Vol. 828
No. 129

Wednesday
8 March 2023

PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF LORDS

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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

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House of Lords

Wednesday 8 March 2023

3 pm

Prayers—read by the Lord Bishop of London.

Divorce: Financial Provision

Question

3.07 pm

Asked by ***Baroness Deech***

To ask His Majesty's Government what progress they have made with their three-year review of the law governing financial provision on divorce since the commitment made by the then Advocate General for Scotland Lord Keen of Elie in his letter dated 16 March 2020 (DEP2020-0150) to gather evidence, consult and develop recommendations on this matter.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, the letter to which the noble Baroness refers was sent during the passage of the Divorce, Dissolution and Separation Act 2020. Since then, we have prioritised the implementation of that Act and the digital systems that go with it, the court recovery programme during and after the pandemic, the Domestic Abuse Act 2021, the Marriage and Civil Partnership (Minimum Age) Act 2022 and further work on the family courts. I hope to announce a review of financial provision very shortly.

Baroness Deech (CB): My Lords, I fear that the noble Baroness, Lady Shackleton, and I were misled when, three years ago, we were guaranteed a review of the financial elements of divorce. Relying on that, we refrained from pressing amendments. The law that relates to splitting money on divorce is so antagonistic and unreformed that it undermines the alleged good points of the no-fault divorce law. We are lagging 50 years behind nearly every other country in the western world, including Australia. The amount of discretion in our law makes it very hard for unrepresented parties. Money that should go to the children is being spent on legal costs. Even judges have called this law "apocalyptic" —accessible only to the rich. When will the Government reform this very bad law?

Lord Bellamy (Con): My Lords, I pay warm tribute to the noble Baroness, Lady Deech, my noble friend Lady Shackleton and many others for their work in this area. Respectfully, I do not accept the characterisation that the Government have misled everybody; we have had our hands somewhat full in recent times. The Matrimonial Causes Act 1973 reaches its 50th anniversary this year and a review of financial provision is indeed opportune. The Government are in close consultation with the Law Commission, which we consider the most appropriate body to carry out that review.

Baroness Shackleton of Belgravia (Con): My Lords, I declare my interest as a practitioner in this field for 40 years. The law is hopelessly out of date: it relies entirely on finance and the discretion of judges. The judges have a fiefdom now in that, since 3 October 2017 you cannot go to the Court of Appeal if leave is refused, so their discretion is absolute. It is normally commercial judges who change the law, and arbitrators, mediators and judges need guidance. There is no use in having a divorce if the money is not sorted out; the house has to be sold and the children are caught in the conflict. Divorce practitioners like me make a fortune in arguing, because the guidelines are 50 years out of date. I know that this is not a vote winner and does not appeal to the masses, but many people in this country are touched by this and I would like an assurance that it will be included in the King's Speech as vital business on the agenda, because responsible Governments do service to this.

Lord Bellamy (Con): My Lords, these matters will be considered fully in a forthcoming review, hopefully by the Law Commission. That commission is completing important work on surrogacy at this moment. Subject to final agreement, I hope to make a further announcement very soon indeed.

Lord Watts (Lab): My Lords, there are models around the world that the Government could adopt. Why do they not look to those models and introduce them now?

Lord Bellamy (Con): The Government think that the Law Commission is best placed to investigate all these matters, establish what the existing law and practice is and where the problems lie, and make comparative studies of various other jurisdictions, including Australia and elsewhere, as has already been mentioned.

Lord Hunt of Wirral (Con): My Lords, I declare my interest as a practising solicitor. I share the views of many around this House in applauding the work of the Law Commission, which is engaged in a number of important areas. Will my noble and learned friend the Minister undertake to ensure that the Law Commission is properly resourced, so that it can deal with this aspect, which needs urgent reform, as quickly as possible?

Lord Bellamy (Con): My Lords, the Government will do their very best to make that the Law Commission has the resources it requires.

Baroness McIntosh of Hudnall (Lab): My Lords, given that there is clearly some scepticism about whether the Law Commission is the right body to conduct this review, could the noble and learned Lord give the House some idea of how long he expects it to take to undertake it, and at what point he thinks it will be commissioned so to do?

Lord Bellamy (Con): My Lords, I hope to make a further announcement immediately before or shortly after the Easter Recess. Matters are being finalised at the moment. Typically, Law Commission work takes place in two phases. There is an initial phase of the kind I have just outlined, where the problem is identified and comparative studies are made. That is typically

[Lord Bellamy]
followed by a consultation phase in which all stakeholders' views are fully taken into account, which results in final recommendations and possibly draft legislation. That process will probably take at least two years.

Baroness Berridge (Con): My Lords, not only is this law antiquated—it is 50 years old—but there is an out-of-date view, which I found even among those in their twenties and thirties, that if you are cohabiting you are in some sort of arrangement called common-law marriage, which does not exist, and that the court would have powers under the Matrimonial Causes Act. So without going to the Law Commission, can my noble and learned friend the Minister please raise awareness that actually, that is not the legal position and there is an even more complex situation if you are not in a legal relationship such as a marriage or civil partnership?

Lord Bellamy (Con): My Lords, cohabitation is not envisaged as being within the review we have been talking about today. It does raise important issues and the Government keep them under review.

Lord Ponsonby of Shulbrede (Lab): My Lords, the noble and learned Lord will be aware that the time taken to reach a financial settlement following a divorce is often far greater than that taken for the divorce itself. The noble and learned Lord will also be aware that children often suffer badly from family breakdown and its consequences, particularly when there is an acrimonious and protracted divorce. Legal aid is currently permitted only in limited circumstances, such as when there is evidence of domestic abuse. Will the Government reconsider the issue of legal aid for matrimonial matters, particularly where one party has insufficient resources to get the necessary advice?

Lord Bellamy (Con): The Government have commissioned a review of civil legal aid, which includes legal aid in the family courts. The point the noble Lord raises will be included in that review.

Baroness Janke (LD): My Lords, it is well known that women suffer tremendously in divorce settlements regarding pensions and that tactics are employed to make them really lose out on the pension they would potentially be entitled to from their marriage. Will the noble and learned Lord assure us that he will examine this aspect of divorce when he looks into updating the law?

Lord Bellamy (Con): My Lords, I am sure the Law Commission will look very carefully into the points the noble Baroness raises.

Women and Men: Pay Gap

Question

3.15 pm

Asked by ***Baroness Twycross***

To ask His Majesty's Government what assessment they have made of the reasons why women are paid less than men; and what steps they are taking to address this issue.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): Robust equal pay protections in the Equality Act made it unlawful to pay men and women differently for the same work or work of similar value. However, on average women earn less than men over the course of their careers. This is caused by many factors, including women being more likely to take time off work because of caring responsibilities and to work in lower-paid occupations and sectors. The Government are committed to helping women reach their full potential and are changing the culture of the workplace by enabling more people to request flexible working, extending redundancy protection for those on maternity leave, introducing carer's leave, and strengthening protections against harassment in the workplace.

Baroness Twycross (Lab): I thank the Minister, and wish her a happy International Women's Day. Recent analysis by the TUC shows that women effectively work for free for two months of the year. It will take 20 years to bridge the gender pay gap, which is even greater for older women. On International Women's Day, will the Minister agree that this is simply not acceptable and let the House know exactly how the Government plan to right this wrong?

Baroness Scott of Bybrook (Con): I wish a happy International Women's Day to everybody in the House as well. I said some of the things that the Government are doing in my Answer, but the gender pay gap has fallen from 19.6% to 14.9% over the last decade. More importantly, the percentage of women in employment has gone up from 66.5% to 72.3%. The Government are doing something for women and will continue to do so because they think that it is an extremely important issue.

Baroness Walmsley (LD): My Lords, what consideration has been given to the possibility that fewer women are being encouraged or equipped to take on the better-paid professions? Much of this goes back to schools, where fewer girls are taking up STEM subjects. What is the Minister going to do about that?

Baroness Scott of Bybrook (Con): The noble Baroness is absolutely right. That is why we are working with schools and encouraging young people to take up STEM subjects in particular. Since 2010, there has been a 31% increase in girls' entry into STEM A-levels. That is a great success, but there has also been a 34% increase in women being accepted on to full-time STEM undergraduate courses in the UK. I look forward to this increasing, because we need more women in these areas.

Baroness Lister of Burtersett (Lab): My Lords—

Lord Trefgarne (Con): My Lords—

Baroness Jones of Moulsecoomb (GP): Women!

Noble Lords: Oh!

Baroness Lister of Burtersett (Lab): Thank you. There is widespread agreement that an effective parental leave scheme that encourages fathers to shoulder more of the work of caring for young children is one of the keys to gender equality at work. There is also wide agreement that the current parental leave scheme is utterly ineffective. It is now five years since the Government began their review of the scheme. What has happened to it?

Baroness Scott of Bybrook (Con): Interestingly enough, we have launched an online tool, hosted by GOV.UK, to make it easier for parents to check if they are eligible for shared parental leave, plan their leave, and give the required notice and information to their employer. The number of couples taking up shared parental leave and pay is increasing year on year; last year it was at 13,000. We are also looking at what more we can do to make it easier for fathers to take paternity leave, to challenge the entrenched assumption that caring is the sole responsibility of the mother.

Lord Trefgarne (Con): My Lords, am I not right in thinking that the Royal Air Force has recently authorised women to fly fast jet aircraft on operations for the first time ever? If I am right and that is the case, can the Minister confirm that they are paid the same salary?

Baroness Scott of Bybrook (Con): I am sorry; I cannot confirm that they are paid the same salary, but it is a jolly good job if they are doing the same as the men.

Baroness Chakrabarti (Lab): Will the Minister reflect on whether we have a historic fatal flaw in equal pay legislation? We leave it to women themselves to find out the comparators and sue their employers. In every other area where the state wants to regulate, it takes on principal responsibility for inspection and enforcement.

Baroness Scott of Bybrook (Con): I think the equal pay scheme has worked well since 1970, and it was protected but also enhanced in 2010. Many employers conduct regular equal pay audits in their companies, which is a good thing. It ensures that they are not acting unlawfully and that their staff are treated equally. In 2014, the Government strengthened equal pay protections by introducing mandatory equal pay audits for organisations that lose any equal pay claim, so if an organisation goes wrong, we will check it out.

Baroness Bennett of Manor Castle (GP): The gender pay gap at tech start-ups in the UK is more than double the national average, with women paid 70p for every pound that men earn, according to a study by the salary benchmarking platform Figures. This is particularly disturbing given that there is no historic hangover in tech start-ups. Can the Minister tell me what the just-released UK science and technology framework is doing to address this situation?

Baroness Scott of Bybrook (Con): I cannot say what it is doing, but I can get an answer for the noble Baroness.

Baroness Brady (Con): We know that for every pound a man makes, a woman makes only 86p and that it will take 132 years to close that pay gap, but actually the biggest barrier to women furthering their careers is having access to high-quality affordable childcare. What are the Government doing about that?

Baroness Scott of Bybrook (Con): My Lords, the UK has some of the highest-quality child provision in the world. We know the sector is facing economic challenges, but challenges are being faced across the whole economy. By the end of 2024-2025, an additional £510 million will have been provided for that sector, but we are not complacent and continue to look at ways to make childcare more affordable and to encourage families to use the government-funded support to which they are entitled.

The Lord Bishop of London: My Lords, in 2019 the Royal College of Nursing found that 90% of all nurses in the UK are women and that they fill less than a third of senior positions and earn on average 17% less than men. That is despite the fact that the Royal College of Nursing also noted that nursing is a gendered profession seen as a woman's role. What steps are the Government taking to ensure that female nurses progress to senior positions?

Baroness Scott of Bybrook (Con): I will talk to my colleagues in Health about that issue. I was not aware of it, but it is important and I will take it forward and come back to the right reverend Prelate.

Baroness Janke (LD): My Lords, research has shown that the gender pensions gap between men and women is 17% at the start of women's careers and a staggering 56% at retirement. What are the Government doing to make sure that women get a fair deal on retirement and do not lose out because they have taken on caring responsibilities or other unpaid but valuable work?

Baroness Scott of Bybrook (Con): Measures have been put in place to improve the state pension outcomes for most women. More than 3 million women stand to receive an average of £550 more per year by 2030 as a result of the recent reforms. Under the new state pension, outcomes are projected to equalise for men and women by the early 2040s, more than a decade earlier than they would have under the old system, so I think we are on top of that issue.

Lord Woodley (Lab): My Lords, the gender pay gap has reached 15% and is getting worse, not better. That is a disgrace, is it not, especially as more than half the women say they would use any additional money just to put more heating and lighting on in their homes, according to the Fawcett Society? It is unbelievable. How sad is that in Britain today? The ETUC and my own union, Unite, are clear that the most effective way to tackle the gender pay gap is through collective bargaining. Does the Minister therefore agree that negotiating a legally enforceable right to know what a male colleague is being paid for equal work would be a step in the right direction?

Baroness Scott of Bybrook (Con): The noble Lord is wrong. As I have already said, the gender pay gap is improving and, no, I do not agree that making that mandatory would make the position even better for women.

Women's Safety
Question

3.26 pm

Asked by ***Baroness Donaghy***

To ask His Majesty's Government what steps they are taking to improve women's safety (1) from domestic violence, and (2) in the streets.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): The Government are committed to tackling domestic abuse and making our streets safer. We have provided £125 million through the safer streets and safety of women at night funds. For example, Lambeth Council has received just over £1 million to deliver interventions including improving street lighting and CCTV. On 20 February, we announced new measures to crack down on domestic abusers, including the locations of domestic abuse protection order pilot sites.

Baroness Donaghy (Lab): I thank the Minister. The organisation Refuge has said there is a "fragile funding landscape" for specialised domestic abuse services, even though they are statutory, and more than 60% of referrals are turned away. Financial support for community-based support services such as advocacy and support for children is particularly dire as it is non-statutory. What steps will the Government take to provide better funding for the specialist domestic abuse service sector? Will the forthcoming victims Bill introduce an adequate, sustainable funding offer for specialist domestic abuse community-based services?

Lord Murray of Blidworth (Con): I thank the noble Baroness for her question. On 20 February, a package of measures was announced by the Home Secretary to tackle perpetrators and give better support to victims of domestic abuse. As the noble Baroness will know, the Government committed to legislate to add controlling or coercive behaviour, with a sentence of 12 months or more, to the list of offences eligible for management under MAPPA, and to ensure that all offenders managed under MAPPA are recorded under MAPPS when it is launched in 2024. She will know that MAPPS is replacing the violent and sex offender register. All these measures, together with the development and piloting of the domestic abuse harm risk assessment tool so that police forces can quickly identify the highest-risk perpetrators and take appropriate action, demonstrate the Government's dedication to addressing these issues.

Baroness Jones of Moulsecoomb (GP): My Lords, one of the first areas the Government have to address is the sexism and misogyny in police forces all over the UK. What specific measures has the Home Office suggested for all police forces? If the Minister cannot reply, I am happy to have a letter left in the Library.

Lord Murray of Blidworth (Con): I am conscious that that is an issue to which the Home Office is paying close attention in light of the recent cases. I am happy to write to the noble Baroness about it and to deposit that letter in the Library.

Baroness McIntosh of Pickering (Con): My Lords, is my noble friend convinced that the current rules on indecent exposure go as far as they possibly could? Can he think of a reason why the perpetrator who went on to murder Sarah Everard was not apprehended and prosecuted for earlier offences of indecent exposure, which could have prevented her sad death?

Lord Murray of Blidworth (Con): I am conscious that the case to which my noble friend alludes is a terrible one, and officials in the Home Office are very alive to it. The safer streets fund has worked with various local authorities to reduce the risk of incidents of indecent exposure. In particular, one project at the Basingstoke Canal had the effect of reducing incidents by 55%. Clearly there is much more to be done, but I assure my noble friend that that work will continue.

Baroness Kennedy of The Shaws (Lab): My Lords—

Lord Brooke of Alverthorpe (Lab): My Lords—

Baroness Janke (LD): My Lords, does the Minister accept that confidence on the part of women that sexual and violent crimes against them will be properly investigated is at an all-time low? If so, what will be done to make sure that the police focus on the crime and the offender rather than on shredding and undermining the reputation of the victim?

Lord Murray of Blidworth (Con): The ambition of the department is to ensure that women and girls have absolute confidence in the police. I appreciate the difficulties that have been caused by recent court cases. I should add that in January we launched a fund worth £36 million for police and crime commissioners to increase the availability of interventions for domestic abuse perpetrators. These aim to improve victims' safety and to reduce the risk posed by the perpetrator. I hope all these measures will generate increased confidence among women and girls.

