 million value, of which the House of Lords' share will be some £30 million, I believe.

Therefore, I share noble Lords' concerns that we do not repeat those mistakes. There are important lessons to be learned. The Elizabeth Tower project was another project of this sort. I will not use strong language, but, if I might express a personal opinion, it was disappointing that a building so famous across the world should take four years to set right and put again in place. I do not think that many other countries with something so famous as Big Ben, as it used to be called, would have taken so long over it.

There are lessons to learn. My understanding, and the assurances I have been given, is that those lessons have been learned and will be absorbed.

Baroness Doocey (LD): I am very pleased that the Minister said that there will be more transparency. That is very welcome. I wonder whether he would consider how the figures could be more transparent, because the whole of the spending on both the delivery authority and the sponsor body has been shrouded in secrecy—not for those of us on those bodies, but for everyone else. It would be much better if there was a process—I am not suggesting what it should be—whereby vast expenses are much more open and transparent, so that we can see what the money is being spent on before it is spent.

Lord True (Con): My Lords, that is an important challenge. On the local authority that I once had the honour to lead, one of the first things I did was ensure that items of spending over a certain level were put on the web immediately, which was not then current practice. I am sympathetic to the aspiration. I am only Leader of the House of Lords; I am not commanding this process. As Leader of the House of Lords I will try to ensure that matters are as clear as they should be.

Lord Forsyth of Drumlean (Con): On the point about my noble friend not commanding the process—in many ways, I wish he was—there is a real problem, to pick up on what he said about the most recent project. It is a cultural thing. It is a culture of, "We are here to be done unto by people who know what's best", and consultation consists of telling us, "This is what is going to be done." When you say that it is not such a good idea, the response is that it is all decided. If my noble friend can change that culture, it would make it so much easier to make progress.

Lord True (Con): My Lords, I fear that I have trodden too widely. This is not a debate about me personally—God forbid. Nor is it about the wider culture that my noble friend asserts exists. I have heard that said by others and I am conscious of it, and as a relatively new Leader of your Lordships' House, as I said, I am extremely concerned that every Member of this House feels involved and engaged with all that is happening. To repeat my opening remarks, which were personal rather than from my draft, this before all else is a place where democratic work has to be done. Therefore, the role of Peers and Members should be pre-eminent in that.

On accountability, the process is being directed not by me but by the new in-house client team, in which I will have a part as a member of the commission on the client board, and it will be required to hold the delivery authority to account for the costs it presents. As I have said, the new head of the team is aware of the need to increase capability. The costs will be presented to the programme board in the way I have described. There will be extra expertise on it. All costs will be presented to the client board composed of the two commissions. I have described the process and will not go over it again. I am conscious of the noble Baroness's challenge, and I am sure that those who read the debate will be too.

At this point, and with these regulations, we are simply seeking to wind up the sponsor body and launch the new ship, which I hope, despite the scepticism of noble Lord, Lord Best, who also expressed hope, will take us forward in an effective way, allowing Peers and Members to feel involved when considering options that will be presented next summer and which will come before both Houses for decision at the end of the year. We are just starting this process. I submit that we should allow and support it going forward. For all the proper scepticism that some noble Lords have expressed, I think the noble Lord, Lord Newby, is right to say that, ultimately, we have to do our duty to make sure that this building is fit for purpose and for future generations. That is the challenge.

It is clear that most who have spoken and others I have spoken to are committed to ensuring that this remarkable building, which we can proudly call our place of work, is protected for future generations. I hope that noble Lords will join me in supporting these regulations, which will come into force on 1 January 2023, as well as in supporting the delivery authority and those involved in programme going forward. All parties are represented on the boards involved, and I agree with the noble Lord, Lord Best, that there should not be politicisation of the process. It is important that those from all parts of both Houses should come together to ask challenging questions and to put themselves in a position to make decisions next year.

Motion agreed.

Public Contracts (Amendment) Regulations 2022

Considered in Grand Committee

4.44 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the Grand Committee do consider the Public Contracts (Amendment) Regulations 2022.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, these regulations, which were laid before the House on 8 November, have two functions. First, they amend the domestic public procurement regulations to ensure that changes in calculation of VAT in the valuation of contracts do not place undue burdens on contracting authorities. Secondly, they will ensure that NHS trusts and NHS foundation trusts are treated consistently for the purpose of applying certain obligations which promote transparency.

Public procurement in the UK above certain financial thresholds is currently regulated by the procedures laid down in the Public Contracts Regulations 2015, known as the PCRs. These financial thresholds are set down in the World Trade Organization's Agreement on Government Procurement, known as the GPA, and are revised at international level every two years to take account of currency fluctuations. Those revisions are subsequently implemented domestically, by amendment of the PCRs, to ensure that the UK

[Baroness Bloomfield of Hinton Waldrist]
complies with its obligations under the GPA. These thresholds for regulated public procurement are not altered by this SI.

The PCRs also outline specific, less prescriptive procedures for public procurement carried out below these thresholds in order to facilitate access to public procurement for SMEs. This takes place by requiring opportunities to be advertised on a portal called Contracts Finder and by prohibiting assessments of suitability where they are used to narrow the field, rather than as part of the assessment of bids. Below-threshold regulation also improves transparency by requiring the publication of details of the contract published. The thresholds are currently £10,000 for central government bodies, known as central government authorities, and £25,000 for wider public sector bodies, known as subcentral authorities.

This SI will implement changes only to the lower-value thresholds in the PCRs and therefore only impact on the regulation of lower-value contracts. The amendments are necessary in order to address the impact of the new requirement to include VAT in the assessment of contract value. The change to how VAT is considered in estimating the value of a contract is a result of the UK joining the GPA as an independent member following EU exit. When the UK was a member state of the EU, it was obliged to adopt the EU's methodology for calculating the estimated value of contracts. The EU's thresholds included a 13% unilateral VAT reduction agreed upon in 1987 as a solution to a dispute with the United States. As such, contract values were to be calculated exclusive of VAT. This was, and remains, an internal EU measure which it is no longer appropriate to apply in the UK now we are an independent member of the GPA. Last year, we therefore amended the 2015 regulations, such that contracting authorities are now required to include VAT in the estimation of contract values for the purposes of establishing whether a contract is above or below the threshold.

To ensure a consistent approach, this change was applied to all thresholds in domestic procurement regulations, including the lower thresholds. While the upper thresholds were increased to make allowance for this, the lower thresholds were not, which in effect has resulted in a reduction to those thresholds. This instrument will rectify this discrepancy by raising the lower thresholds for central government authorities from £10,000 to £12,000 and for subcentral authorities from £25,000 to £30,000. This will ensure the thresholds effectively remain the same once contract values are calculated inclusive of VAT, thus avoiding bringing additional low-value contracts within scope of the below-threshold regime.

Turning to the second function, this instrument also provides that NHS foundation trusts are to be treated consistently with NHS trusts and be regarded as subcentral authorities. By way of background, for the purpose of the below-threshold regime, subcentral contracting authorities, such as local authorities, are subject to the higher of the two contract value limits for the purposes of publishing notices on Contracts Finder. NHS trusts are considered central government authorities, being listed on Schedule 1 to the PCRs; however, following consultation it was agreed that NHS trusts would sit alongside subcentral authorities in applying the higher value limit to below-threshold procurement and this is reflected in these regulations. At the time, the term "NHS trusts" was taken to mean all NHS trusts, including foundation trusts.

NHS foundation trusts were added to Schedule 1 to the PCRs last year as a category distinct from other NHS trusts. The unintended consequence was that NHS foundation trusts must now follow the lower contract value limit of £10,000 in respect of publishing notices on Contracts Finder.

This has caused confusion within the NHS, particularly because NHS foundation trusts, being semi-autonomous organisational units within the NHS, were established to have more financial and managerial freedom than classic NHS trusts. It is therefore seen as inappropriate that they should be held to the central government threshold for publication when NHS trusts are not. This amendment will rectify that by applying the same threshold to NHS foundation trusts as is currently observed by NHS trusts.

There is no impact on the Procurement Bill; having just seen that Bill through its Third Reading, I am pleased to be able to say that. This SI simply amends the existing legislation. The regulation of below-threshold procurement in the Procurement Bill is intended to continue the position that will be reached by this SI and will set the lower value limits at £12,000 and £30,000 respectively.

I commend these regulations to the Committee and beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I welcome this opportunity to raise an issue that arose during the passage of the Procurement Bill through the House. I congratulate my noble friend the Minister on introducing the regulations before us, which I support.

All I seek is an assurance and confirmation from my noble friend that, with these limits being lower than the limit to which we are subscribed under our independent membership of the GPA, produce from local growers, farmers and agricultural producers will be accepted in preference to those coming from the EU or other countries. Basically, it is about trying to support home-grown food and our farmers as they embark on a more sustainable way of farming.

I understand that, because the Procurement Bill is very specific, we are signed up in the same way as we were to the EU's thresholds when we were part of it and cannot bid for such contracts over $136,000. Can my noble friend commit to the fact that we will be able to encourage our farmers to supply local hospitals, as in this case, but also military defence establishments, schools, prisons and all other public procurement contracts to ensure that we source more of our food for these establishments locally than has previously been the case?

Lord Scriven (LD): My Lords, I thank the Minister for presenting this set of regulations in such a clear, concise and understandable way to try to make sense of the existing situation post the situation that she talked about.

These Benches support the thrust of and details in the statutory instrument but I want to ask a couple of questions. First, I am somebody who is not an expert

in statutory instruments, but the dates on which the SI is to be made and come into force have three asterisks next to them. Is that normal? When is this statutory instrument intended to come into force?

The second issue is to do with the thresholds and the use of VAT. Some goods are exempt from VAT while some have a VAT level of 5%. The effect of putting in the statutory instrument the figures of £12,000 and £30,000 will be that some contracts, for example in printing, will by default have a slightly different total value than those with a 20% rate of VAT because they are exempt from VAT. Would it not be more sensible to use the figures of £10,000 and £25,000 and include a provision that the threshold for the contract will be at the rate of VAT for the goods and services being procured, rather than having a blanket rule when some goods and services do not have a VAT rate of 20%?

With those questions, as I say, these Benches support the thrust of and reasoning for this statutory instrument.

Baroness Chapman of Darlington (Lab): This is really just about making a change in order to keep things the same. We certainly agree with the decision about NHS trusts and foundation trusts but I have a question about services or goods that are VAT-exempt and the Government's thinking on them. There also seems to be a delay in this issue coming about and it being rectified. I wonder whether that may has disadvantaged some businesses, particularly small businesses, over that period.

I notice that, when consideration of this instrument was raised in another place, my colleague, Flo Eshalomi, asked specifically why it has taken the Government nearly a year between introducing the new regulatory scheme on 1 January 2021 and attempting to fix this inconsistency. When the Minister responded, he did not answer that at all. I am concerned, as it is troubling that something so straightforward and uncontentious was allowed to drift for so long. What does the Minister make of that? Does she have an assessment of what the impact of that might have been?