Baroness Kennedy of The Shaws (Lab): My Lords, I hope that on International Women's Day women's voices might be given a little more prominence. I want to raise the issue of sexual harassment in public places. While it is very clear that not all men sexually harass women in public spaces, it would be hard to find a single woman who has not experienced it at some point in her life. What is being done to address that? There has been a call for misogynistic sexual harassment in public spaces to be addressed as a crime and to be more effectively dealt with. It is one of those things that blight women's lives. Social media has disinhibited people so that, in the very way that we are seeing this happen online, we are now seeing it increasingly experienced by women offline, and it leads on to more serious crime. What is the state going to do about

introducing a law to protect women in the streets, at bus stops and on public transport as they go about their lives?

Lord Murray of Blidworth (Con): I agree with almost everything that the noble Baroness has said. I am delighted to confirm that the Government will support the Protection from Sex-based Harassment in Public Bill, advanced by the right honourable Greg Clark, which would make public sexual harassment a specific offence. It provides that if someone commits an offence under the existing Section 4A of the Public Order Act 1986—that is, intentionally causing harassment, alarm or distress—and does so because of the victim's sex then they could obtain a higher sentence of two years rather than six months.

Baroness Browning (Con): My Lords, what monitoring is undertaken by the Home Office of those who have been convicted of either sexual offences or domestic abuse who subsequently go on to change their names?

Lord Murray of Blidworth (Con): I know this issue has been raised in the House of Commons recently in a 10-minute rule Bill. It is certainly a matter that the Home Office has under review, and it may be something that we hear more about later.

Baroness Walmsley (LD): My Lords, what are the Government doing to encourage more intelligent and public-spirited young women to join the police force? Would that not go a long way towards making women feel that when they reported sexual abuse they would have a more understanding ear at the end of the phone? It would make women feel much safer on the streets if they knew that a female police officer might be there to help them.

Lord Murray of Blidworth (Con): I entirely agree, and there is much in what the noble Baroness says. I do not, I am afraid, have the statistics to hand as to the level of women among recent recruits to the police in meeting the 20,000 target that was in the last manifesto, but I can certainly find that out and write to her.

Baroness Thornton (Lab): My Lords, following on from my noble friend Lady Kennedy, evidence suggests that the impact on victims of indecent exposure can be considerable, as visual sexual violence. If the report of Wayne Couzens' indecent exposure had been taken seriously and acted upon, he would have been apprehended and would not have gone on to rape and murder Sarah Everard a few days later. In the past, the stereotype of a harmless and possibly mentally ill—but not dangerous—flasher has informed the view of this offence. Is it time to take the offence of indecent exposure more seriously, and how might that be achieved?

Lord Murray of Blidworth (Con): Clearly, the first answer is the one I gave to the noble Baroness, Lady Kennedy, a moment ago. We are supporting the Bill brought by Greg Clark. There is also the money that has been spent under the safer streets fund and the safety of women at night fund. If I may return to the example of the funding for the Basingstoke Canal programme, it had a very effective method of tackling the crime of indecent exposure. I entirely agree with the noble Baroness that the impact of these offences has often been minimised in the past and we must not fall into that trap again.

WhatsApp: Ministerial Communications

Question

3.36 pm

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

To ask His Majesty's Government what assessment they have made of the extent of the use of WhatsApp for ministerial communications.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): Ministers use a variety of channels of communication. This may include non-corporate communication channels as well as conversations in person and telephone calls, as has long been the case. Arrangements and guidance are in place for the management of such communications to ensure that official records are kept where it is considered necessary for good governance, but it remains the case that official decisions are made and recorded through proper processes, including ministerial boxes and Cabinet committees.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am really grateful to the Minister for her very helpful reply. However, is there any evidence that Ministers are using WhatsApp for government business on their personal phones rather than their work phones? Also, are they using the so-called "disappearing messages" that are removed after a set period, and, if so, is that consistent with government rules about record keeping? If the Minister is not able to deal with all those points today, could she write to me?

Baroness Neville-Rolfe (Con): Of course. As I have said, if communications are substantive in nature, they need to be captured on government systems. But there is no requirement to retain every single communication, and that would include social media. As to disappearing WhatsApps, we will be producing new guidance shortly on the use of WhatsApp and other forms of communication, and that will include advice on the use of the facility for disappearing. As I have said, formal decisions must be recorded, but existing policy requires ephemeral and trivial information to be deleted.

Lord Forsyth of Drumlean (Con): My Lords, could the use of these disappearing WhatsApps be an explanation for the complete absence of policies on the part of the Opposition?

Baroness Neville-Rolfe (Con): I note what my noble friend says and I refer to my previous answer about disappearing WhatsApps. Of course, parliamentarians

[Baroness Neville-Rolfe]
and indeed Ministers get advice on security and on the use of social media, which I am sure the noble Lords opposite concur with.

Lord Scriven (LD): My Lords, I note what the Minister says about guidance, but there is a difference between guidance and rules. The Hancock WhatsApp saga has highlighted that no standardised and formal rules exist across government on the handing over of government business app messages on a private phone when individuals leave their post. When and how will the Government close this serious loophole?

Baroness Neville-Rolfe (Con): As I have explained, we do have guidance and we are in the process of developing revised guidance on the use of non-corporate communication channels, which we will be publishing in due course. There is a general understanding of the nature and extent of the use of WhatsApp for ministerial correspondence. As regards Mr Hancock, we have of course established a Covid inquiry to look into these things and it would be wrong of me to be making piecemeal comments on his use of WhatsApp.

Baroness Smith of Basildon (Lab): My Lords, many of us recall the TV series and the films "Mission: Impossible", where a confidential message from the Government would self-destruct in about 30 seconds. I think some Ministers probably did not realise that was fiction and not what happens in real life. We understand the difference between personal messages between Ministers and civil servants and those that relate to government decision-making, which, in normal circumstances, would be minuted. From the Answer she gave to the noble Lord, Lord Foulkes, I think she has confirmed that there is currently no official guidance on the use of the disappearing message facility for WhatsApp. Can she confirm whether it is true that, at present, there is no guidance or advice on this? If that is the case—she said that they were going to be working on this—when guidance has been set up and published, could she confirm that it will be in the public domain so that it can be easily understood by all?

Baroness Neville-Rolfe (Con): We have obviously been looking at the guidance to bring it up to date with modern methods, to which the noble Baroness refers, and are in the process of finalising that. To the extent that matters relate to security, we have to be careful about what we publish, but I will bear in mind the request from the noble Baroness as to what we should say about disappearing WhatsApps and their use. However, I refer back to the advantages of using disappearing WhatsApps as well as the disadvantages.

Lord Cormack (Con): My Lords, would we not have been spared a great deal of tedium had WhatsApping and twittering and tweeting been made automatic breaches of the Ministerial Code?

Baroness Neville-Rolfe (Con): I feel that that is completely impractical. We live in a modern world, where people use WhatsApp, private mail and SMS. What we need to do is have sensible rules and training for Ministers and parliamentarians to teach them what they can do and what is risky. I personally had an excellent briefing on my first day as a Minister at the Cabinet Office. I was given my own devices and was told about the risks of social media in a way that I found encouraged me to conform very closely.

Lord Vaux of Harrowden (CB): My Lords, is it appropriate for a Minister to hand a cache of WhatsApp messages—government messages—to a journalist for personal gain?

Baroness Neville-Rolfe (Con): I will not be drawn on the individual case, but I will point to what the Government are doing and also refer the noble Lord, who is a friend, to the Covid inquiry. My understanding is that Mr Hancock has said that he will ensure that all appropriate material is given to the inquiry, and I understand that the Department of Health and Social Care is ensuring just that.

Lord Allan of Hallam (LD): I understand that staff in departments such as the DWP and HMRC already have guidance that tells them very clearly that they should not use their personal phones for business purposes. This creates a very clear separation between personal and public correspondence. Can the Minister confirm whether the advice she was given included clear strictures on using personal devices for public purposes and, if not, why not?

Baroness Neville-Rolfe (Con): The answer is that it did.

Lord Browne of Ladyton (Lab): My Lords, in April last year, when the Government saw off at first instance a judicial review about the use of WhatsApp in government, a Cabinet Office spokesperson said publicly:

> "We have been clear from the outset that there are appropriate arrangements and guidance in place for the management of electronic communications within Government".

Those are the exact words the Minister has used at the Dispatch Box. The Cabinet Office position clearly was that these applied to WhatsApp messages. So, in a generality, do these procedures and arrangements allow former Ministers to take these records home? Do they allow them to alienate them to a third party, such as a journalist or ghost writer? If they do not, why do they not? Will the Government to publish the guidance?

Baroness Neville-Rolfe (Con): I do not entirely understand the question, but what I can say is that the High Court dismissed challenges to the Government's policy and practice with regard to non-corporate communication channels, which allows us to move ahead with the new guidance that I mentioned, and there are clear rules, of which we have already had evidence, on what we are supposed to be doing in the meantime.

Lord Bellingham (Con): My Lords, is it not worth remembering that the journalist in question signed an NDA but then betrayed a confidence and handed the documents over—or perhaps sold them—to the *Telegraph*? Is there a data-protection aspect to this?

Baroness Neville-Rolfe (Con): My noble friend refers to a private arrangement between two parties, which I certainly would not want to comment on. Clearly, we in this country have some of the best data-protection law in the world, and data protection and the work of the Information Commissioner—I remember originally being responsible for this—is an important part of this whole policy area, although it is perhaps not directly relevant to the particular Question asked today.

Lord Watson of Wyre Forest (Lab): Ministers expect civil servants to give impartial and candid advice, and, in return, there should be a reasonable expectation of privacy. This has clearly not happened in the Hancock case. What emergency measures is the Minister taking to protect the integrity of the Civil Service? Civil servants do not have a choice when a Minister asks them a question in a WhatsApp message, and they need protection.

Baroness Neville-Rolfe (Con): As I explained, we have rules about how this is managed. Civil servants and Ministers have government devices that they can use to ask questions on. The Civil Service Code underpins the way the Civil Service operates, and impartiality is of course one of its fundamental principles; it is often quoted by civil servants in their day-to-day work and they feel very proud of it.

Retained EU Law (Revocation and Reform) Bill

Committee (5th Day)

Relevant documents: 28th Report from the Secondary Legislation Scrutiny Committee, 25th Report from the Delegated Powers Committee, 13th Report from the Constitution Committee. Scottish, Welsh and Northern Ireland Legislative Consent sought.

3.47 pm

Clause 15: Powers to revoke or replace

Amendment 117

Moved by ***Lord Bruce of Bennachie***

117: Clause 15, page 18, line 38, at end insert—

"(3A) Regulations under subsections (2) or (3) may not be made if they apply to an instrument, or a provision of an instrument, which is subject to an agreed Common Framework unless it has been subject to the full process agreed between His Majesty's Government and the devolved administrations for that instrument."

Member's explanatory statement

This amendment is to probe the application of Common Framework Agreements to retained EU law.

Lord Bruce of Bennachie (LD): My Lords, Amendment 117 is in my name and that of my noble friend Lady Randerson. I apologise to noble Lords that I have not spoken on the Bill so far—it is not for want of interest but because of conflicting engagements. I tabled this amendment because, although common frameworks have already been debated in Committee, I and other members of the Common Frameworks Scrutiny Committee remain concerned about the uncertainties attaching to them.

Our committee has been absolutely crucial to the progress of common frameworks, which might have somewhat run into the sand if we had not had such an active committee and energetic chair, making sure that the departments were following through. On many occasions, we pushed departments back more than once to get sufficient detail and to get them to engage in the process, in which they sometimes appeared to show a lack of interest.

I also have to say—this is a slightly more topical issue—that the process among the civil servants has been led, of course, by Sue Gray. With the departure of Sue Gray, it would be good to know who is going to take over that responsibility. I think the committee accepted that she was, in evidence that she has given to us, extremely vigorous in ensuring that at least the civil servants were engaging in it in a serious amount of detail. The commitment of Ministers has been, at best, somewhat variable.

The problem, too, is that different Administrations have had a different direction on common frameworks. In our engagement with Wales, you have an Administration who desperately want devolution to work, and to work effectively, and are frustrated that the UK Government do not appear to be quite as committed to that. In Scotland, of course, the Government do not want devolution to work, do not believe in devolution and try to pretend that Scotland is independent, claiming that any engagement from the UK Government is somehow an interference in Scotland's sovereign right, which many of us feel fails to understand the common interest that Scotland has with the rest of the UK.

It is a fact that common frameworks have been designed to get all the relevant partners—and I know that my noble friend Lady Randerson is particularly concerned that that includes stakeholders—to be brought together to try to work out how devolution will work in a post-Brexit world, where previously the umbrella of the EU was the framework for operation. Apart from agreeing how the policies would be laid out and setting out in detail a framework, they all also had dispute resolution mechanisms: detailed and systematic mechanisms to ensure that disputes could be resolved and, wherever possible—and to date that has been the case—without even necessarily having the engagement of Ministers.

In many ways, we have been impressed by those processes, which could apply outside common frameworks much more widely. The remaining flaw in all that, of course, is that the ultimate final appeal rests with the UK Minister and, on occasion, it seems that UK Ministers, knowing that to be the fact, are less engaged with the concerns and anxieties of the devolved Administrations—and I would suggest that that really has to stop.

Before this Bill came along, we had the internal market Bill—now Act—which also cut across common frameworks. Fortunately, the noble and learned Lord, Lord Hope, secured an amendment in this House to allow for divergence opt-outs to be agreed, albeit at the discretion of UK Ministers. That has been used in the case of single-use plastics, but I suggest that UK

[LORD BRUCE OF BENNACHIE]
and Scottish Ministers have rather stumbled in relation to the deposit return scheme. The Secretary of State for Scotland, Alister Jack, said that he was minded to reject the scheme, but did so before it was revealed that the responsible Minister in the Scottish Government, Lorna Slater, had not even asked for a departure. I suggest that the Secretary of State was overeager and that she was rather behind the curve—the net result being that we are still in some degree of confusion.

In the leadership contest that is going on north of the border, one candidate has implied that somehow UK Ministers are itching to overturn devolution decisions by Ministers at every twist and turn. I genuinely do not believe that to be the case, but it is genuinely important that the UK Government do not give the impression that that is the case and that they recognise that they have to tread with respect and carefully in trying to ensure agreed and respectful decisions sometimes to differ.

I come to my final point. Having had that Bill, we now have this Bill and a total lack of clarity—apart from the fact that the Bill is totally devoid of clarity in any case—as to how any decisions that Ministers might make could impact on these common frameworks, not all of which have been completed but which, thanks to the committee, have been worked through, painstakingly and in considerable detail, to make sure that devolution can proceed in a constructive, fair-minded way, with proper ways of resolving disputes and taking decisions beforehand.

The purpose of this amendment is to seek clear reassurance that the Government will not proceed with measures under this Bill that cut across common frameworks and, in particular, the dispute resolution mechanisms within those frameworks. It is a very simple proposition and one that I think the Minister ought to be able to accept. I beg to move.

Baroness Humphreys (LD): My Lords, my Amendment 118 brings us, once again, to the issue of devolution, the powers of the devolved legislatures and the protection of those powers by legislative consent Motions.

I have spoken to a number of amendments in Committee and expressed my concerns about the way that confidence in the Sewel convention has been eroded over the last few years and how legislative consent Motions have been degraded and disregarded. At each stage, the Minister has sought to reassure me that my fears for the future of our devolved settlements are unfounded but, as I have said before, our experience often tells us a different story. I have therefore tabled Amendment 118 to Clause 15, seeking to ensure that a legislative consent Motion be passed by the relevant devolved legislature if a Minister of the Crown seeks to make regulations to revoke or replace secondary EU law where the provisions of those regulations fall within the legislative competence of a devolved legislature.

Three of your Lordships' committees have published reports that have included criticism of Clause 15; the issues that they have highlighted are serious and deserve to be debated. The Delegated Powers Committee has recommended that Clause 15 be removed from the Bill because it

"contains an inappropriate delegation of legislative power".

It says that Clause 15 is

"the most arresting clause in the Bill for its width, novelty and uncertainty."

Why is this clause arresting? It gives Ministers extraordinarily wide discretion in relation to thousands of secondary EU laws; for example, one option under this clause allows Ministers, as the committee says,

"by regulations to … revoke any secondary REUL and make such alternative provision as Ministers consider appropriate, including with completely different objectives."

This is, the report says,

"a power to do anything Ministers wish to do"

with retained EU law until 2026.

I appreciate that the Minister has spent time in Committee reassuring me and other noble Lords that the powers of the devolved legislatures are not under threat. I would like to believe that he believes what he says but can he explain, if this clause were to pass, how certain I could be that some other Minister would not use it to make regulations to revoke or replace any piece of secondary EU law where the provisions of those regulations fall within the legislative competence of a devolved legislature?

Ministers will have the power under this part of Clause 15 to do anything, so who or what will stop them acting in devolved areas if they so choose? We received a letter this morning from the noble Baroness the Minister, and I am sure that she or the noble Lord the Minister will summarise the points it contains in their response in relation to these powers.

4 pm

Your Lordships' Secondary Legislation Committee is so concerned about the powers given to Ministers in Clause 15, as well as Clauses 12 and 13, it recommends that an enhanced scrutiny mechanism should apply to the exercise of powers under these clauses. This mechanism would allow either House to modify an instrument and would, I think, receive a welcome from noble Lords. Will the Minister inform the Committee of the Government's response to the concept of an enhanced scrutiny mechanism for these clauses?

Your Lordships' Constitution Committee deals specifically with devolution in part of its report on the Bill. It highlights one the problems with the Sewel Convention:

"At present when the Government considers consent is not required from a devolved legislature and proceeds to give effect to this view, there is no parliamentary scrutiny of that determination."

We have seen this situation time and again in Wales. The UK Government provide a list in a Bill to inform us where they are seeking consent; the devolved legislatures examine the Bill and point out that their consent is needed in certain other areas too; the devolved Administrations produce an LCM saying that consent is required in those areas and that they withhold consent; and the UK Government ignore the LCM. That is the end of the process. There is no scrutiny and no holding them to account for their decision to override the powers of the devolved Administrations. The Constitution Committee therefore recommends that, in future,

"the Government should justify its approach to the House at the beginning of a bill's consideration. In the case of this Bill, it should do so at the earliest opportunity."

Will the Government accept the committee's recommendation and commit to justifying their approach to this aspect of consent in this Bill and in future Bills?

I am grateful to all three committees for their careful and expert analysis of the Bill and for their recommendations. I thank them for their support of democratic principles and their defence of the devolved legislatures and their powers.

I turn briefly to Amendments 135 and 143 in the name of the noble and learned Lord, Lord Hope of Craighead. I am grateful for the support he shows for the devolved legislatures and value greatly his expertise in the legal issues surrounding their powers. His amendments have my full support.

Baroness Ritchie of Downpatrick (Lab): My Lords, I will speak in support of the two amendments I submitted, along with the noble Baroness, Lady Suttie. Amendments 119 and 127 would ensure that substantial policy change with regards to human rights, equality or environmental protection in Northern Ireland may not be effected or take place via the exercise of delegated powers.

Last Thursday, I referred to the importance of protocol Article 2, which deals specifically with equality and human rights considerations in Northern Ireland. I have had several conversations, as has the noble Baroness, Lady Suttie, with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. They are concerned by the breadth of delegated powers provided under the Bill and the potential for the inadvertent breach of protocol Article 2 or the wider diminution of human rights, equality and environmental considerations via ministerial action, or inaction, in the absence of detailed parliamentary scrutiny. I ask the Minister whether that will be the case. What mitigations will be in place to ensure the protection of protocol Article 2?

The tight deadlines of the restatement of REUL by the end of 2023 and assimilated law by 2026, and the scale of the task to be achieved in that time, create a risk of gaps in legislative coverage. It may also contribute to further uncertainty and a potential breach of Article 2 if REUL essential to the no diminution commitment is not preserved or restated with set deadlines. A general convention on this principle was enunciated by the Constitution Committee, which reported in 2018 that

> "we have identified a number of recurring problems with delegated powers. We have observed an increasing and constitutionally objectionable trend for the Government to seek wide delegated powers, that would permit the determination as well as the implementation of policy."

That begs the comment that not much has changed in five years.

The Bill gives effect to a significant body of policy relating to human rights and equality, including employment legislation and EU regulations providing for the rights of disabled people, much of which will fall unless preserved or restated by Ministers. Under Clause 15(1), to which Amendment 119 refers, Ministers may revoke secondary REUL without replacing it, creating potential policy change with limited scrutiny. In addition to being given powers in subsection (2) to replace secondary REUL with provisions with the same or similar objectives, Ministers are also given significant additional powers to replace REUL with alternative provisions in subsection (3), which is of particular concern.

Problems will emerge in exercising these powers, as Ministers are not under a duty to consult on the REUL that is being replaced. Even though the powers granted are time-limited, both the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission believe that they are too widely drawn and will provide insufficient scrutiny, potentially leading to conflict with obligations under Article 2. Our Amendment 119 to Clause 15 would curtail the powers to revoke or replace secondary retained EU law affecting human rights or equality protections in Northern Ireland to ensure continuing adherence to the UK constitutional convention of providing for policy change via primary legislation, with technical and operational detail addressed in subordinate legislation.

Ministers need to engage with stakeholders, including both commissions, and human rights and equality organisations before using delegated powers to replace REUL. Will the Minister give an assurance that that will happen? I know that the noble Baroness, Lady Suttie, will refer to this issue, but will the Minister undertake to meet representatives of both commissions in Northern Ireland to discuss this issue further and help assuage their concerns?

Our Amendment 127, relating to Clause 16, provides for powers to be granted to Ministers to modify and amend REUL and restate or assimilate law or provisions replacing REUL as they consider appropriate to take account of changes in technology or developments in scientific understanding. The use of this power is subject only to the negative procedure, so changes made under it may not require active parliamentary approval. This power will not be time-limited. Our Amendment 127 seeks to ensure that the delegated power to modify legislation may be used for dealing with minor and technical matters only.

I have two questions for the Minister. First, will he meet with both commissions? Secondly, can he provide assurances today that the delegated powers in the Bill to modify legislation will be used to deal with minor and technical matters only, and that any substantive policy change to the law in Northern Ireland, including to human rights and equality law, will be made via the primary legislative process?

We must not forget that both commissions were set up under statute to manage Article 2 of the protocol, which deals specifically with equality and human rights and goes back to the Good Friday agreement. Can the Minister set out what consideration was given to ensuring compliance with Article 2 in the development of this Bill, and ensure that there will be no detrimental impact on the precious commodity of devolution in Northern Ireland or our special arrangements in Northern Ireland under the protocol and the Windsor Framework?

Baroness Suttie (LD): My Lords, I rise to speak briefly to Amendments 119 and 127, to which I have added my name. Like my noble friend Lord Bruce, I apologise to the Committee: for a variety of reasons I was unable to attend the previous debates on devolution.

[BARONESS SUTTIE]

The noble Baroness, Lady Ritchie of Downpatrick, has given detailed background to these amendments and made a powerful set of arguments in favour of them. I just want to re-emphasise a couple of the points she made.

As the noble Baroness said, these two amendments would ensure that no significant policy changes relating to human rights, equality or environmental protection in Northern Ireland could be implemented through the use of delegated powers. As it stands, the Bill does not give enough consideration to the very particular set of circumstances faced by Northern Ireland. There are multiple layers of existing international commitments through the Good Friday/Belfast agreement, the Northern Ireland protocol and now the Windsor Framework, and it is not entirely clear to me how all these commitments will fit in with the Bill and which will take precedence.

The Minister will be aware that, as the noble Baroness, Lady Ritchie, set out clearly, the Northern Ireland Human Rights Commission has expressed strong concerns about the sheer number and scope of delegated powers provided for in the Bill and the potential impact of the protocol on Article 2, which guarantees "no diminution" of certain human rights and equality protections. As the noble Baroness spelled out, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland are deeply concerned that the Bill as drafted may accidentally or otherwise result in breaches of Article 2 of the protocol. Article 2 touches on a range of equality and employment rights protections that could be unpicked, not least because it is open to a certain degree of interpretation.

These concerns about the potential impact on Northern Ireland are exacerbated by the continuing absence of an Assembly or Executive in Northern Ireland. A functioning Executive and Assembly would have provided an additional layer of oversight and scrutiny in safeguarding Article 2 of the protocol. As a result of the lack of a Northern Ireland Executive, the Northern Ireland Civil Service is already extremely stretched. The Bill will almost certainly impose an extra set of burdens on it, not least given the unrealistic timescales involved.

I strongly support the request from the noble Baroness, Lady Ritchie, that the Minister meet representatives of the Northern Ireland Human Rights Commission in order to hear at first hand their very real concerns. I look forward to hearing the Minister's response.

4.15 pm

Baroness Randerson (LD): My Lords, my noble friends Lord Bruce, Lady Suttie and Lady Humphreys have explained the different approaches and situations of the devolved Administrations, thereby demonstrating the need for a sensitive approach from Ministers. I particularly welcome the reference by the noble Baroness, Lady Ritchie, and my noble friend Lady Suttie to the application of the Bill in Northern Ireland. Because of the situation there, we discuss the Administration far too infrequently, and that issue needs to be addressed.

On Amendment 117, to which I have added my name, I am very grateful to the Minister for his recent letter which specified that any REUL to be extended will need to be specified by its full title or by "specifying a description". That phrase is not defined in the Bill, which means it is another thing that has been left to the judgment of Ministers; indeed, the Minister's letter actually uses that phrase, saying that it will be left as "a judgement for Ministers". It says that this description

"could encompass a description of legislation in scope of the Common Frameworks"

and gives the example of common frameworks relating to food and feed safety. That is extremely helpful information for those of us who have been members of the Common Frameworks Scrutiny Committee for some years.

By logical progression, am I right to assume that Ministers could decide to include all common frameworks in one umbrella description in the Bill, or to provide a list of all the agreed common frameworks? Surely, that is the logical conclusion. There are very good reasons to do that. First, it would end the unnecessary uncertainty caused by the Bill and the economic damage it is doing to industries in Britain. Secondly, there can be no clusters of legislation that have been more thoroughly and comprehensively—and very recently—looked at than those subject to common frameworks. They have been subject to scrutiny by all four nations of the UK and by a wide variety of stakeholders. All those clusters have been deemed by the UK Government and by the Administrations in the devolved nations to be up to date and fit for purpose. The Minister has said that that was the reason why some legislation might need to fall, and we would all understand that, but it does not apply to the legislation subject to common frameworks. If something unforeseen arises, there is a mechanism to resolve disputes.

There is no doubt that this legislation is not fit for purpose. The UK Government have nothing to fear because they have the last word on common frameworks and have led the process of establishing them. So I urge the Minister to table amendments on Report that clarify the future place of common frameworks and that specify which ones will be exempt from the sunset.

I have one other thing to probe. In his letter, the Minister used the example of food safety legislation. The extensive catalogue of this has grown since the 19th century. Back then, lead was put in Red Leicester cheese to make it red, copper was put in butter to make it yellow, and chalk and water were put in milk to make it go further. Even if the food was kept in normal circumstances, those normal circumstances were often so poor that it went off and made people seriously ill or killed them. We have moved on from that to a vast catalogue of food safety legislation, but we are still nowhere near perfection or peak knowledge on food safety. Our understanding improves all the time. Recently, there has been research showing that there are plastic particles in bottled water. That is something that we did not understand a couple of years ago. We do now.

Can the Minister tell us how further regulations on food and upgrading regulations on food will be viewed by the Government? Will it be regarded as an additional burden on business? Will it be regarded as increasing regulatory burdens and therefore be excluded by the Bill? If we are not allowed to update our legislation, surely we will lag behind. We will be the country that still has the substandard plastic bottles, just as we

would be the country with cars that are less fuel-efficient and toys that are more dangerous, to take examples from earlier debates.

On Amendments 135 and 143 in the name of the noble and learned Lord, Lord Hope, which I support, I refer to the fourth report of the Procedure and Privileges Committee, which followed up on the Constitution Committee's report of January 2022. That report recommended that we in the House should give greater prominence to legislative consent Motions. The Procedure and Privileges Committee has now agreed to a very welcome and comprehensive process for reporting the decisions of devolved Administrations on LCMs and situations where the UK Government have not sought consent but the devolved Administrations have given or withheld it. This is significant because, as my noble friend has said, in the last few years there has been a huge erosion of the 1998 decision that the UK Government would not normally legislate in matters within the competence of a devolved parliament without its consent. It used to be the case that the Government went to enormous lengths to take the Sewel convention into account. That has been eroded, to the great detriment of good relationships across the UK. This Bill does nothing to improve relationships.

I fully support those amendments tabled by the noble and learned Lord, Lord Hope, which seek to restore a small part of the devolved powers that have been undermined by the Government in recent years. Those amendments and the recent decisions of the Procedure and Privileges Committee will make it more difficult for us to remain unaware of the views of the devolved Administrations.

Lord Thomas of Cwmgiedd (CB): My Lords, I will add a brief word on two of the amendments, because I agree with everything that has been said but do not wish to prolong the debate. I wish to say something about Amendments 135 and 143 as, in my view, they go to the spirit of the union. I know that the noble Baroness the Minister has done much to try to ensure that we are governed in a union where there is respect and equal treatment. I thank her very much for that. I also welcome the attitude of the Prime Minister, which is in complete contrast to that of the last but one Prime Minister.

The spirit of the union is encapsulated in both these amendments. First, on Amendment 135, if something is devolved, please get consent. That seems a matter of ordinary courtesy that strengthens the union. It is not a big ask. Secondly, on Amendment 143, why should the Welsh and Scottish Ministers not have the same powers? The answer was given by the noble Lord the Minister to a similar question I raised. Although the Government may not say what they are going to do, I very much hope that they look at these amendments as showing a determination to govern our union in the spirit of co-operation, equality and respect.

Baroness Crawley (Lab): My Lords, I support this group of amendments, particularly, as a member of the Common Frameworks Scrutiny Committee, Amendment 117, which tries to tease out the application of common framework agreements to retained EU law and how they will be impacted by the Bill. These frameworks work right across the devolved Administrations, as noble Lords have said, and are underpinned by retained EU law. As my noble friend Lady Andrews has said during Committee, that underpinning is a cat's-cradle of hundreds if not thousands of complicated and interrelated SIs. How much instability will the Bill, and its obvious legal uncertainties, bring to the common framework agreements between the devolved Administrations?

The noble Baroness, Lady Neville-Rolfe, wrote to the noble and learned Lord, Lord Thomas—and to all of us, in fact—to answer several questions. We appreciate that. One of the questions was on methodology. What competence do the UK Government have to affect the methodology of seeking retained EU law within the devolved Administrations?

Lord Dodds of Duncairn (DUP): I rise briefly to follow the noble Baronesses, Lady Ritchie and Lady Suttie, on Amendments 119 and 127. I thank them for casting a spotlight on the situation for Northern Ireland, which is now more complicated than ever. As was said by the noble Baroness, Lady Suttie, there is a danger of a change inadvertently being made.

In the Minister's response, could she clarify the situation pertaining to the law in Northern Ireland? We have laws that will be affected by this legislation, as it will disapply whole swathes. As the noble Baroness mentioned, this will pose a great burden on the Civil Service and could lead to a situation at the end of the year when it is not clear who is responsible for making change. If the Assembly is not restored, it is likely to lead to Ministers here having to step in, in a considerable number of areas.

I do not expect a full answer in this Chamber today, but at some point it would be helpful for the Minister to write to us, and place a copy of that letter in the Library, to set out which laws pertaining to Northern Ireland are affected by this legislation and which are exempted because of the necessity that they remain to give effect to the provisions of the withdrawal Acts or to implement the Northern Ireland protocol. Which laws then apply directly to Northern Ireland as a result of annexe 2 to the protocol—the 300 areas of law?

Then we have the body of laws which have been applied —hundreds of regulations—under the dynamic alignment since the 300 areas of law became statutory law in Northern Ireland: perhaps we could have a list of those. Then, perhaps—and I say this more in hope than expectation—we might get a list of the laws, said to comprise 1,700 pages, which will be disapplied as a result of the Windsor Framework.

4.30 pm

Now, it is a very complicated picture, and that is before we come on to legislation passed here applying to Northern Ireland and legislation passed by the Northern Ireland Assembly. It would help if the Government were able to set that out, and there is no reason why they should not be able to. If they have counted 1,700 pages that are disapplied by the Windsor Framework, they must be able to tell us what they are. If they tell us that 3% of EU laws continue to apply to Northern Ireland, they must know what those laws are and what the percentage figure was under the old protocol. We will eventually find all this out; I just do not understand

[LORD DODDS OF DUNCAIRN]

why they are reluctant to spell it out. So I just make a plea for that information to be provided, so that all your Lordships can consider these matters very clearly in the round. I thank the noble Baronesses for tabling these amendments.