Baroness Bloomfield of Hinton Waldrist (Con): I am grateful to all noble Lords who spoke in this short debate. I will answer the noble Baroness, Lady Chapman, first. I do not have a satisfactory response to her question about why this instrument was not laid sooner. We simply laid it as soon as parliamentary time allowed. I recognise that, as that was almost a year, this is not entirely satisfactory.

My noble friend Lady McIntosh asked about farmers. I applaud her commitment to the farming community. I assure her that the principles of non-discrimination still apply to below-threshold contracts. This does not have a bearing on procurement from the farming community, as such. She raised those issues very effectively during the debates on the Procurement Bill; I am sure that they will continue to be discussed as that Bill goes through the other place.

The noble Lord, Lord Scriven, asked about exemptions from VAT and about asterisks. I am told that asterisks are typical and that the SI will come into force in line with the articles in it—basically, as soon as it has been signed.

On the question about VAT from both the noble Baroness, Lady Chapman, and the noble Lord, Lord Scriven, there are two reasons why we use 20% as standard. It aligns the methodology for estimating contract values for the purpose of applying thresholds with GPA parties, such as Japan and the USA, which are not part of the EU and therefore do not have the EU 13% VAT reduction that was agreed in 1987. Also, when contracting authorities are estimating their contract values, the £10,000 threshold will no longer be reduced to £8,333.33, assuming a 20% VAT rate is applied. That is why we are raising the thresholds to £12,000 and £30,000 respectively: it maintains the lower threshold at £10,000 before 20% VAT is added, taking the value to £12,000; and similarly £25,000, before 20% VAT is added, taking the value to £30,000. We are aware that VAT is not always set at £20,000 but it will not be less than this figure, hence why we assume this rate.

In short, as I have said, the instrument makes two brief but important corrections to the regulations governing the below-threshold regime. It will adjust the lower-value procurement thresholds upwards to reduce the burden on contracting authorities and ensure that NHS foundation trusts are placed on an equal footing with NHS trusts in respect of the application of these thresholds. The changes to the lower thresholds will be made under the affirmative procedure using the powers in Section 39 of the Small Business, Enterprise and Employment Act. This regulation-making power permits the Minister for the Cabinet Office or the Secretary of State to

"impose on a contracting authority duties in respect of the exercise of its functions relating to procurement."

I am grateful for noble Lords' support for this statutory instrument; I commend it to the Committee.

Motion agreed.

South Yorkshire Passenger Transport Executive (Transfer of Functions) Order 2023

Considered in Grand Committee

5.01 pm

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

That the Grand Committee do consider the South Yorkshire Passenger Transport Executive (Transfer of Functions) Order 2023.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, this draft order was laid before Parliament on 8 November. It is solely concerned with the South Yorkshire Passenger Transport Executive and the South Yorkshire Mayoral Combined Authority, and has been laid at the original request of the former Mayor of South Yorkshire, Dan Jarvis MP, with the full support of the current Mayor of South Yorkshire, Oliver Coppard.

The order is being made under Section 85 of the Transport Act 1985, which allows the Secretary of State for Transport to make provisions for the dissolution of PTEs and the transfer of their functions, property, rights and liabilities to the relevant integrated transport

[Baroness Vere of Norbiton]
area. This order will dissolve the South Yorkshire PTE and transfer its functions, property, rights and liabilities to the South Yorkshire MCA.

PTEs are delivery bodies responsible for implementing the strategic transport plans in their area. They are responsible for securing the provision of local public transport across their area as they consider appropriate, including commissioning socially necessary bus services and administering travel concession schemes. PTEs have existed in many of our largest city regions for many years, predating combined authorities, which are now responsible for transport planning in their areas.

The South Yorkshire PTE was established by the South Yorkshire Passenger Transport Area (Establishment of Executive) Order 1973 and was variously accountable to the metropolitan county council, the passenger transport authority and the integrated transport authority in South Yorkshire until the South Yorkshire integrated transport authority was dissolved and its functions transferred to the South Yorkshire Mayoral Combined Authority by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014. As well as its responsibilities in relation to buses, the South Yorkshire PTE also owns Supertram in Sheffield and is responsible for the arrangements for its operation.

The South Yorkshire MCA's 2019 review of bus services in its area, chaired by Clive Betts MP, recommended among other things that the PTE cease to exist as a separate organisation and instead become part of the combined authority. The review concluded that a separate arm's-length transport authority was no longer the right model and that a single entity responsible for bus transport strategy and delivery in South Yorkshire would provide a clearer focus on passenger needs and user-centred transport design and delivery.

As the review notes, this is already the case in other city regions—for example, the West Midlands and West Yorkshire—while other city regions, including Greater Manchester and the Liverpool City region, have chosen to retain their PTEs as executive bodies of their combined authorities. The Government recognise that a single entity may support the alignment of transport priorities with economic growth and decarbonisation objectives. However, providing that there are clear lines of accountability and sound governance in place, it is right that combined authorities determine which arrangements are best for their area. In this case, South Yorkshire has also identified scope for efficiency savings that could be reinvested in the local bus network.

Following the bus review, the then Mayor of South Yorkshire asked the Department for Transport to take the necessary steps to transfer the functions of the PTE to the combined authority. The Secretary of State agreed to do so and my officials have worked closely with the mayor's team to bring forward this order. The order will make the MCA responsible for planning, delivering and managing local public transport services, bringing these functions under a single roof.

This order will make a straightforward and sensible amendment to the administration of local transport services in South Yorkshire at the request of the mayor. It is important that the Government deliver on devolution, supporting local authorities in providing services more efficiently for the people in their area. I beg to move.