Lord Collins of Highbury (Lab): My Lords, I do not want to prolong the Committee, so I will not repeat many of the contributions that have been made today. But I do want to pick up the point of the noble and learned Lord, Lord Thomas, because when he raised this in a previous clause on a previous Committee day, I also asked a supplementary question. The reply I got from the Minister—I was seeking an assurance—was that

"there is a power for them to just restate that law, to continue it, if they wish to do so. We would want any extension to be discussed between the Administrations"—[*Official Report*, 2/3/23; col. 473.]

Well, the simple question is this: why, on an issue of law that is the sole competency of the devolved Administrations, do they not have the same power as the Secretary of State? I think it is a fundamental question. The noble Lord, Lord Callanan, said:

"I do not agree with the noble Lord's characterisation. If they wish, it is perfectly possible for them, before the sunset date, to renew that legislation. The extension mechanism is of course something that we will discuss with them as appropriate"—[*Official Report,* 2/3/23; col. 473.]

If the noble Baroness, in responding to this, cannot give a clear answer to what I believe is a clear question, I hope she will write to us, because I cannot see any reason why we would undermine the authority of the devolved parliaments in this way.

I will also, because it has come up in terms of the implications of divergence, repeat the question that the noble Lord, Lord Moylan, raised in another debate. He said that there were "profound implications" for paragraph 52 of the framework, which states that

"the Office of the Internal Market (OIM) will specifically monitor any impacts for Northern Ireland arising from relevant future regulatory changes".

The noble Lord, Lord Moylan, asked

"what the purpose of that is, and what weight the Government are going to give to the results of such monitoring?"—[*Official Report*, 7/3/23; col. 689.]

Of course, when you read the framework, you also see that that is mirrored in terms of a response by the EU. So I hope the Minister will be able to answer these questions: what are the implications? Has this been thought through? What assurances were given to the EU by the Prime Minister? Those are important questions for us to consider.

I appreciate my noble friend Lady Ritchie's amendments. In looking at them, I thought that I would not only take on board the comments made in letters from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland but would read the commissions' annual reports, which the Government would obviously have. Of course, the overarching recommendation of the commissions' most recent 2022 annual report is that

"in the development of any laws or policies the UK Government and NI Executive consider the extent to which any change engages Protocol Article 2 and ensure that there is no diminution to the rights and safeguards which fall within its scope".

I hope the Minister will address that specific recommendation in relation to this Bill.

On the divergence of rights on the island of Ireland, the commissions recommended that

"the UK Government and the NI Executive ensure North-South equivalence, by keeping pace with changes to equality and human rights law, arising as a result of EU laws introduced on or after 1 January 2021, that enhance protections. This should include rights introduced as a result of EU laws that do not amend or replace the Protocol Annex 1 Directives."

What consideration have the Government given to that particular recommendation, bearing in mind that Article 2 is a firm foundation of the relationship on all sides on the island of Ireland?

I conclude by saying that, on retained EU law, the commissions recommended that

"no change to retained EU law be made which would weaken Protocol Article 2, its enforceability or oversight mechanisms".

Again, can the Minister tell us what assessment the Government made of that recommendation when drawing up the Bill? The commissions also recommended that,

"when making any change to retained EU law, the relevant UK or NI Minister confirms that an assessment for compliance with the commitment in Protocol Article 2 has been undertaken and that there is no diminution of the rights, safeguards and equality of opportunity as set out in the relevant part of the Belfast (Good Friday) Agreement as a result of the UK leaving the EU".

Has that assessment taken place? What are the implications for the powers outlined in both the clauses under consideration in this group? If the Minister is unable to answer today and give a full account of these particular recommendations, I would be grateful if she could write and put a copy of her letter in the Library for everyone to see.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I am grateful to all noble Lords who have contributed to this important debate. Amendments 117 to 119, 127, 135 and 143 seek to amend the way in which the powers operate in areas of devolved competence. I should say at the outset in response to the query about Sue Gray leaving her post, it is really not my place to comment on Civil Service appointments, but the work that her team does will not stop just because she has moved on. There was a competent team around her, and I am sure more announcements will be made in due course.

Amendment 117 exempts legislation relating to common frameworks from the powers under Clause 15(2) and (3) to replace revoked REUL unless relevant instruments or provisions have been subject to the full process between the UK Government and the devolved Administrations. This would prevent the powers being able to operate on these instruments to create replacement provision unless a process agreed between the UK Government and the devolved Governments is followed. Common frameworks are integral to managing regulatory divergence in the areas they cover and provide a flexible governance tool for the UK Government and the devolved Governments. I reassure the noble Lord, Lord Bruce of Bennachie, that the UK Government value the committee's work and regard it as essential to ensure that the common frameworks are as good as they can be, including by helping to ensure the functioning of the UK internal market.

Retained EU law is in scope of the common frameworks. This includes not just REUL operating within devolved competence but that same REUL operating in England. In some cases, this REUL will be UK-wide. This is a point I have made in earlier debates on this subject.

The Government believe that it is simply not necessary to carve out REUL in scope of common frameworks from the powers to revoke or replace. Common frameworks are purposely designed to manage any potential divergence which may result from the Government's use of the powers in the Bill. When using the powers in the Bill, we will use common frameworks to engage with the devolved Governments on decision-making across the UK. The UK Government and the devolved Governments agree that where common frameworks are operating they are the right mechanism for discussing REUL reform in the areas they cover.

To respond to the question asked by the noble Baroness, Lady Randerson, about extending the sunset applicable to REUL within the scope of common frameworks, it will be possible to extend REUL within the scope of common frameworks as the Clause 2 power enables extending the sunset for specified instruments or descriptions of legislation. In response to her queries around exemptions for food, there is simply no need to have specific exemptions or carve-out areas in the Bill. As I outlined earlier, the common frameworks are purposely designed to manage any potential divergence which may result from the Government's use of the powers in the Bill.

Amendments 119 and 127, tabled by the noble Baroness, Lady Ritchie of Downpatrick, would restrict the use of the powers to revoke or replace and the power to update by requiring that any new regulations must not bring about substantial policy change for regulations relating to human rights, equality or environmental protection with effect in Northern Ireland. First, I emphasise that the Government recognise the unique challenges that Northern Ireland departments are facing in delivering plans for the reform of retained EU law in the continued absence of the Northern Ireland Executive and Assembly. Our officials are working closely with the Northern Ireland Civil Service and the UK Government are committed to ensuring that the necessary legislation is in place to uphold the UK's international obligations.

Responding to the noble Baroness's point about Article 2, as outlined by my noble friend Lord Callanan in the debate on assimilation last Thursday, I can assure the noble Baroness that the Bill provides powers to restate rights and obligations required for Article 2 of the Northern Ireland protocol as needed. The Government will ensure that all necessary legislation is in place by the sunset date to uphold commitments made under Article 2. Departments will take into account the assessment of whether a restatement would meet the Article 2 non-diminution right when reviewing their retained EU law.

I turn to the delegated powers in the Bill. The Bill sets out the circumstances under which the powers can be used appropriately. The powers to revoke or replace are important, cross-cutting enablers of REUL reform in the Bill and will allow the Government to overhaul EU laws and secondary legislation, while the power to update is intended to facilitate technical updates to keep pace with scientific and technological developments over time. The REUL dashboard has identified more than 3,700 pieces of retained EU law, many of which are unduly burdensome and not fit for purpose. It is therefore necessary to have broad, forward-leaning powers capable of acting on wide-ranging REUL across different policy areas. Furthermore, we fully intend to maintain the UK's leading role in the promotion and protection of human rights and equality, and environmental protections. We are proud of our long and diverse history of freedoms and are committed to ensuring that the UK's international human rights obligations continue to be met.

The provisions within the Bill, including the powers, are not intended to undermine these hard-won human rights or equality legislation, nor our world-leading environmental protections, which this Government have also committed to uphold. The UK is a world leader in environmental protection, and we want to ensure that environmental law is fit for purpose and able to drive improved environmental outcomes.

4.45 pm

Amendment 118 seeks to prevent Ministers of the Crown exercising the Clause 15 powers in devolved areas entirely unless legislative consent is granted. This requires that the powers to revoke or replace cannot be used on retained EU law or post-2023 assimilated law within areas of devolved competence to create replacement provision, unless the relevant legislature has provided legislative consent on that particular instrument. Amendment 135, tabled by the noble and learned Lord, Lord Hope of Craighead, places a similar consent requirement on the use of concurrent powers when exercised by a Minister of the Crown in devolved areas.

The majority of the powers in the Bill will be conferred concurrently on the devolved Governments. This will enable them to make active decisions regarding their retained EU law within their respective devolved competences and provide them with greater flexibility. The concurrent nature of the powers is not intended to influence decision-making in devolved Governments; rather, it is intended to reduce additional resource pressure by enabling the UK Government to legislate on behalf of a devolved Government where they do not intend to take a different position.

However, the edges of where UK government competence ends and devolved competence begins for retained EU law are not always clear. Therefore, it is essential that UK Ministers can make provision in devolved areas to ensure that nothing important falls between the reserved and devolved areas. It is hoped that this will ensure that the most efficient and appropriate approach can be taken in every situation.

The Government therefore believe it is not necessary to limit the use of the powers within devolved areas by requiring legislative consent. It is pivotal that there are no impediments to or delays in delivering this much-needed retained EU law reform. Furthermore, having a delay to seek consent from devolved Ministers will make it much more difficult for the regulations required for retained EU law reform to be laid before the sunset date.

Lastly, Amendment 143 confers the power to make transitory, transitional and savings provision on Scottish and Welsh Ministers. This standard power is in connection

[Baroness Bloomfield of Hinton Waldrist]
with the bringing into force of provisions in the Bill and is commonly included in Bills. It will ensure a smooth transition of affairs under the law as it currently stands and the law as it will stand after the provisions of the Bill come into force. As currently drafted, this power is conferred on a Minister of the Crown only, as is standard practice for this power. However, UK Ministers will be able to make provisions on behalf of the devolved Governments where appropriate.

As I have set out above, none of the provisions within the Bill, including the powers, affect the devolution settlements, and nor is the Bill intended to restrict the competence of either the devolved legislatures or the devolved Governments. Indeed, the Government remain committed to continuing discussions with the devolved Governments to ensure that the most efficient and appropriate approach to REUL reform can be taken in every situation in a way that works and provides certainty for all parts of the UK.

For the reasons outlined, I therefore ask the noble Baroness, Lady Randerson, to withdraw her amendment. I promise to write to the noble Lord, Lord Collins. There were a number of questions there and I think they demand a full response, so I would rather write in due course.

Baroness Randerson (LD): I have listened carefully to the Minister's response. When I spoke earlier, I said that the letter from the noble Lord, Lord Callanan, was very helpful, but I have not had a specific answer, taking my example of fragments of plastic in bottles of water, as to whether the Government would respond to that requirement for change in food and food safety legislation. Would the Government regard it as a technical advance, which the Minister referred to, or as unduly onerous regulation, which she also referred to? What would happen if, for example, the Welsh Government decided they wanted to go to a higher standard of plastic in water bottles but the UK Government decided they did not want them to go to that higher standard? If the Minister cannot answer that now, could she give us a commitment to write with that worked example and give us an indication of what is unduly onerous EU-based legislation and regulation and what is technical advance?

Baroness Bloomfield of Hinton Waldrist (Con): I am happy to write if I do not give a satisfactory answer now. It is up to the relevant department to look at the proposed amendment and consider whether it meets the criteria for the use of the update power. The Government will always maintain the power to increase standards. Any more than that I will take back, and I will write in fuller detail.

Lord Collins of Highbury (Lab): Can the Minister inform the House what the criteria are?

Baroness Bloomfield of Hinton Waldrist (Con): If the noble Lord is talking about the Clause 15 power, that gives discretion to Ministers. It is the criteria for the use of the update power, which is at the discretion of Ministers.

Lord Collins of Highbury (Lab): I hope *Hansard* picks that up.

Baroness Bloomfield of Hinton Waldrist (Con): I think the noble Baroness was talking about adding to the burden of legislation, which is Clause 15.

Baroness Ritchie of Downpatrick (Lab): On a different point, I thank the Minister for the assurances that she has provided us with in relation to Article 2 of the protocol, but could she also indicate whether she is prepared, if required, to meet both commissions? I understand that one commission is responsible to the Northern Ireland Executive and the other directly to the UK Government. Would that be possible? Maybe in the fullness of time, if the Minister wants to reflect on that request, she could provide us with an answer in writing.

Baroness Bloomfield of Hinton Waldrist (Con): Certainly, more relevant Ministers will be meeting all the time, as well as officials, to discuss these issues, and they are probably the best and most appropriate channels of communication.

Lord Bruce of Bennachie (LD): My Lords, this has been an interesting debate covering a number of topics. I welcome the Minister's assurances, which I accept in good faith, about wanting to work constructively with the devolved Administrations. However, I am sure she will recognise that there are still a lot of questions hanging in the air.

To take the point made by the noble Lord, Lord Dodds, if the Government know that there are 3,700 pieces of legislation then they ought to be able to tell us what they are. The impression one gets is that the Government claim they know exactly what they are doing but are not prepared to tell anyone else what it is. We need to get a little further down the road on that.

The Minister said that some of the laws were no longer fit for purpose, and we need to know which those are; others need to be updated, and we need to know which those are; and others are UK-wide. Well, the devolved Administrations still need to know which they are, because, clearly, they have an impact throughout the United Kingdom.

This debate has been useful, but there are still issues that we need to press the Government on. In the meantime, I beg leave to withdraw the amendment.

Amendment 117 withdrawn.

Amendments 118 to 122 not moved.

Amendment 122A had been withdrawn from the Marshalled List.

Amendments 123 to 125 not moved.

Clause 15 agreed.

Amendment 126

Moved by ***Baroness Parminter***

126: After Clause 15, insert the following new Clause—

"Powers to revoke or replace: application to environmental law

(1) This section applies in respect of provision which may be made by a relevant national authority under section 15 where the provision is in respect of secondary retained EU law which is environmental law.

(2) No provision to which this section applies may be made in relation to an element of the environment unless the relevant national authority considers that the provision, taken together with other secondary retained EU law relating to the element of the environment, will contribute to a significant improvement in environmental protection.

(3) The relevant national authority must ensure that any provision made under section 15 does not—

(a) reduce the level of environmental protection arising from the EU retained law to which the provision relates,

(b) conflict with—

(i) the relevant international environmental agreements,

(ii) the relevant international environmental principles, and

(c) otherwise undermine the implementation of the policy statement on environmental principles as set out in section 17 of the Environment Act 2021 before the duty to have regard to the statement is brought into force.

(4) Prior to making any provision to which this section applies, the relevant national authority must—

(a) seek advice from persons who are independent of the authority and have relevant expertise,

(b) seek advice from, as appropriate, the Office for Environmental Protection, Environmental Standards Scotland, a devolved environmental governance body or another person exercising similar functions, and

(c) publish a report setting out—

(i) how the provision does not reduce the level of environmental protection in accordance with subsection (3),

(ii) how the provision will contribute to a significant improvement in environmental protection in accordance with subsection (2), and

(iii) how the authority has taken into account the advice from the persons referred to in paragraphs (a) and (b) of this subsection.

(5) In this section—

the

"relevant international environmental agreements" means—

(a) the UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus, 25 June 1998);

(b) the Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 1979);

(c) the UN Convention on Biodiversity (Rio, 1992);

(d) the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979);

(e) the Convention for the Protection of the Marine Environment of the North-East Atlantic (1992);

(f) the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971);

the

"relevant international environmental principles" means—

(a) the integration principle;

(b) the precautionary principle;

(c) the prevention principle;

(d) the rectification at source principle;

(e) the polluter pays principle."

Member's explanatory statement

This new clause creates additional conditions to be satisfied before the powers set out in clause 15 can be exercised where the subject matter of their exercise concerns environmental law. It would set out in legislation the commitments Government has made not to reduce environmental standards through exercise of the powers in clause 15 of REUL which are not (currently) reflected in clause 15 or elsewhere.

Baroness Parminter (LD): My Lords, Amendment 126 is in my name and that of the noble Lord, Lord Krebs, who sadly cannot be with us this afternoon, the noble Lord, Lord Randall of Uxbridge, and the noble Baroness, Lady Bennett of Manor Castle. We will touch on some of the issues in Clause 15, although this new clause is to go after it. I make no apology for that because when we talk about this Bill, as my noble friend Lord Fox so rightly said when we last debated the environmental impacts, Defra is the largest shareholder. The wide-ranging powers of the Minister to revoke or repeal environmental legislation will have a massive impact on the 1,781 pieces of legislation—probably more by the end of this month, because the dashboard will have been updated—that are under Defra's auspices.

We obviously debated at some length in previous sessions the wide-ranging powers in the regulatory burdens which are the overriding framework for Ministers when they are considering how they take forward those powers, but one issue has not been discussed very much, if at all, so far in the context of those regulatory burdens which have particular relevance to the environment. It is the requirement that those regulatory burdens do not allow for any taxation to be increased. As the Government will know, the Dasgupta report, which they commissioned, made it clear that, as it stands, the economic benefits which the environment brings to this country are not adequately reflected in the economic models that we have. The full externalities need to be built in to our economic models and the Government need to take them very seriously.

To their credit, when it comes to environmental taxation, this Government have made through secondary legislation, which is what we are talking about, several new taxes. Those are working extremely well, delivering for both the environment and the Exchequer. The first of those, which was delivered under the coalition Government, was of course the popular levy on plastic bags, which delivers for the environment and to which the general public seem to have taken extremely well. It is delivering incredibly well but, as I say, that was made through secondary legislation.

Recently, the noble Baroness, Lady Hayman of Ullock, and I, along with others, discussed an SI which was about the new and extended producer responsibilities. It was about having levies on producers to tackle some of the major problems of waste that we have in our country. Again, businesses are comfortable with those taxes, which will raise revenue that can then be spent on communicating with the general public about the wider impacts on the environment. By secondary legislation, this Government have already accepted that environmental taxes can have a valuable role to play, yet by saying that there can be no financial costs levied Clause 15 is ruling that route out.

I argue strongly that, in the environmental context, to deny Ministers that flexibility to raise financial revenues, which are welcomed by a number of businesses—including the ones we debated recently in Grand Committee on the extended producer responsibility—is an incredibly

[BARONESS PARMINTER]
retrograde step. It is great to see the Minister, the noble Lord, Lord Benyon, here in his place again to defend this area. I am sure that in summing up, he will say, "The noble Baroness doesn't need to worry, because, of course, you can introduce regulatory burdens as long as there is a compensation in a particular subject area". I think those were the terms used. Having sat through debates in the Chamber and read what the noble Baroness, Lady Neville-Rolfe, said in *Hansard* from Monday night's debate—and having read about four times the letter from the noble Baroness, Lady Bloomfield—I am still no clearer about what "subject area" means.

I have been thinking about this. If, for example, the Government were to amend the water framework directive, which has regulatory burdens on businesses, farmers and landowners, and say, "It's okay—we can find another regulation and you can increase the burdens on that, because we have made compensatory cuts to somebody else", does it have to be exactly the same people? Does it have to be landowners, companies and farmers, or can we say that it just has to be in Defra? In which case, the regulatory burdens might be on very different people; it may not be the same businesses that have had the regulatory burdens in one area or another.

5 pm

There have been numerous mentions of olive trees. Of course, that legislation from the EU was never applicable. Can those pieces of legislation be counted if you want to add new regulatory burdens? Alternatively, because they never had any applicability in the first place, can you not count them? I do not think we have had any reassurances, to my satisfaction, in this Committee about how this will be practically applied.

Moving on, what I really want to talk about is my amendment, which seeks to set conditions on Ministers in advance of them taking forward the wide-ranging powers that Clause 15 of this Bill gives to them. It seeks to do three things. First, it seeks to ensure that there is an increase in environmental protection levels as a result of any changes. That seems to be fundamental if the Government are going to meet their welcome targets to improve the environment and are going to deliver the benefits—which the noble Lord, Lord Krebs, spoke so well about; it is great shame he is not able to be here today—that the people of our country see from a quality environment, both for their well-being and their health. Improving environmental protection will be a condition that would need to be met before Ministers could take forward these wide-ranging powers.

Secondly, the amendment seeks to ensure that we have a guarantee that we will meet our international obligations. We are one island in a large world and birds do not stop at Dover; we share this planet with other countries. We need to be mindful of the international obligations that we as a country have signed up to: Ramsar, Bern, Bonn, the CBD—all of them. If we are going to carry on playing the role which we did so well at the CBD—the Convention on Biological Diversity—of leading other countries to accept the 30 by 30 target, and I give credit to the Minister and his team for being part of that, we have to meet our international obligations. We cannot guarantee that leadership if we do not meet those obligations.

One would hope that you should not have to put that on the face of a Bill—although after yesterday and the issues with the small boats, maybe we do need to put on the face of the Bill that Governments need to meet their international obligations. Let us be clear on this issue: if this Government do not seriously address the environmental and climate problems, the figure of 100 million displaced people from the UN talked about yesterday will be as nothing compared with climate displacement. We all need to seriously address our environmental and climate targets now. We need to ensure that we meet our international obligations.

We have heard from various sources, including Ministers, about changes to the conservation of habitats and species regulations and of conservation of offshore marine habitats and species regulations. Both of these need to be maintained if we are to keep up with our international obligations under Ramsar and Bonn. The Government may wish to tinker with these, but they are fundamental building blocks of the international agreements we are signed up to. If we want to carry on being a leading player and have Prime Ministers going round talking about how we are world leading—I heard this phrase used in the last group by the noble Baroness, Lady Bloomfield—we have to meet international obligations. My second point is that we should put on the face of the Bill that we will not do anything that would undermine our international obligations.

Thirdly, the amendment seeks to ensure that there will be a non-regression clause. This was in the OEP's advice and submissions to Committees down the other end. It was an absolute minimum in this Bill to have a non-regression clause. It is not just for the sake of the environment; it is for the sake of our farmers, who are trying desperately to trade in Europe, and for businesses. The *i* newspaper yesterday published a very interesting piece of research which showed that businesses do not want any reduction in environmental regulations; they want stability. I do not understand why the Government are moving away from the commitment they made in the Environment Act. As I referred to in my last speech, the Environment Act made it very clear that, if we change environmental legislation in the future because the science and evidence has changed—no one believes anything should be set in aspic—there is a non-regression clause. So my amendment seeks to ensure that we improve legislation, meet our obligations and have a non-regression clause.

The amendment does two other things, but I will not speak to them in any detail because the noble Baroness, Lady McIntosh, and the noble Lord, Lord Whitty, touched on them exceedingly well in previous discussions around the issue of who is consulted about making these decisions. These issues are complex, difficult, long term and interconnected, and who we talk to is important. Equally, as the noble Lord, Lord Whitty—who is not in his place—rightly said, Parliament needs a role in this. My amendment does all that.

In conclusion, I think many in this Committee would wish that Clause 15 were deleted. We had my noble friend Lord Clement-Jones's stand part debate last Monday, and the Government made it quite clear that they are not prepared to remove this clause. At that time, the Minister, the noble Baroness, Lady Neville-Rolfe, said that she saw no case either for carve-outs for a

particular area. The noble Baroness, Lady Chapman, rightly reminded the Minister that they already have carve-outs in the Bill for the financial sector, so, if they want to do it, they can. But my amendment does not say, "Carve out the environment"; it basically sets down some conditions that would enable the Government to do what they say they want to do: ensure that we improve our environment within a generation.

If we do not do that, there are very real risks not only that we will not meet the Government's welcome targets but that the promises made to the general public will be completely hollow, because of what the Bill will allow to happen. I will cite just one example. If the bathing water directive were changed in any way, what people rely on to swim safely on our beaches could be fundamentally undermined. The Government have said they do not want to do that, but the way to say that you do not want to do it is to put it in the Bill, rather than using just ministerial words—much as we admire the Minister who will be speaking from the Dispatch Box. That is the only way to guarantee the protections that people in this country want and the Government say they have set targets to deliver.

Baroness Hayman of Ullock (Lab): My Lords, my Amendment 130 in this group would ensure that the powers to amend the important pieces of retained EU environment law do not reduce the level of environmental protection that is provided for in them. As we heard in the previous debate, there is a huge risk to the laws on the environment and animal welfare protections. I brought a list of wildlife protections that are at risk—there are so many, and that is just on wildlife—to give noble Lords an idea of the number of regulations and the complexity of what we are talking about.

My amendment would also specify that, when exercising these powers, authorities

"must have regard to … the conservation and enhancement of biodiversity … improving water quality … protecting people and the environment from hazardous chemicals".

I thank the noble Lord, Lord Krebs—who is not in his place today—and the noble Baronesses, Lady Bakewell and Lady Bennett of Manor Castle, for their support for this amendment.

On Report of the Bill in the Commons, Minister Ghani said:

"The Department for Environment, Food and Rural Affairs has committed to maintain or enhance standards".—[*Official Report*, Commons, 18/1/23; col. 395.]

But we should compare that with Clause 15, which, as the noble Baroness, Lady Parminter, said, we have to touch on when looking at these amendments. Clause 15 has been described by some as a "do whatever you like" provision, because it gives Ministers extremely wide powers to revoke or replace retained EU law and to lay the replacement legislation either with

"such provision as the relevant national authority considers to be appropriate … to achieve the same or similar objectives"

or with

"such alternative provision as the relevant national authority considers appropriate".

Unfortunately, the reason why we are so concerned is that this is so subjective. The judgment is on what is appropriate, which is accompanied by a very limited link to the objectives in the original legislation, leaving an open door for sensible, long-standing protections to be replaced by regulations with entirely different divergent aims and outcomes. Without the amendment that I have laid, and the amendment proposed by the noble Baroness, Lady Parminter, the power allows for replacement legislation to change both the content and objectives of the law. That is without any kind of scrutiny or consultation; it is further deregulation without oversight.

As I mentioned during last week's debate on the environment in this Bill, the running total of laws affected by REUL in Defra is suggested to be 1,781—by far the largest share of any Whitehall department. That highlights the hugely significant implications of the Bill for environmental law-making. The Defra body of REUL also contains many regulations that are of significant public interest, aiming to protect every single element of our natural environment and, as was mentioned last week, many aspects of human health—we must not forget that.

We have also heard about how the laws being debated in the REUL discussions are bound together in a complex way, with significant case law attached to them. That is why there is such a profound risk when you try to disentangle it in the manner proposed by the Bill, but also because of the speed at which it is being proposed, and the lack of scrutiny, consultation and oversight. That has been discussed at length in both Houses, and I would hope that Ministers have taken note.

The problem is that Clause 15 substantially exacerbates these concerns because of its unfettered nature and because of the burdens test in Clause 15(5), which the noble Baroness, Lady Parminter, talked about. She referred particularly to issues around revenue and taxation. As I say, we support everything that she said on that matter. She also referenced the letter to all Peers from the noble Baroness, Lady Bloomfield, on the burdens test. I think that noble Lords felt that it raised more questions than it answered; there was no explanation of how a department such as Defra, which has so many laws covering a large number of subject areas, is going to apply the in-the-round consideration that was in the letter. Perhaps the Minister could explain how that is going to be managed.

I shall give some examples. If Defra Ministers wanted to make changes to one nature regulation that increased one of the regulatory burdens specified in the non-exhaustive list, would that mean that they would have to bring forward changes to another nature regulation that decreased burdens to balance the books? What is meant by "category" and how is that implied when looking at the different regulations that come under Defra? Does the removal of redundant or superfluous laws, as the Minister talked about in the last debate on the environment, count as a removal of burdens, even if they were not active components on our statute book? Parliament is being asked to agree to Clause 15 without a satisfactory explanation of how it is going to be practically applied. Furthermore, with regard to the stipulation in Clause 15(5), there is no confidence that the power will not lead to a de facto lowering of standards, which is the opposite of what Ministers repeatedly say they want to achieve.

[Baroness Hayman of Ullock]

My Amendment 130 focuses on regulations that have been earmarked as priorities for review and on which the Government already have amending powers. For example, during the evidence session with the House of Lords Environment and Climate Change Committee, the Defra Secretary of State referred to the goal of the Environment Agency to change quite a lot of the water framework directive. What does she mean by that? Perhaps the Minister could expand.

We support a sensible, consultative approach to strengthening regulations that underpin the water framework and other directives. However, tackling the dire state of our water bodies will not be possible without substantial investment. That would trigger both the financial cost and profitability limbs of Clause 15(5). Can the Minister explain how Clause 15 can then be a route through which the Government are able to deliver the improved environmental outcomes that they keep promising? To me, it is the opposite; it is a blockage.

5.15 pm

These amendments would give legal substance to the voluntary objectives that Defra Ministers indicate that they would use to inform their review of REUL. It is really important that any environmental law we have going forward is fit for purpose and able to drive improved environmental outcomes. I do not have any confidence that some of the clauses in the Bill, as drafted, would allow that to be achieved.

The Government already have the powers to amend environmental REUL and regulations. Given that powers to amend key environmental regulations that are referred to by the Bill already exist in primary legislation, why are the Government seeking the additional powers in the Bill? For example, the Government recently sought and were granted powers to amend the REACH regulation under Schedule 21 to the Environment Act, the water framework directive regulations under Section 89 of that Act, and the habitats regulations under Sections 112 and 113 of the Act. The Environment Act powers are a much more appropriate vehicle for amending these regulations. For example, amendments to the habitats regulations must not reduce the level of environmental protection; amendments to the water framework directive regulations must entail expert consultation; and amendments to REACH must respect the precautionary principle. I believe that my Amendment 130 would provide comparable safeguards.

I will speak very briefly to Amendment 126 in the name of the noble Baroness, Lady Parminter. As she said, her amendment would create additional conditions to be satisfied. We strongly support what she seeks to do with her amendment and everything that she said in her introduction to it. It is an important amendment. I draw particular attention to her words on the importance of non-regression safeguards in the Bill. That is absolutely critical and something that we covered a lot in our debates on the Environment Bill as it was going through the House.

Finally, I want to come back to something that the Minister said in our previous discussion on the environment. He was absolutely adamant that the regulations would be retained by default. There was a lot of confusion in your Lordships' House, because it had been expected before that things would fall by default. This is such an important point, and we really need to understand what is happening. I will read from a few of the reports, so that the Minister understands why I am somewhat confused by his assertion that it is retained by default.

The Constitution Committee report says that the Bill

"also provides UK ministers and ministers of the devolved administrations with the option of doing nothing, and allowing EU law in certain policy areas to be automatically revoked."

The Delegated Powers and Regulatory Reform Committee says:

"The normal way of changing the law to deliver significant policy change is by Act of Parliament, following consultation, debate, amendments and (if at all) with targeted and proportionate delegated powers. This Bill takes a radically different approach. Under clause 1, considerable swathes of REUL will automatically expire at the end of 2023 unless Ministers decide otherwise."

The Secondary Legislation Scrutiny Committee said, referring to the dashboard:

"The scale of the task, both in terms of cataloguing a definitive list of relevant legislation and the deadline by which it has to be achieved, as a result of the sunset provisions is extraordinary and deeply troubling. The work is still ongoing and we remain wholly unconvinced that there is not a significant risk of inadvertent omission and that pieces of REUL will fall by accident."

I cannot see where there is security of retained by default; I just do not see it and it is such an important issue that we really need proper clarification on. If the Minister is able to point out exactly where the Bill states that it is retained by default, that would be extremely helpful.

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Baronesses, Lady Parminter and Lady Hayman, and to speak to Amendments 126 and 130, which they have already so ably introduced and to which I have attached my name, both of which have the fullest and broadest possible range of support across parties and non-parties in your Lordships' House. I essentially agree with everything the noble Baronesses said, although I would perhaps give the Government rather less praise for what I would say are the extremely limited measures on polluter pays they have so far delivered than the noble Baroness, Lady Parminter, did.

First, on Amendment 126, Clause 15 has been described as the "Ministers can do whatever they like" part of the Bill. I note that the Peers for the Planet briefing, among others—I should declare my position on the advisory board of Peers for the Planet—says that the direction of travel of the Bill is deregulatory. We are hearing one set of rhetoric, but ultimately, what we are talking about is the law and what will be written into it. That is what will hold sway, not fine words we might hear about a desire for higher standards. It is important also to stress that both amendments deal with environmental issues, but these are also very acutely human health issues: look at the current parlous state of public health in the UK. We really cannot afford to be going backwards in any such areas.