Lord Scriven (LD): My Lords, I declare an interest as a long-suffering passenger in South Yorkshire. I live in Sheffield, and I am well aware of the area and of the request of the former mayor and the current mayor, Oliver Coppard, for this change. However, in South Yorkshire we are bit perplexed, not because we are not bright people but because since August, as the Minister said, the functions of South Yorkshire Passenger Transport Executive have moved to the mayoral combined authority.

South Yorkshire Passenger Transport Executive's website still exists. Its last post was on 31 August. It states:

> "To better reflect who we are, the communities we serve and the way we work we changed our name on 17 September 2021 from 'South Yorkshire Passenger Transport Executive' (SYPTE) to 'South Yorkshire Mayoral Combined Authority' (SYMCA).
>
> SYPTE will continue to exist and retain the responsibilities of the local transport authority until the legal integration of SYPTE and SYMCA is complete".

which is what this statutory instrument does. However, there is no reference on the mayoral combined authority's website to its function separate from the mayoral authority. There is no way that a member of the public can work out what is happening and there does not seem to be any oversight of the functions of the passenger transport executive. It seems from a lay person's perspective—and from my perspective, and I used to lead a city in South Yorkshire—that by default this has just happened and there is no dividing line. What assurance does the department have that there has been separation until this order goes through and that it is still there? How has the department checked that separation and that the passenger transport executive is independent?

More important for those of us living in South Yorkshire is whether this is an administrative change. We want to see an impact on our buses and trains, not just the deckchairs on the "Titanic" being shuffled as our public transport sinks. Will the Minister say exactly what difference the order will make, and what powers that do not currently exist in South Yorkshire will be brought to bear that will mean that our bus services will be better—or is it just that the existing powers are being shifted to somebody else and therefore the mayor is unable to get anything extra that the passenger transport executive could not get? That is the key issue. Administration is good, but administration for a purpose is the most important thing. Will the Minister explain to the people of South Yorkshire and to the Committee why this administrative change will have an effect on the bus and train services in South Yorkshire?

For example, 103 TransPennine Express trains were cancelled yesterday—a record for the north of England, many affecting people in South Yorkshire. Will these changes have any effect on the mayor's ability to hold TransPennine Express to account? Will this new statutory instrument mean that the mayor will be able to do things that the passenger transport executive was not able to do to help with our buses and trains in South Yorkshire?

The reason why I ask this is really important. Mayor Coppard has a very good way of blaming others for the poor state of buses and trains. To some degree he has a point, but if he asks for these powers, what is it that he will be able to do that people in South Yorkshire—either democratically elected councillors who are on the passenger transport executive or the leaders of the council who make up the South Yorkshire Mayoral Combined Authority with the mayor—are

unable to do at present? I look forward to answers from the Minister, because an administrative change is welcome if there is an effect on our buses and trains but not if it is just a shuffling of administrative posts back in South Yorkshire.

Lord Tunnicliffe (Lab): My Lords, I welcome this order to merge the South Yorkshire Passenger Transport Executive into the South Yorkshire Mayoral Combined Authority. This step should lead to more effective and more accountable decision-making, but it is disappointing that it has taken this long for the order to be implemented. I begin by asking the Minister to confirm that the department is engaging with the South Yorkshire Mayoral Combined Authority and its constituent local authorities to ensure there are no further delays.

Powers and reform must be matched with investment, and it is clear that the Government lack ambition for the future of South Yorkshire's transport network. Today, Ministers still spend three times per head more in London than in Yorkshire and the Humber. If the South Yorkshire Mayoral Combined Authority is to deliver a truly transformative agenda, then the Government must provide real support. I hope the Minister will commit to that.

Baroness Vere of Norbiton (Con): My Lords, I am grateful to both noble Lords for their contributions to this short debate. I hope I was able to warn the noble Lord, Lord Scriven, in my opening remarks that this is an administrative change: it is nothing more exciting than that, but it makes sure that the accountability, responsibilities and governance are clear. It also saves the MCA having both the PTE and the MCA structure, so there will be some small savings. We were asked for this, and it is not something that we would necessarily have required of all MCAs, because MCAs should be able to choose how they administrate their local transport powers. There are no changes to the powers that the mayor will have, although colleagues in DLUHC are looking at taking forward further devolution for places in due course.

Lord Scriven (LD): The Minister has a difficult job in defending this in terms of accountability. People understood the South Yorkshire Passenger Transport Executive, and councils were accountable at a local level for being on it. My point is that, since the transfer of the passenger transport executive to the mayoral authority, all that the South Yorkshire Passenger Transport Executive did has been lost in the myriad of what the mayoral authority does. The public are finding it harder than before to hold anyone to account for what is going on. All this does is formalise exactly the hybrid situation that has been in place since early 2021. As for accountability, if it continues as it has done since the partial incorporation, it does not make the accountability easier; it actually makes it harder.

5.15 pm

Baroness Vere of Norbiton (Con): I beg to differ with the noble Lord on this matter. The people of the constituent local authorities can of course take it up with Mayor Coppard, as the elected mayor. The local authorities that are the constituent parts of the combined authority can also take it up with that elected mayor. All this is doing is trying to take out some of what Mayor Coppard must believe to be unnecessary administration between him and his team and the operation of effective local transport systems. I literally have no further lines on that. If the noble Lord has a problem about establishing accountability, I reassure him that Mayor Coppard is accountable and he should of course raise those issues with him.

I hope the noble Lord knows—I am sure he does—that heavy rail services do not operate under these arrangements but, of course, we look to locally elected mayors to engage very robustly with train service operators in their area. It is the case that light rail services will fall under the remit of the local transport plans that Mayor Coppard will no doubt take forward for the benefit of local people.