Amendment 126 tries to address the fact that there are no non-regression clauses in the Bill. This is trying to bring in a non-regression clause in one area. I would like a non-regression clause to apply to every category,

whatever a category is, that the Bill might identify, but I will stick with the things that are identified in these two amendments, at least as some kind of starting point. When we come to Amendment 130, it is clear—and we had long and hard fights in your Lordships' House, as I recollect, in the Environment Act 2021—that we need non-regression clauses, and there is also the power to amend what we are now calling retained EU legislation, so it is there in primary legislation; the power already exists, with rules applying to it.

I am not a lawyer and I am not sure whether the lawyers present in the Committee can explain to me how we can have non-regression clauses applying to a set of regulations in one Bill while another Bill has no non-regression clauses. It depends which Bill you use as to whether regression or non-regression is going to apply. Let me guess which law the Government are likely to want to use. Let us have a guess, shall we?

I turn to Amendment 126, and I am seeking to add to rather than repeat what the other noble Baronesses have said. I want to focus on ensuring that we do not conflict with relevant international environmental agreements. I am actually not sure about that, with the way this is currently written—and indeed this is a fast-moving area. Of course, since this amendment was written, we have finally had, after 20 years of negotiation, very excitingly, the agreement on the high seas treaty. That is a real step forward. We also have a mandate for negotiating a UN treaty on plastic pollution. This is where a significant amount of environmental action is happening. We can surely have something in the Bill to say, "We will comply with the international agreements that we have signed up to", and, indeed, in many cases that we claim to be, and in some cases are, leading.

It might be said that we do not need to do that, but if it is not a problem for the Government, why cannot we write it in anyway? Many noble Lords will have just picked up the Illegal Migration Bill, on the front of which is a statement from the Home Secretary:

> "I am unable to make a statement that, in my view, the provisions … are compatible with the Convention rights, but the Government … wishes the House to proceed".

I truly believe that we need a statement written into this Bill—perhaps every Bill—that we will comply with international obligations that we have signed up to.

Finally, I turn to the non-regression elements in both amendments and the paragraph in the famous letter about overall regulatory burden and what a "category" is. It might reasonably be thought that regulations applying to plastics are a category, so I will explore a practical example of what these amendments could stop. In the last week or so, some extremely disturbing research has come out on the impacts of microplastics; in particular, the newly identified disease of plasticosis. It has been found in the digestive tracts of flesh-footed shearwaters—that is only one seabird, but the experts tell us that there is no biological reason why what is happening to it is not happening to all of us as we ingest what research suggests is up to 5 grams of plastic a week, depending on your diet.

The disease has been given that name because it is like silicosis and asbestosis: it is an inorganic material causing irritation to biological tissues. This is really serious. A few days ago, the *Times* quoted Dr Luisa Campagnolo, an expert in histology and embryology, as telling the American Association for the Advancement of Science that

> "we should not drink bottled water in plastic bottles."

That is what someone who is looking at the damage being done to tissues is saying.

Let us imagine that the science gets stronger in the next year or two—we can see the direction in which it is heading—and we want to bring in an SI to end all use of plastic bottles for food materials and drinks. What could be the conceivable counteracting release of regulation to achieve a balance of no greater regulatory burden? What in the area of plastics would you have to abolish to balance that? These amendments attempt to deal with issues such as that.

Baroness Young of Old Scone (Lab): My Lords, I support these two amendments and congratulate the noble Baronesses, Lady Parminter and Lady Hayman of Ullock, on the way in which they introduced them. It is slightly ironic that the Government have just published their *Environmental Improvement Plan*, yet we do not have any sentiment of improvement in this Bill. In fact, we have a distinct deregulatory flavour with this emphasis on not increasing burdens.

In a way, I will miss this Committee, because we have been getting these wonderful letters from Ministers over the last few days. I thank the hot and cold running supply of Ministers wheeled in for this Bill for their correspondence on the issues we have raised on the various days of Committee. I confess that today's letter from the noble Baroness, Lady Neville-Rolfe, on the safeguards around Clause 15 did not leave me any the wiser on the definition of "alternative provision", but perhaps most germane to these amendments was the letter of 28 February from the noble Baroness, Lady Bloomfield, on the definition of "regulatory burden". It left us all, as many noble Lords have said, confused about how not increasing the overall regulatory burden will be assessed—other than, as the Minister has just told us, that it will be up to Ministers to decide whether they are satisfied that the use of the power does not increase the overall regulatory burden in a subject area. I am sure that case law will have to prevail.

5.30 pm

Amendment 126 is really important, as many noble Lords have said, because it would ensure significant improvement in environmental protection from any revocation or replacement. It very much follows the OEP's recommendation that an environmental non-regression safeguard needs to be added to the Bill.

The amendment is also important in terms of compliance with international agreements, as noble Lords have said. It is slightly unnerving that we are already beginning to see an erosion in our commitment to some of our international agreements. For example, under the UN Convention on Biodiversity, we now have an international commitment—one that we helped to forge in international circles only recently—to have 30% of our land and sea delivering protection for nature by 2030. However, the habitats regulations,

[Baroness Young of Old Scone]
which are crucial to that effect and are needed to drive improvement in the management of protected areas, are being brought into risk by this very Bill.

I am sure that, were he here, the noble Lord, Lord Callanan, would tell us that we do not have to worry—that the habitats regulations are home and dry, that they are saved, that we have done them in the Environment Act and are dealing with them in the levelling-up Bill. Well, the levelling-up Bill appears to be receding into the middle distance as we speak, because its Committee days are constantly being cancelled, so we cannot rely on that. Indeed, there is still a massive gap between what the environment regulations currently deliver, what is in the Environment Act and what would be brought in by the provisions of the levelling-up Bill, which are as yet unclear. In general, the Government will struggle to achieve their commitments on leaving the environment in a better state and not reducing environmental standards without the safeguards against regression in the environmental field which these amendments represent.

Amendment 130 focuses on some key regulations that the Government appear to have particularly in their sights; it aims to ensure that standards are not reduced in those key areas. I want to touch briefly on two sets of regulations. One is the habitats regulations; I know that I am absolutely fixated on them but they are one of the most impressive pieces of international and national legislation ever passed in terms of environmental protection, honed increasingly better as they have been by case law over the past 15 years. We meddle with them at our peril, but enough of that; I will take off my hair-shirt now.

The other legislation that I want to talk about is the water framework directive. I must admit, I had great hopes for that directive when it was passed. It is one of those rare pieces of legislation that brings together issues across a whole variety of government departments, including planning, land use, water quality, water quantity and environmental protection. I should take some responsibility for this because I was the chief executive of the Environment Agency at the time of the implementation of the directive—at least for part of it—and I admit that we all dealt with it in a way that meant that it became rather lumbering. However, in legislative terms, it is still an excellent regulatory framework; it very much fosters integration across a number of policy areas. So it is not the legislation that is wrong; it is the implementation that we have to get better.

The amendment would ensure that changes to the water framework regulations would not reduce the level of environmental protection. However, I agree entirely with my noble friend Lady Hayman of Ullock that any amendment to the water framework regulations, which Defra is currently embarking on, should not be made through this Bill at all, with its deregulatory and regressive provisions and its lack of consultation requirements; instead, it should be made through the provisions which already exist in the Environment Act. Indeed, Defra has taken the route of the Environment Act to review the water framework directive—three cheers for Defra—but we would like to ensure that this decision, which was a good one, is enshrined in the Bill. We would like to see the key environmental regulations which are listed in the amendment on the reduction of standards safeguarded in the Bill, rather than being subject to ministerial or departmental whim about which piece of legislation they would take them under.

The noble Baroness, Lady Bennett, is absolutely right that it must be terribly tempting for the third civil servant from the left to choose the easy route, rather than the more difficult route, when it comes to amending these laws. As such, I support both amendments.

I will raise one more point. The retained EU law dashboard is absolutely crucial; it is the holy grail of what these laws are—and it is slightly increasing. In the last Committee sitting, I sat with my iPad open at the Defra section of the retained EU law dashboard. I was fascinated because under the heading "REUL Reform Progress" is recorded, for each department, the percentage of retained EU law which has been amended, repealed or replaced. It does not actually say whether laws have been given a straight pass through, but it does talk about amendment, repeal and replacement. As I sat watching it, the percentage of retained EU law in Defra that had been amended, repealed or replaced changed from 17.6% to 18.4%. I thought that was really interesting and wondered what had made it make that change. I asked myself, "What piece of law has just been given assent in the Moses Room that has suddenly flipped the switch on a particular piece of legislation so that it is now amended, repealed or replaced?"

The only way you can find that out at the moment is by wading through every single one of the 1,700 Defra retained EU laws, trying to work out which ones have changed since the last time you looked; there is no other indication. Even for a nerd like me who loves the dashboard and who spends all their life studying it, it is a bit unsatisfactory that there is no easy way of working out how the progress of this review of EU law is going.

It is slightly unfortunate that the Minister, the noble Lord, Lord Callanan, is not in his place, but I hope that the noble Lord, Lord Benyon, and all the assorted Ministers we have had responding to the Bill, will commit to publish a weekly or fortnightly list of regulations which have been amended, repealed or replaced—and, I hope, also some which have simply been assimilated. That will allow us all to see how this work has progressed—not just in Defra but in other government departments; the MoD has claimed that it is practically finished—and enable us to judge the progress of this work and, indeed, to take a position and a view on the effectiveness of this review of EU legislation. I ask for that as a parting gift from Ministers as we come to end of Committee, at some stage this evening, we hope.

Lord Lilley (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Young, with whom I share the honour of serving on the Environment and Climate Change Committee, under the excellent chairmanship of the noble Baroness, Lady Parminter, whose amendment I wish to address. However, before I do, I say that I do not think that anybody in this Chamber wants to tear up necessary environmental

protections that maintain the standard and beauty of our environment. Certainly I do not, and I do not think that the Government have any such intention.

However, some of us want to change those regulations in a way which would improve them and make them less onerous and less burdensome. I fear that the amendment tabled by the noble Baroness, Lady Parminter, would prevent that, because it says in proposed new subsection (2):

"No provision to which this section applies may be made … unless … the provision … will contribute to a significant improvement in environmental protection."

Therefore, no change may be made unless there is some improvement—even to a regulation which could be made less onerous but where there is no scope for improving the standard of environmental protection or where any additional environmental protection would be unnecessary and not cost effective. This could freeze the whole thing.

If the noble Baroness, Lady Parminter, interprets her amendment in a way that she did not in her speech, that improvement can be making a law less onerous, then that would be an excellent and wonderful thing, because there is considerable scope for making environmental protection less onerous than it is now. Current rules can be cripplingly expensive, mind-bogglingly complex and hugely time-consuming. Moreover, those failings can prevent environmentally desirable developments.

My eyes were opened and the scales fell from them when I read an article by Sam Dumitriu—you only have to Google it and you will find it. He points out that the proposed Norfolk Boreas offshore wind farm, which is necessary and desirable for environmental reasons, as I am sure all noble Lords would agree, to reduce our emissions, needed to produce 1,961 documents just to get approval, with a total of 13,275 pages. That is more words than the entire works of Tolstoy and all seven volumes of *In Search of Lost Time*. That probably could be streamlined and made easier without undermining the protection of the bit of sea where that windfarm is proposed to be.

Let us take Sizewell C nuclear plant. Some people object to nuclear plants, but those who want to reduce carbon emissions think that they are a very necessary part of our energy mix. It will be built alongside an existing nuclear plant, so you would think that most of the environmental obstacles had been overcome. It is desirable to reduce CO_2, but it had to produce environmental applications running to 44,260 pages, most of which referred not to land but to any impact that it might have on the sea and maritime areas nearby.

It is difficult to put a cost on, because the people who have had to go through these processes are in the private sector, but a freedom of information request by *New Civil Engineer* magazine revealed that the highways agency, when applying to build a 23-kilometre road, had to produce 30,000 pages of environmental application, costing £267 million. I am sure that the noble Baroness, Lady Bennett of Manor Castle, does not want any extra roads, and I respect that, but I think that she would agree that if you are not going to build the road, then just stop it, save £267 million and spend it on something worth while rather than on a process of applying for environmental protection which is just mind-bogglingly expensive.

For each of those cases, I do not know how much regulation was imposed on us by the EU and how much by our own volition. From listening to noble Lords and noble Baronesses who have spoken in these debates, almost all assume that all environmental protection of a worthwhile and onerous kind comes from the EU. I would be grateful if the Minister, not necessarily in the reply to this debate but subsequently, can tell us to what extent EU law is feeding into these hugely onerous, costly and time-consuming things that prevent us doing what is necessary for the environment and would help us to meet net zero.

5.45 pm

Of course, this is not only our problem. President Macron recently complained that it has taken 10 years for France to get first approvals for an offshore wind farm. In the future, he wants environmental projects to be approved twice as rapidly as non-environmental projects. Maybe that is something that we should seek. It must be possible.

I decided to become a scientist as a child because we had just approved Calder Hall—the first atomic power station producing civil nuclear power in the world. It was produced a few years after the war when the first atomic weapon was produced. They went through the whole process of inventing the technology, getting approval, and getting up and running in those few years. Nowadays, you would not even get through the approval process for the environmental regulations in that time. That cannot be right. There must be scope to streamline these processes in a way that does not undermine environmental protection, or mean that we will lose biodiversity or that our beautiful landscape will be desecrated. I hope that we focus on that aspect of changes to environmental law as the principal fruit of the REUL Bill.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, my noble friend Lady Parminter clearly set out the arguments for Amendment 126, which I fully support. The noble Baroness, Lady Hayman of Ullock, ably introduced her Amendment 130, to which I have added my name. I will speak briefly to that amendment.

The Minister, the noble Lord, Lord Benyon, made it clear that he is personally committed to ensuring that environmental standards are maintained, that biosecurity is improved, and that the Government leave the environment in a better state than they found it. However, this commitment and aim are not shared by all in the current Government.

The Bill is worded in such a way as to provide a very large degree of what can be called "wriggle room". We have debated in Clause 15 the meaning of "appropriate" and how this will be interpreted by both officials and Ministers when it comes to individual pieces of legislation.

Clause 15 allows Ministers to amend important retained EU environmental law on nature, water and chemicals, ensuring that there is no reduction in environmental protection. This has to be achieved without extra bureaucracy, taxes or burdens being incurred. My noble friend Lady Parminter has spoken on this issue.

[Baroness Bakewell of Hardington Mandeville]

In evidence to the Lords Environment and Climate Change Committee, the Secretary of State referred to the Environment Agency's wish

"to change quite a lot of the water framework directive".

The quality of our water has featured in our debates more often than many of us would care to mention. To be informed that a lot of changes are likely to come to the water framework directive without any indication of what they may be is extremely worrying for many in this Chamber. The noble Baroness, Lady Hayman of Ullock, also raised this.

Amendment 130 would insert a new clause whose aim is to maintain environmental standards across a range of regulations and directives, which the country has taken for granted and which have protected the health of the population, our environment, wildlife and the marine environment over the years. Proposed new subsection (4) lists those laws that we believe are essential to keep. Others are also important, as the noble Baroness, Lady Hayman of Ullock, also raised, but those five are vital and should be included in the Bill. There is consensus on this across the Committee.

We have debated these issues on previous days in Committee without the Minister giving any comfort. On this occasion, we are all looking for the Minister to realise that the vital issue of protecting the environment and the population is not going to trickle away. Unless he wants to see a flood of opposition from all quarters, both inside and outside Parliament, he will accept the amendment before we come to Report. I look forward to his agreement.

Lord Inglewood (Non-Afl): My Lords, I have been listening to this debate with interest. Obviously, it relates to environmental standards, but is also about the way in which the legislation that deals with environmental standards is cast. I am sure we are all agreed that some of the things that the noble Lord, Lord Lilley, described could be substantially mitigated, to the benefit of everybody.

Having said that, what we see with the two amendments we are considering is the introduction of legal certainty into the legislation. That, it seems to me, is actually quite important because, as has been described on previous days in Committee, the underlying rationale behind the kind of approach being adopted by the Government is what I might describe as the operation of a compensatory principle. This, it seems to me, is a very attractive notion. But how is it going to work? In particular, as has been debated previously, what is the currency you use to determine whether or not something is compensation? It has to be equivalent, it seems to me. That is the basic meaning of the word in the English language.

Then there has been discussion about "Well, it'll be done on the whim of a civil servant or a Minister". But I do not think this is going to be the end of the story—this is what my concern is—because any change that comes about will produce winners and losers. Wherever there are winners and losers, not least in this area of policy, the law gets dragged in. I can see that the whole scheme on which this particular approach has been adopted is going to lead to an absolute abundance of applications for judicial review, because any change that is made on the basis of this compensatory principle is going to have a winner and a loser, and is going to be the hinge on which the legislation depends. I would be very interested to know the views of the Front Bench on this, because I can see that what sounds superficially like a siren song of easy administration may well end up providing an absolute bonanza for lawyers. I suppose that, as one myself, I should declare an interest.

Baroness Ludford (LD): My Lords, I want to say a few brief words before the Minister replies; this is prompted by the words of the noble Baroness, Lady Bloomfield, in summing up on the last group, and the letter we received today from the noble Baroness, Lady Neville-Rolfe. My noble friends, in moving and speaking to the amendments in their names, and other noble Lords from other Benches, have highlighted the objective of the amendments, which is to get pledges to uphold environmental protections, including those in international instruments.

In the last group, the Minister gave as an example a pledge to uphold human rights. We are shortly to have a Statement on the well-named Illegal Migration Bill, in which the Home Secretary has said that this is 50% likely to breach the European Convention on Human Rights. If that is the standard by which we judge the Government's intentions in upholding international law, I do not think it is terribly encouraging.

We debated on Monday the definition of a subject area in the light of the letter from the noble Baroness, Lady Bloomfield. I think we have done so again today. Does it mean water quality? Is it the whole of environmental law? Is it the whole of what Defra does? None of us has the foggiest idea. The same puzzle arises over the term "objectives". The letter from the noble Baroness, Lady Neville-Rolfe, tells us that

"the individual limbs of the power"

in Clause 15

"are also restricted. Subsection (2) is limited such that any replacement legislation must be appropriate and must fulfil same or similar objectives as the retained EU law or assimilated law that it is replacing."

That is, of course, the wording in the Bill. She goes on:

"This limits the functionality of this limb of the power to essentially adjusting policy to better fit the UK context".

Apparently, this is

"rather than radically departing or introducing legislation in ways that are controversially different from the existing legislation."

So now we have "appropriate", we have the "same or similar objectives", we have "subject area", and now we have a pledge to essentially adjust policy to better fit the UK context. I am afraid that this does not assuage concerns because I, for one, do not have the foggiest idea what restraints or constraints there will be on the Government in their adjustment of policy. They are proposing to adjust policy on refugees, with a 50% likelihood of breaching the European Convention on Human Rightsm as well as, in the opinion of these Benches, totally breaching the refugee convention. I am afraid that the Minister has his work cut out to convince us—certainly these Benches—of the Government's good intentions in the environmental area.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I seek two things this evening: first, to get through this

group without having to write any more billets-doux to noble Lords, because I think they have had quite enough. I will be able to explain, I hope, what we are trying to do to satisfy noble Lords. The other is to leave them, if I did not in the previous group that I responded to, with the absolute certainty that we want to see our environment enhanced, and that existing protections continue to function in a way that works at a time when we are tackling the biggest crisis mankind has faced. My noble friend Lord Lilley raised points about the bureaucracy of trying to do the right thing—that if we want to create a wind farm, the delays in doing that are prohibitive. We need to do things quickly, because there is an urgency about what we are trying to do. There is an urgency in trying to reverse the decline of species, which is more than just a crisis. As Dasgupta said, it is more than just an environmental crisis; it is an economic one as well.

The noble Baroness, Lady Parminter, mentioned my noble friend Lord Randall, who is in hospital. I sent him a message earlier and he replied; he is on the mend and we wish him well.

Amendments 126 and 130 seek to add conditions on and restrictions to the use of the powers contained in the Bill. Amendment 126 would place conditions on UK Ministers or devolved authorities when using the powers under Clause 15 to revoke or replace retained environmental EU law. In particular, this amendment would prevent any provision being made before all the conditions specified in the amendment had been fulfilled. This would add significant delay and negatively impact how we review and reform retained environmental law.

The Government have been clear that we will uphold our environmental protections and our commitments, both domestic and international. The UK is a world leader in environmental protection. In reviewing our retained EU law, we want to ensure that environmental law is fit for purpose and able to drive improved environmental outcomes. We remain committed to our ambitious plans, set out in the net zero strategy, the Environment Act and the *Environmental Improvement Plan 2023*, which detailed comprehensive action this Government will take to reverse the decline in species abundance by 2030, achieve our net zero goals, and deliver cleaner air and water. This includes creating and restoring at least 500,000 hectares of new wildlife habitats, delivering a clean and plentiful supply of water for people and nature into the future, keeping councils accountable to improve air quality faster, incentivising farmers to adopt nature-friendly practices, and boosting green growth and creating new jobs. This Bill will not alter that.

6 pm

Our commitments to nature include pledging £750 million of nature for climate funding to restore peatlands, drive up tree planting and create wildlife-rich habitats. At home, we are pledging to launch a new multimillion pound fund this spring as a key part of our plan to help halt and reverse species decline in England, supporting habitat creation and ecosystem restoration. As the Secretary of State reiterated in her speech at the launch of the environmental improvement plan on 31 January, and as I noted in this House last Tuesday evening:

"Defra's default approach will be to retain EU law unless there is a good reason either to repeal it or to reform it".—[*Official Report*, 28/2/23; col. 205.]

That is what Defra Ministers are allowed to do under the terms of this Bill. It is entirely consistent with what my noble friends have been saying on other sections of this legislation.

Baroness Hayman of Ullock (Lab): Defra's approach is not the same as saying "retain by default": is that what the Minister said "retain by default" meant when he talked about it last week? I really think we need to be clear.

Lord Benyon (Con): Our position, as announced by the Secretary of State at the launch of the environmental improvement plan, is that we will retain by default provisions for environmental protection. Where we think there is any element of doubt, we will retain. If it needs to go, it can.

I can give the noble Baroness some examples of areas of law that we will remove. We will remove around half of fisheries rules, as they are no longer relevant. They have either expired or relate to areas that we do not fish—for example, access to the Skagerrak, off Norway, for vessels with the flags of Denmark, Norway and Sweden. We do not need that on our statute book. We will remove the Landfill (Maximum Landfill Amount) Regulations 2011 because they set targets up to 2020, which has happened, for the landfilling of biodegradable waste. They have been achieved.

To remove unnecessary burdens, for example, we will remove some of the CITES-implementing legislation, which lays down specific rules for the design of applications and permits on the protection of wild flora and fauna, including prescriptive rules on the weight of paper that must be used for such documents. Removing these regulations will eliminate unnecessary restrictions and allow the UK to pursue a digital regime. When they were written, there was no digital regime; we can now do that. Commission regulation 644/2005 of 25 April 2005 allows for the removal and non-application of ear tags for bovines kept for cultural and historical purposes—in this context, bullfighting. It is a derogation that we have not used in the UK and will not be using, so we no longer need to have it.

Baroness Hayman of Ullock (Lab): Apologies for intervening again, but is the Minister saying that the Bill retains by default, or just that Defra's approach is to retain by default? Those are two very different things. The letter we recently had from the noble Baroness, Lady Neville-Rolfe, talked about how

"the internal methodology for identifying such retained EU law was for each department to decide, given their expertise and institutional knowledge".

It would be useful to understand how that will work within Defra.

Lord Benyon (Con): Yes, that is Defra's approach; that is what we are doing in respect of this legislation. Doing that allows us to keep protections in place, provide certainty to businesses and stakeholders, and make reforms tailored to our needs while removing irrelevant and redundant pieces of legislation, such as the ones I recently mentioned.

[LORD BENYON]

The noble Baroness, Lady Parminter, and other noble Lords asked about the justification for Clause 15(5). The UK's high standards were never dependent on our membership of the EU. We can deliver on the promise of Brexit without abandoning our high standards. The powers to revoke or replace will provide the Government with the opportunity to amend retained EU law and will limit those reforms that do not add to the overall regulatory burden. This is about ensuring that we have a regulatory environment that is the right fit for the UK and not for an environment, as I said last week, that goes from the Arctic to the Mediterranean, and which can fit our overall regulatory regime. Our intention is to revoke any retained law that is not fit for purpose and replace it with laws that are more tailored to the UK and reflect our new regulatory freedoms.

The noble Baroness mentioned taxation. This Bill does not affect the raising and collection of taxes; that is a matter for the Finance Act.

On no regression, the Levelling-up and Regeneration Bill is clear that the Government cannot use the powers in that Bill to reduce the overall level of environmental protection, and includes a clause setting out this commitment to non-regression. As stated on the face of the Levelling-up and Regeneration Bill, the Secretary of State may make regulations only if satisfied that they

"will not have the effect of reducing the level of environmental protection provided for by any existing environmental law".

So any changes to environmental regulation will need to support these goals, as well as our international commitments, including those with the EU.

The noble Baroness, Lady Young, referred to the Bill as somehow weakening our resolve or our ability to deliver on our international commitments. I can be absolutely clear on this: there has never been a more determined effort to deliver for international biodiversity and the international climate, as well as domestically.

Baroness Parminter (LD): My Lords—

Lord Benyon (Con): If the noble Baroness will allow me: Britain is revered in many of the fora that I have attended, whether COPs or other UN events, for the leadership we have taken on this. We cannot do it internationally unless we do it domestically as well. That is why our 30 by 30 commitment is so important and why we will achieve proper management of our marine protected areas by the end of next year, which will deliver precisely on the 30 by 30 commitment for the marine environment.

Baroness Young of Old Scone (Lab): My Lords—

Lord Benyon (Con): The noble Baroness, Lady Parminter, was before the noble Baroness.

Baroness Parminter (LD): Indeed. I do not wish to contradict the Minister, but I am going to. On reading my copy of the Bill, Clause 15(4)(f) states that the burden "may not … impose taxation". It states that you cannot include new taxation if you are looking to introduce a new piece of legislation. That is pretty clear.

Lord Benyon (Con): That is because taxation is a matter for the Finance Bill—for the Treasury. This Bill does not relate to that. It is a negative. This does not affect taxation.

Baroness Parminter (LD): Okay, but it goes on to say in Clause 15(10)(a) that the burden includes, among other things, "a financial cost". A financial cost can be a levy, which is taxation.

Lord Benyon (Con): Forgive me, I think that is dancing on the head of a pin. Taxation is not a matter for this piece of legislation.

Baroness Young of Old Scone (Lab): I was going to ask the noble Lord something else, but I support what the noble Baroness, Lady Parminter, said.

It is kind of fruitless if we ping-pong across, with Ministers generally saying that we are right behind current levels of environmental protection, international commitments and all that. I wonder whether we could try a little test case on the habitats regulations, which we have made some changes to already through the Environment Act, and a number of changes to them are already embedded in the levelling-up Bill. Some bits of those regulations are left for which I do not know what the Government's intentions are. Inevitably, for something such as protected areas and our commitment to 30 by 30, not having a clear view from government as to how the habitats regulations will fare in this review process, which is under way through two separate pieces of legislation already, is a bit of a worry when we have to sort that out before the end of the year.

Perhaps we could use the habs regs as a test case and ask the Minister to map out for us what has been sorted in the Environment Act, what will be sorted if we approve it in the levelling-up Bill and what is going to happen to the remainder of the provisions of the habs regs before they fall off a cliff at the end of this year. That would give us a lot more confidence in some of the assertions—which we absolutely accept the Minister is making in good faith—about not diminishing standards and not welshing on or diminishing our ability to respond to our international obligations.

Lord Benyon (Con): I totally respect the noble Baroness for her commitment on these issues. I know she would not want legislation that sealed the habitats regulations in aspic for ever, because the environment changes and demands change and Parliament has to reflect that occasionally regulations need amending. We may well want to raise the standards of those regulations.

Baroness Young of Old Scone (Lab): If I can correct the Minister on that, this retained EU legislation Bill has a hard edge. As of the end of December, if nothing else has been done it does not set it in aspic but sets it eight feet under.

Lord Benyon (Con): If we maintain it as is, it will not fall at the end of the year. If we want to reform it, it will be in the form of an SI, as before, so noble

Lords will have a chance to debate it. The noble Baroness seems to be presupposing that somehow we are just going to allow it to sunset, and we will not.

I will make a bit of progress, if I can. We want to positively—I think this answers the noble Baroness's point—tailor our legislation to our new status as an independent nation. This is why we do not consider the proposed conditions for such regulations necessary.

Amendment 130 seeks to add a new clause to the Bill relating to environmental standards. This amendment would introduce a new clause requiring Ministers to meet the additional conditions set out within it. It would also specify that, when exercising these powers, the relevant national authority must have regard to the conservation and enhancement of biodiversity, the improvement of water quality, and the protection of people and the environment from hazardous chemicals. I recognise that the noble Baroness, Lady Hayman, may have concerns about the powers within the Bill and the impact their use may have on regulations related to environmental standards. I reassure her that such concerns are unfounded.

A number of noble Lords talked about the water framework directive. I shall relate very quickly an experience I had when I came into government with the Liberal Democrats in the coalition. I visited a river that was feeding into the Wye—a river that is often raised in this House for its condition. I visited a mill-house. Its owners said that they had been there for eight years. They pointed at some farm buildings about half a mile away and said, "When we came here we couldn't see those farm buildings. Two metres of top soil has been lost in the eight years we have been here." I asked where it was now and they showed me the millpond round the other side of the house which was full of the delicious red soil that comes from that area. I said, "How could this have happened?" The farmer who had allowed it to happen was receiving money from the basic payment scheme, and probably from the countryside stewardship scheme, but no one had visited, or if they had visited they had not raised this issue. The river authority—or whoever was in charge of the quality of the rivers; it was the Environment Agency at the time—had not raised the issue.

That was 12 years ago. Since then, we have produced measures which would require that farmer, if they wanted to continue to get public money, to have soil conditions that would prevent that kind of erosion, and the management of that river would require much higher standards. The water framework directive, which has some very high standards and high bars which we talked about last time, was being ignored, and one of the great rivers of our country was being ruined.

Let us not pretend that everything was perfect in the past. We have got a long way to go to improve our rivers, and it is the determination of this Government to write a new form of the water framework directive which will continue the high standards that we seek for our rivers.

6.15 pm

Baroness Ludford (LD): In his reply, the Minister has several times implied that it was the fault of EU law, but surely it was a problem of UK implementation and enforcement. I know I am a broken record in this respect but I have, at various times, referred to the Thames super sewer. Left to their own devices, the UK Government were not going to stop the discharge, in even minimal rainfall, of raw sewage through 36 combined sewage overflows into the River Thames as it goes through London. It was only infringement proceedings by the European Commission that led to this result. The standards that we have are not the EU's fault; it is the UK Government and the agencies that have not done their job.

Lord Benyon (Con): I never said that. I was the Minister who made the sewer that is being put in place happen. I know all about the urban waste water treatment directive, and it is a very good directive indeed. It is cleaning up a lot of rivers and will ensure that we have more investment such as we are seeing in the Thames. There may be cases where there has been poor implementation, and there may be cases where there has been very good European regulation which we want to see retained. There may be areas where we can see an improvement which reflects a local dynamic in our environment.

We cannot talk about this in a binary sense. There is some very good EU law which we want to see continue, there are some areas in which it is no longer necessary, and there are some areas in which with a few tweaks it can be improved. Among the proposed conditions in the amendment is a requirement to publish a statement setting out how such environmental standards have been met. Such conditions are already being met under the Environment Act 2021. The Act has established a robust legal framework to deliver environmental benefits and hold Governments, both now and in the future, to account in delivering them. Crucially, the Act also established the Office for Environmental Protection, an independent body to scrutinise government delivery and progress on environmental ambitions. In addition, we have a statutory duty, through the Environment Act, to report annually to Parliament on progress against the environment improvement plan and to undertake a significant improvement test every five years.

To reiterate the point on REACH, which the noble Baroness, Lady Hayman, raised, we recognise there may be concerns about the future of REACH regulation. That is why we have deliberately built protections into the provisions of the Environment Act. The Secretary of State must publish a statement to explain how any proposal is consistent with the basic aim and scope of REACH. There must be consultation before we can make any changes. We have also excluded more than 20 provisions to protect the fundamental principles of REACH, including the no dating, no market principle, using animal testing only as a last resort, and the public transparency of the system.

Finally, I want to clarify a response made to the noble Baroness, Lady Chapman, the last time I addressed the Committee on the Bill's removal of interpretive effects. The removal of interpretive effects by the Bill refers to measures in Clauses 3 to 5 which repeal rights, powers and liabilities saved by Section 4 of the European Union (Withdrawal) Act 2018. They abolish the principle of the supremacy of EU law and general principles of EU law as aids to interpretation of the UK statute book. Retained case law is not being sunsetted.