On the questions raised by the noble Lord, Lord Tunnicliffe, I suppose one could say that there has been a short delay in putting this administrative order in place. We got to it as soon as we could, but there is pressure on parliamentary time at the moment. I believe that the delay was not excessive and throughout all that time we have had a strong relationship with the local mayor and his team. Indeed, from a transport perspective we have a good relationship with all the local mayors. When I covered that portfolio, I would frequently have conversations with them to hear their concerns and listen to what they wanted as investments.

It is worth touching on some of the investments that we have made and are making in South Yorkshire. South Yorkshire has received £570 million from the city region sustainable transport settlement, which is just part of the £5.7 billion that is going to eight mayoral combined authorities. The South Yorkshire amount includes just over £100 million for the renewal of the Supertram in Sheffield. Prior to that, the area received £150 million as part of the transforming cities fund. The MCA has been awarded £8.3 million in ZEBRA funding to fund zero-emission buses. In addition, from the local growth fund there was £42.3 million towards the Lower Don Valley scheme in Rotherham. There was also a successful bid in round 1 of the Restoring your Railway Fund.

We always look to the mayors of our large cities and city regions to put forward investment ideas, and are grateful that they have done so. The city region sustainable transport settlement schemes are now, I think, all finalised. It is now a question of getting them delivered, and I very much look forward to seeing some of those projects come to fruition to improve transport, not only in South Yorkshire but in all the mayoral combined authority areas that have been the beneficiaries of our investment.

Motion agreed.

Product Safety and Metrology (Amendment and Transitional Provisions) Regulations 2022

Considered in Grand Committee

5.20 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Product Safety and Metrology (Amendment and Transitional Provisions) Regulations 2022.

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, since 1 January 2021, the post-exit UK conformity assessment—UKCA—marking has been in use alongside recognition of the EU's CE and reversed epsilon markings. For most product sectors, recognition of the CE marking in Great Britain is due to end at 11 pm on 31 December this year. The main objective of this instrument is to reduce immediate cost increases and burdens for businesses, given the current cost of living crisis and global supply issues, by providing businesses with additional time to transition to UKCA requirements. This means that businesses will continue to have flexibility in how they can legally place products on the market in Great Britain while maintaining high levels of product safety for British consumers. Without the measures implemented by this instrument, industry will have to meet UKCA requirements from 1 January 2023 at a time of economic hardship for many businesses.

By way of background, the UKCA marking was introduced in Great Britain to replace the EU's CE marking. As a result of Brexit, we have the autonomy to set our own product regulations and ensure that they work for businesses and consumers in this country. To place products on the market in Great Britain, manufacturers must ensure that products meet the essential safety requirements of relevant product legislation. Compliance is achieved by following a conformity assessment procedure. For lower-risk products, manufacturers can self-declare compliance; for higher-risk products, manufacturers may need to go to a conformity assessment body—a CAB—for product testing.

We have of course engaged with businesses on the challenges that they face in transitioning to UKCA. The feedback that we received from industry informed the decision to announce a range of measures in June to make it easier for businesses to use the UKCA marking. However, given the current cost of living crisis and economic challenges that businesses are facing, we need to go further in our support. The SI will not only implement the measures announced in June but provide flexibility to allow businesses to use CE marking or UKCA marking for their goods for a further two years.

Over the past 12 months, officials have delivered an extensive programme of domestic and international engagement to support businesses transitioning to the UKCA regime. Officials have also engaged with UK conformity assessment bodies and worked closely with the UK Accreditation Service to ensure that organisations that wish to become UK CABs can do so.

Despite the work we have done to support industry to transition, industry engagement has indicated that the additional costs and burdens of fulfilling UKCA requirements may be impacting UKCA business uptake. Although we recognise that a further extension to the recognition of CE marking may raise questions about the future transition timescales to the mandatory UKCA regime, we believe that the benefits of reducing immediate burdens and costs for industry in the current economic climate outweigh the potential risk of business hesitancy to prepare.

The UKCA marking remains valid when placing goods on the market in Great Britain. We will continue to engage with industry closely to provide businesses with support and to understand how to take a pragmatic approach to improving regulation to the benefit of businesses and consumers.

I turn to the key elements of the instrument. First, this instrument extends the time for existing transitional provisions allowing certain products meeting EU requirements and markings to be placed on the market, or put into service, in Great Britain. This will give businesses the option to choose to use the CE marking for a further two years until 31 December 2024.

Secondly, this instrument provides that where a manufacturer has undertaken any steps under EU conformity assessment procedures in the period up to 31 December 2024 but those goods have not been placed on the Great Britian market, those steps will be taken to have been done under the equivalent UK conformity assessment procedures. This applies for only as long as any certificate issued is valid or until 31 December 2027, whichever is sooner.

Thirdly, this instrument extends time for existing labelling easements. This will allow businesses to affix the UKCA marking and to include importer information for products imported from EEA countries, and in some cases from Switzerland, on a label affixed to the product or an accompanying document, rather than on the product itself.

The SI does not cover all product areas that require UKCA marking, and there are different rules in place for medical devices, construction products, cableways, transportable pressure equipment, unmanned aircraft systems, rail products, and marine equipment.

Without the measures implemented by this instrument, most businesses will have to meet UKCA requirements from 1 January next year for product sectors covered by this instrument, at a time of cost of living increases and global supply chain challenges. From 1 January 2023, if businesses are unable to meet UKCA requirements, most businesses will not legally be able to place their products on the Great British market. This could cause short-term market and supply chain disruption across different sectors. In turn, reduced product availability could translate into higher costs for commercial supply chains and consumers.

In conclusion, I hope noble Lords will recognise that, at a time of cost of living increases and global supply chain challenges facing UK businesses, it is vital that the UK Government continue to support businesses. Without this legislation in place, recognition of the CE marking in Great Britain would end at 11 pm on 31 December 2022 for most product sectors. The main objective of the instrument is to provide businesses with additional time to transition to the post-exit independent UK conformity assessment marking by providing flexibility to use either CE marking or the UKCA marking, while maintaining high levels of product safety for UK consumers. Therefore, I commend the regulations to the Committee.

Baroness McIntosh of Pickering (Con): While my noble friend pauses for breath, I thank him for introducing the regulations. What will their status be in the context of the EU retained law Bill? Will this be one that the department seeks to keep or to dispense with?

Lord Lennie (Lab): My Lords, I thank the Minister for his detailed introduction to this instrument, the main objective of which is to provide businesses with additional time to transition to the post-exit independent UK conformity assessment, the UKCA. As has been said, the UKCA is a conformity mark that indicates conformity with the applicable requirements for products sold within GB.

The purpose of the instrument, without compromising on safety or consumer and environmental protection, is to correct a deficiency arising from EU exit by preventing immediate cost increases and burdens on businesses, which the Minister set out. It will ensure that businesses continue to be provided with flexibility and choice on how they comply with product regulations. The instrument's provisions will also prevent potential temporary and short-term market and supply chain disruption that may have occurred at the start of 2023 if the recognition of products meeting EU requirements and markings came to an end at the end of December 2022.

We support the instrument overall, but I have some questions in response to the provisions that the Minister set out. First, this is the second extension and it is significantly longer than the first one. What are the Government getting wrong? Is it entirely down to cost of living and supply chain challenges? How sure are they that this will be the last time? If they are not, what needs to change for there not to be another extension?

On the second set of provisions that the Minister set out, the instrument provides for where a manufacturer or other relevant persons has undertaken steps under EU conformity assessment procedures. This applies only as long as the certificate is valid or until 31 December 2027. This seems sensible and the benefits of reduced costs are self-evident, but does it come with any risk? If so, are the Government taking any steps to mitigate this risk? If not, why not just carry over everything? Why is that date specified?

5.30 pm

The third point made was that, if this solution is workable in the interim, why can we not continue in this manner to further make UKCA compliance easier and less costly indefinitely?

The fourth point is to correct a drafting error.

There are three key components of this instrument that directly affect businesses: acquiring conformity, marking and labelling products, and costs associated with businesses familiarising themselves with the changes in legislation, as the Minister pointed out.

Conformity assessment certification will be a net benefit to businesses, because those that still hold conformity assessment certificates with EU-recognised CABs will have more time to transfer them to UK CABs carrying out conformity assessments. Overall, the combination of the impacts of these three components results in a quantified annual net impact that is de minimis. In addition, there are indirect benefits from this measure associated with avoiding potential temporary and short-term market disruption that could arise if this measure were not introduced. Despite significant previous engagement with businesses and other stakeholders, it has not been possible to quantify these impacts due to uncertainties over the scale of products affected and the extent to which sales would be forgone rather than delayed.

Lastly, earlier amendments made by the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020, No. 1460, and the Product Safety and Metrology etc. (Amendment) Regulations 2021, No. 1273, were also assessed as de minimis. This instrument will impact a subset of the original business population in scope of the 2021 and 2020 regulations, and the quantified net annual costs of this instrument are also de minimis. If all the impact is seemingly de minimis or unquantifiable, why have the Government decided to do this? Why did they not give any consideration to not making these changes in order to force the changeover to UKCA to happen more quickly? I would like that question answered.

Briefly, the House of Lords Secondary Legislation Scrutiny Committee raised concerns that businesses have already incurred substantial costs and that this is being deferred again. This is one element of post-Brexit policy-making that has proven much more complex than we expected. Is there more to come or is this it?

Lord Callanan (Con): I thank my noble friend Lady McIntosh and the noble Lord, Lord Lennie, for their forbearance and for being the only ones to turn up and talk about my regulations. They deserve special Christmas medals for that and for the valuable contributions they made to the debate.

The regulations under consideration today are essential to support businesses within the context of the rising cost of living and the many global supply chain challenges they face. As I said in my introduction, for most product sectors, recognition of the CE and reversed epsilon marking in Great Britain is due to end at 11 pm on 31 December. This legislation will therefore provide industry with additional time to transition to the UKCA regime, for most product sectors. It will give businesses continued flexibility in how they can legally place products on the market in Great Britain, by allowing them to use either the CE marking or the UKCA marking, until 31 December 2024.

If this legislation is not implemented, and businesses are therefore unable to comply with UKCA requirements by the end of this year, most businesses will not legally be able to place their products on the Great British market. Industry will also not be able to benefit from the transitional labelling and retesting measures provided by this instrument.

My noble friend Lady McIntosh asked how this instrument relates to the passage of the retained EU law Bill. I would remind my noble friend that the Bill is a separate piece of legislation, with its own aims. Sunsetting retained EU law will help to review and simplify our statute book, ensuring that we understand and utilise what is left and do away with any unnecessary legislation. The deadline is not about a cliff edge but about having a focused date to create the impetus for change, enabling the UK to make the most of its new-found freedom from the EU and build a domestic regime that works for the British people. We will use the additional time under this instrument to address

[Lord Callanan]
challenges that businesses have raised regarding transition to UKCA, and consider whether we can reduce regulatory burdens in the longer term. The short answer to my noble friend's question is that these regulations are unaffected by the REUL Bill.

The noble Lord, Lord Lennie, asked whether there would be a further extension and what needs to change to present a further extension. This instrument shows that the Government are committed to taking a pragmatic approach to implementing post-Brexit rules. We have engaged and listened to industries' concerns, and have responded accordingly on our approach to implementing the UKCA markings. Over the next two years, we will continue to engage with businesses to understand whether there are any further actions that we need to take to minimise burdens on them.

The noble Lord also asked whether the measure on testing would come with any safety implications and whether this could not be done for the longer term. We are confident that extending recognition of the CE marking will not impact product safety or consumer protection. We have made this decision because we want to support industry as much as possible, while maintaining high levels of consumer protection. However, it is important that we introduce our own regulatory approach. An autonomous domestic product regulation regime allows us to set our own product regulations and make them better for UK businesses and consumers, while ensuring high levels of protection from unsafe goods.

The noble Lord also asked why these changes must be made when they are effectively de minimis. We know that lots of businesses are already ready; however, it is right that we provide additional support in the current economic context. In October, 89% of UK manufacturers subject to the UKCA market were either using or planning to use UKCA. However, the risks that we outlined remain, which is why we have acted.

Lastly, the noble Lord noted the Secondary Legislation Scrutiny Committee's report, which highlighted concerns that businesses have already spent money to prepare for the UKCA regime and may have concerns about future changes. Ultimately, the UKCA marking remains valid when placing goods on the market in Great Britain and can still be used by businesses. We will continue to engage with industry closely, and to understand and manage any implications that are flagged up to us.

I underline once more that these regulations are essential to support industry in a time of economic hardship. They will provide businesses with the flexibility to use either the CE marking or the UKCA marking to avoid potential economic impacts, supply chain disruption and the likelihood of limited product availability. We will continue to engage closely with industry to provide support to businesses, and to understand how to take a pragmatic approach to improving regulations for the benefit of businesses and consumers, while maintaining our commitment to high levels of protection for UK consumers. I therefore commend these draft regulations to the Committee.

Motion agreed.

Conformity Assessment (Mutual Recognition Agreements) (Amendment) Regulations 2022

Considered in Grand Committee

5.40 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Conformity Assessment (Mutual Recognition Agreements) (Amendment) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that the draft Conformity Assessment (Mutual Recognition Agreements) (Amendment) Regulations 2022, which were laid before the House on 21 November 2022, be approved.

Switzerland is the UK's 10th-largest trading partner, with bilateral trade between our two countries worth £38 billion in 2021. The UK and Switzerland have strong economic and historical ties, and both our countries have been clear about a shared commitment to maintain a strong trade and investment relationship.

In 2019, the UK and the Swiss Confederation agreed a trade agreement bringing together a number of different areas covered by the EU's various agreements with Switzerland. Included as part of this were provisions to replicate the mutual recognition agreement between the EU and Switzerland for three sectors of UK-Swiss trade: motor vehicles, good laboratory practice and good manufacturing practice for medicinal products. It was possible to reach agreement in these sectors because many of the applicable rules were already aligned internationally. Between them, these three sectors covered 70% of the UK/Swiss trade covered by the old EU/Swiss mutual recognition agreement.

Although this covered a significant amount of trade, the UK and Switzerland committed through a memorandum of understanding to continue to work towards an agreement in the remaining chapters; the UK and the EU also agreed temporary measures to aid continuity of trade in 13 sectors until such an agreement could be reached. On 17 November this year, the UK and Switzerland successfully concluded a mutual recognition agreement in five of these remaining sectors. From hereon in, I will refer to this as the MRA.

The MRA supports trade in goods between the UK and Switzerland by reducing technical barriers to trade but, importantly, it does so in a way that protects the UK's robust product safety system. The UK's product safety legislation requires certain products to be assessed to ensure that they meet requirements in legislation. Sometimes this assessment must be done by third parties that are independent of the manufacturer. MRAs can reduce barriers and costs by allowing this assessment to be undertaken by a conformity assessment body—a CAB—based in the UK for export to the relevant country, in this case Switzerland. We make the same arrangements for Swiss businesses so that the agreement procedures carried out by recognised Swiss CABs are accepted for the purposes of our domestic regulations.

The SI that we are debating today implements this MRA to ensure continuity for UK businesses trading conformity-assessed goods with Switzerland. It does this by amending the earlier 2021 regulations made by my department, which implement MRAs with other countries so that they also include the Swiss MRA. I will return to this briefly when discussing the territorial scope and specifics of the regulations.

Let me now address the measures that we are taking to recognise Swiss bodies and appoint UK bodies under this MRA. This SI provides for the Secretary of State to designate CABs as competent to assess that certain goods comply with the regulatory requirements of Switzerland under the MRA as set out in the schedule to the SI. For example, this means that, where a UK-based CAB would like to be recognised by the Swiss authorities as capable to assess goods against the Swiss measuring instruments requirements, it can apply to UKAS—the United Kingdom Accreditation Service—to be accredited as fit to test against those Swiss requirements. The Secretary of State may then designate the body under the Swiss MRA to assess, for example, measuring instruments for export to Switzerland.

As a result, a UK manufacturer that uses the services of that UK CAB can now use the same body to do its accreditation for the Swiss market. It does not need to identify and start contracting with another CAB operating in Switzerland. This should reduce its costs and make it able to place products on the Swiss market more cost effectively, potentially passing savings on to consumers.

5.45 pm

I now move on to consider provisions for goods coming into the UK. Under this MRA, the UK recognises the results of conformity assessment procedures carried out by recognised overseas CABs against our domestic regulations. This SI makes clear that assessments carried out by a recognised body based in Switzerland should be treated as equivalent to those carried out by a UK-approved body when relevant products are sold in Great Britain. These regulations do not change the detail of the requirements for third party assessment, nor do they amend any requirements related to a product's specification. This means that the UK will maintain its robust product safety protections, while continuing to reduce barriers to trade with Switzerland, adding the benefit of savings to UK consumers.

The Secretary of State will add Swiss bodies that are recognised under the agreement to the UK's register of CABs, known as the UK Market Conformity Assessment Bodies database. This publicly available resource can be used by businesses and regulators to verify the status of CABs very quickly.

I shall now speak to the territorial scope of these regulations. They extend to the whole of the UK, except that Regulation 5, relating to recognition of conformity assessment by Swiss CABs, extends to Great Britain only. Northern Ireland will continue to recognise the results of conformity assessment procedures done under the mutual recognition agreement between the European Union and Switzerland. This is in accordance with the terms of the Northern Ireland protocol to the withdrawal agreement. Regulations 6 and 7 of the 2021 regulations, to which I referred earlier, deal with the Secretary of State's power to designate UK-based bodies under these agreements and information sharing respectively. These powers extend to the whole of the UK. This means that CABs across the UK can be designated under the MRA and the Secretary of State will be able to share relevant information as required under the MRA.

In conclusion, we introduce these regulations to give effect to provisions which keep our barriers to trade with Switzerland low. As I said, we do this while preserving our robust protections for product safety as a responsible Government. This SI will provide certainty on the UK's approach to recognising and designating CABs for certain products under the MRA. I therefore commend these regulations to the House.

Lord Lennie (Lab): My Lords, I thank the Minister for setting out the details of the regulations for us. I note that we have lost our one Back-Bencher, so it is now a two-person show, but there we go.

This instrument makes provision to give effect to a mutual recognition agreement—an MRA—between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation. It amends earlier regulations. An agreement between the UK and the Swiss Confederation came into force on 1 September 2021 and contains the conditions under which each country will accept conformity results from the other. The five areas it covers are: electrical equipment; measuring instruments; radio equipment; transportable pressure equipment; and noise emitting equipment for use outdoors. The MRA for these is a mutual testing arrangement between Switzerland and Great Britain, but is there any expectation that the sectors covered by this MRA will be expanded in the future? The Minister referred to 12 areas and we have five with us. Are the other seven going to be covered by the regulation at some point in the future?

Equally, the MRA sets out how relevant goods can be tested—Switzerland against UK regulations and UK against Swiss regulations. Are there any notable divergences or are they simply technical adjustments between one and the other? The UK has MRAs with several countries agreed as part of arrangements made under the UK's trade continuity programme. To this extent, the assessment is the same as that performed to assess conformity with requirements in third countries. This may reduce the need to duplicate conformity assessment. This will provide continuity. It will also have the benefit of saving time for manufacturers, with products being able to be placed on the market more quickly than if they were required to undergo a separate test of conformity in the UK as well as in Switzerland before they arrive.

The instrument implements the Swiss MRA in a similar way, by amending Schedule 1 to the 2021 regulations so that it includes all the domestic regulations which the UK may recognise for Swiss CABs to test against under the Swiss MRA. Since 1 January 2021, the UK and Switzerland have granted temporary bilateral access to goods conformity, assessed against each other's regulations. Switzerland will no longer apply these temporary measures for new conformity assessment procedures carried out by bodies based in the UK

[Lord Lennie]
after 31 December 2022. Under reciprocal arrangements set out in the Swiss MRA, conformity assessment procedures issued before this date will still be recognised for goods placed on the market in 2023, ensuring continuity of trade between the parties.

When the Swiss MRA enters into force in 2023, conformity assessment bodies will be permitted to issue new approvals for conformity assessment procedures once they are designated under the agreement. The Swiss MRA specifies the products and sectors to which it applies, such as radio equipment. The amended 2021 regulations also set the power of the Secretary of State to designate UK CABs for the purpose of assessing against Swiss requirements. The instrument amends Schedule 2 to the 2021 regulations to include product sectors of the Swiss MRA.

The main direct impact for business associated with this new legislation will be a one-off familiarisation cost, at a central estimate of £2,300. More specifically, as of 11 October this instrument would have familiarisation impacts on only around 300 affected businesses which are involved in the manufacture and sale of the products within the scope of the instrument, and which trade those products with Switzerland but not the EU. The familiarisation costs should presumably be balanced out by the reduced bureaucracy in having to meet a single assessment conformity. Have the Government made any assessment of the value of exports made by the 300 UK businesses to Switzerland that would be required to break even in this regard?

Lord Callanan (Con): I thank the noble Lord, Lord Lennie, for his comments. It is clear that this SI will maintain our robust product safety framework, at the same time as reducing barriers to trade with Switzerland. It will do this by providing for recognition in Great Britain of conformity assessment by Swiss CABs for certain products under the MRA, while Swiss bodies will be recognised in Northern Ireland under their country's MRA with the EU; and by providing for the Secretary of State to designate UK CABs to assess against the requirements of Switzerland for certain products under an MRA.

In response to the noble Lord's questions, I will have to get back to him in detail on the points that he raised, and in writing. In the meantime, I hope he will give us forbearance and allow me to do that, while agreeing that technical agreements such as this play an important function in the landscape of new trade agreements that the Government are negotiating with partners around the world. With these agreements, we demonstrate our commitment to free trade through a variety of means to promote growth in the UK.

With my apologies for not having a detailed answer for the noble Lord, I will get back to him. I again commend these regulations to the Committee.

Motion agreed.

Committee adjourned at 5.54 pm.