[LORD BENYON]

Further detail on interpretive effects was set out by the noble Lord, Lord Callanan, in his letter circulated before the Committee on 6 March. We will shortly publish a list for noble Lords, so they will have plenty of time and opportunity to review the regulations we intend to allow to expire at the end of the year and those we wish to retain.

The Government are committed to upholding the environmental protections. I hope I have reassured noble Lords, and I therefore ask them not to press these amendments.

Baroness Bennett of Manor Castle (GP): The Minister speaks for Defra and assures the Committee that the Government are entirely committed to progressing environmental standards and will follow international law. Why is there any problem putting a non-regression clause and an agreement to follow international law in the Bill if that is what the Government plan to do anyway? Further to that, can the Minister assure me 100% that before the next general election there will be no change of direction in the Government, change in Prime Minister or change in ministerial personnel?

Lord Benyon (Con): I wish I could. I am very content with the current lot, and I hope they continue. I do not really understand the first point that the noble Baroness made. The Bill is quite explicit about where this stands in law. We want a proper regulatory regime underpinned by law; that is why we are having this debate.

Baroness Parminter (LD): My Lords, I thank noble Lords who have participated in the debate. I thank the Minister, who has had the decency again to come and speak to us. Given how critical the environmental laws are to the Bill, it is important that he is here and we are grateful for that, although it may not always seem it. It is therefore disappointing that I can say with a degree of certainty that he has not reassured Members about the issues we are concerned about. In a reasonable way, these two important amendments sought to work with the Bill to allay some of our environmental concerns.

I do not understand how the Minister did not quite understand what the noble Baroness, Lady Bennett of Manor Castle, was saying. We accept what the Government are saying through the Minister, but if they want to deliver the commitments for our environment and, in principle, not regress, why not put it in the Bill? That would give us—and, just as critically, the public—the reassurance that we need.

I do not often quote in the Chamber, but this issue is not going away. On Sunday, David Attenborough starts a series called "Wild Isles". For five weeks he will encourage the British public to find out what is so special about our country and what they can do to protect it. Sir David said this week:

> "Though rich in places Britain as a whole is one of the most nature depleted countries in the world. Never has there been a more important time to invest in our own wildlife—to try and set an example for the rest of the world and restore our once wild isles for future generations."

For five weeks the British public will get that message and, in the same way as when they heard the plastics message, they will ask what they can do to protect their environment and what their Government are doing. They will see this cuckoo of a Bill, sired by someone who was prepared to trash our environment as well as our economy and, unless it has the significant safeguards we have talked about, it could predate on the environment they care about so much. The Government might choose to ignore us today, but they will not be able to ignore the British public. I withdraw the amendment.

Amendment 126 withdrawn.

Clause 16: Power to update

Amendment 127 not moved.

Debate on whether Clause 16 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): I am grateful for this opportunity to speak to this little group, which is intended as probing amendments that look to the power to update and the transitional part of the Bill.

The aim of Clause 16 is to provide that the national authority will have the power to update by regulations

> "any secondary retained EU law, or … any provision made by virtue of section 12, 13 or 15 … to take account of … changes in technology, or … developments in scientific understanding."

I am honing in on whether Clause 16 should stand part because I believe that the reasons for updating these regulations should also reflect other conditions, such as changes in society or economics. The rationale for making amendments in Clause 16, as currently drafted, is unduly narrow. I therefore urge the Government to consult on this clause and rethink this provision to reflect the wide scope of changes that would necessitate amendment of the law in future.

I take this opportunity to ask my noble friend, when she comes to sum up this small group, what the consultation was on this clause prior to the drafting of the Bill. I would like to understand further the thinking behind why this clause is currently so narrowly drafted.

In turning to Amendments 133 and 134, I raise a request yet again—I think this is my third or fourth attempt. It goes to the heart of not just amendments in my name but of others in the names of the noble Baroness, Lady Humphreys, and the noble and learned Lord, Lord Hope. I have still not heard an answer from any noble friend to the question: what is the Government's view of the Scottish Parliament's decision to withhold consent? It is vital that we get an answer to that question before we leave Committee, which is at the end of today. My noble friend Lady Bloomfield said to me that I would have an answer. This is the last possible moment for me to get an answer to that question, and I think it very important. It relates not just to Clauses 16 and 19 but to other clauses that have been extremely contentious and led to fairly lengthy debates. I hope my noble friend Lady Neville-Rolfe will respond on that vital question.

Amendment 133 would replace "appropriate" with "necessary". As currently drafted, Clause 19(1) provides that:

> "A Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act."

Given that Clause 19(2) allows such regulations to amend any Act, including this Bill, it is my view—and that of the Law Society of Scotland, which helped me draft this small group—that the Minister should be permitted to amend those regulations only where it is necessary to do so. This applies a more objective standard to the amendment of the regulations. If my noble friend is not minded to support my amendment to replace "appropriate" with "necessary", can she explain in which circumstances the Government would consider the provision to be appropriate for the purposes of Clause 19(1) and (2)?

Amendment 134 would require a Minister of the Crown to consult the other relevant national authorities and interested persons before making regulations under Clause 19. In particular, Clause 19(1) has been identified as providing a Henry VIII power that empowers a Minister of the Crown by regulation to make such provision as the Minister considers appropriate in consequence of this Act. Given that Clause 19(2) would allow such regulations to amend any Act, including this Bill, it is the view of the Law Society of Scotland that the Minister should be required to consult the bodies referred to—the devolved Administrations. I share that view.

6.30 pm

My final question to my noble friend the Minister on this is: why should these powers that apply, under the Bill as currently drafted, to the Minister of the Crown not also be extended to Scottish and Welsh Ministers, and indeed devolved Ministers in the Northern Ireland Assembly where that is the case? I am struggling to understand why this power has been reserved exclusively in Clause 19 to a Minister of the Crown. Again, this goes to arguments that have been rehearsed on other groups, including very eloquently by the noble Baroness, Lady Humphreys, about why the Minister of the Crown is put on a pedestal over and above Ministers of the devolved Administrations. I believe it is a hostage to fortune that the Government do not have regard to the fact that these powers should be exercised equally by Ministers of those devolved Administrations. With those few remarks, I beg to move.

Lord Fox (LD): My Lords, we are indebted to the noble Baroness, Lady McIntosh, for again bringing forward some detail and being a conduit for the important work that the Law Society of Scotland provides to a number of different Bill Committees on which I have found myself. I am not going to speak to the clause stand part debate or her first amendment, but I shall speak briefly on Amendment 134. She herself linked it to the first group that we spoke about today. In the words read out by the noble Baroness, Lady Bloomfield, in response to that group, I failed to recognise the description of the relationship that currently exists between the Government in Westminster and the devolved authorities when discussing this Bill. A picture appeared to be painted of some quite progressive and happy discussions, which is not my impression of what is actually going on. The noble Baroness's Amendment 134 is another way of trying to link back to the devolved authorities. It is clear at the moment that the devolved authorities are very sore about how they are being treated by the Bill, so any measures that reach back to them are important. That is why we on these Benches particularly support Amendment 134.

Baroness Chapman of Darlington (Lab): My Lords, I agree with what the noble Lord, Lord Fox, said about the helpfulness of the noble Baroness, Lady McIntosh, in tabling these amendments. It is curious that, in this clause, changes in technology and developments in scientific understanding are allowed to be taken account of but other factors are not. I would have thought, given the Windsor Framework, that we ought to be taking account of developments in the economies of our trading partners and their regulatory developments, because under that framework they are going to have an impact on what we are able to do in the UK and our approach to regulation and divergence. That is becoming increasingly clear, which is why we are seeing questions such as that asked by the noble Lord, Lord Moylan, of the noble Lord, Lord Caine, yesterday at Oral Questions. We do not yet have a sense that the Government are on top of this. It is as if they have done this Bill and then done something somewhere else, and no one has asked about how those two things will overlap.

When I first saw this clause, I thought, "This is a real problem because Ministers are going to get too much power to do things without accountability, rather like the discussions we have had before", but actually even more questions are raised about the privileging of technology and scientific understanding ahead of anything else. It would be good to understand where that has come from and what Ministers had in mind when they included it in the Bill. Might they come to regret not making clear that this is not an exhaustive list, or something like that, as they have in other clauses? We are not clear what is meant by the phrase

"considers appropriate to take account of",

so perhaps some examples might be in order.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): Amendments 133 and 134, tabled by my noble friend Lady McIntosh of Pickering, relate to the power to make consequential provision in Clause 19. I will also address the intention to oppose Clause 16 that she has tabled, regarding the power to update. I reiterate my intention that Clause 16 should stand part of the Bill. As she has indicated, her intention to oppose it is probably partly probing in nature.

The power to update within the clause, as it says, is intended to enable scientific or technological updates to retained EU law, assimilated law, and legislation made using the powers to restate and the powers to revoke or replace in the Bill. This power is intended to provide Ministers and devolved authorities with the ability to update relevant existing legislation in line with its policy intent, rather than provide for fundamental policy change.

The Government considered a number of relevant criteria for the power to update and settled on scientific advancement and technical change as the most appropriate. Adding extra provisions on trade or economics would be very wide-ranging, whereas the need to update narrowly on tech makes sense. I shall give the Committee a hypothetical example. Medical

[Baroness Neville-Rolfe]
devices regulations set out a list of equipment that is safe to use. As new medical technology is developed, this power could be used to update the list of permitted devices to include the new technology.

During our EU membership, EU law was frequently updated by the European institutions—I remember sitting in management committee when I was a civil servant—but we now lack the powers to do so ourselves for retained EU law. We cannot allow this body of law to stagnate on our statute book. To resolve this, a Minister or devolved authority may make updates to such legislation to take into account changes in technology or developments in scientific understanding, as appropriate. That ensures that legislation which sits on the UK statute book is able to keep pace with scientific and technological developments and will enable the UK to continue to uphold our high standards. Without such a power, there is a risk that legislation would stagnate and become outdated on the UK statute book. For example, there could be significant developments in technology that we need to be able to respond to quickly and in an agile way in order for the UK to keep pace with such developments and remain competitive. I therefore ask that the clause remain part of the Bill.

Amendments 133 and 134 both seek to place restrictions on the consequential power within Clause 19. Amendment 133 would limit a Minister of the Crown to make only those changes deemed necessary in consequence of the Bill, while Amendment 134 would place a requirement on the Minister of the Crown to consult any interested persons and relevant devolved Governments before using the power to make consequential amendments. The Minister of the Crown would also be required to publish the results of any consultations.

On Amendment 133, I reassure the Committee that the inclusion of a consequential power is standard practice for a Bill where minor additional changes to legislation may be required as a consequence of the changes brought forward by the Bill. To take another example, consequential amendments will need to be made to rename retained EU as "assimilated law" in existing legislation. Were Amendment 133 to pass, it would limit the power to only those amendments deemed necessary. That would lead to a number of problems. In particular, it is not clear whether any consequential provision would ever be truly necessary, as it would be possible to leave the statute book with an erroneous provision and it would likely be interpreted as modified by the Bill.

Turning to Amendment 134, I have already explained that this power is a standard consequential power. The power is not conferred standardly on the devolved Governments, as it is normally exercised by UK Ministers. Should this amendment be passed, it would hinder the ability to make consequential amendments to legislation, which may be necessary to ensure that our UK statute book continues to function effectively. Indeed, it is our expectation that the use of the consequential power, as in other primary legislation, will be interpreted narrowly and limited to making only those amendments that are genuinely consequential and result from changes in the Bill. For these reasons that I have outlined, I ask my noble friend not to press her amendments.

My noble friend also raised the question of devolved nations and of the Scottish Parliament's consent. We will come to back to that; we understand the concerns raised. I apologise for not being here at the beginning of proceedings, as I had a meeting with the Welsh Government. I know that it has been difficult for everyone because of the extra—but important—days that we have had to debate the Bill.

Baroness Chapman of Darlington (Lab): Can the Minister commit to write to me about an issue that I have raised a few times on different groups? It is about how the Bill relates to the Windsor Framework and how the Government see that evolving.

Baroness Neville-Rolfe (Con): I certainly undertake to write. There are some uncertainties, as the noble Baroness will understand, so I will update her as much as I can. It is important and we need to be as clear as we can be before Report.

Baroness McIntosh of Pickering (Con): I think the whole Committee would probably like to have sight of that letter, if we may. It goes to the heart of what the noble Lord, Lord Dodds, asked earlier today, because we are still very unclear as to the level of withdrawal of EU laws in connection with the Windsor agreement.

I have the highest regard and the greatest affection for my noble friend, but I have to say that I find it extraordinary that we are about to leave Committee and we still have not heard what the government response is to a very serious issue of the Scottish Parliament having announced that it is withholding its consent to the Bill. The Committee will have to form a view on that—I am sure the whole House would like to form a view on it—as we now proceed to Report. I am extremely disappointed that, having given my noble friends three or four goes, it is kind of like, "We don't really care what the Scottish and Welsh Governments, or the Northern Irish people, think, because we're an English Parliament and we are going to proceed". I am afraid that is the impression I am left with.

Baroness Neville-Rolfe (Con): We are the UK Parliament. I have said that we will come back to the House on these devolved issues. It may not be possible to do that today, but I thank my noble friend.

Baroness McIntosh of Pickering (Con): Is my noble friend able to say when? Could we have a meeting before Report? It would be helpful to know whether my noble friend will commit to such a meeting. I will take that as a yes.

Baroness Neville-Rolfe (Con): I have committed to write. Whether or not there is a meeting, we will certainly be in communication.

Baroness McIntosh of Pickering (Con): I am grateful. My noble friend will have soaked up the atmosphere, including in the responses from the two Front Benches opposite, as to the strength of feeling throughout the Bill's proceedings as to how it would appear that there

has not been formal consultation to the extent that the devolved nations would have wished. One has already registered that it has withheld its consent, which obviously calls into question what the next stage will be with the Scottish Parliament in that regard. It has amendments on the table that have not yet been tabled, so we will see what happens there.

I am disappointed that my noble friend was unable to explain—in response to not just my questions but those from the noble Baroness, Lady Chapman of Darlington, as well—why it is only science and technology. Are we including food science in this, or science as it relates to chemicals with regard to UK REACH and EU REACH? I am afraid that more questions have probably been raised during the debate on these small groups of amendments, so personally I would like to return to this at a later stage of the Bill. I am grateful for the opportunity to have debated the amendments this afternoon and, for the moment, I will not press my amendments.

Clause 16 agreed.

6.45 pm

Amendments 128 and 129 not moved.

Clause 17 agreed.

Amendments 130 to 132 not moved.

Clause 18 agreed.

Clause 19: Consequential provision

Amendments 133 and 134 not moved.

Clause 19 agreed.

House resumed. Committee to begin again not before 8.15 pm.

Illegal Migration Bill
Statement

6.47 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): My Lords, I shall now repeat a Statement made yesterday in another place by my right honourable friend the Home Secretary:

"With permission, Mr Speaker, I would like to make a Statement about the Government's Illegal Migration Bill. Two months ago, the Prime Minister made a promise to the British people that anyone entering this country illegally will be detained and swiftly removed—no ifs, no buts. The Illegal Migration Bill will fulfil that promise. It will allow us to stop the boats that are bringing tens of thousands to our shores, in flagrant breach of both our laws and the will of the British people.

The United Kingdom must always support the world's most vulnerable. Since 2015, we have given sanctuary to nearly half a million people through family resettlement and global safe and legal routes. These include 150,000 people from Hong Kong escaping autocracy, 160,000 Ukrainians fleeing Putin's war and 25,000 Afghans escaping the Taliban. Crucially, these are decisions supported by the British people precisely because they were decisions made by British people through their elected representatives, not by the people smugglers and other criminals looking to break into Britain daily. For a Government not to respond to waves of illegal arrivals breaching our borders would be to betray the will of the British people whom we are elected to serve.

The small boats problem is part of a larger global migration crisis. In the coming years, developed countries will face unprecedented pressures from ever greater numbers of people leaving the developing world for places such as the United Kingdom. Unless we act today, the problem will be worse tomorrow, and the problem is already unsustainable.

The volume of illegal arrivals has overwhelmed our asylum system. The backlog has ballooned to over 160,000. The asylum system now costs the British taxpayer £3 billion a year. Since 2018, some 85,000 people have illegally entered the United Kingdom by small boat—45,000 of them in 2022 alone. All travelled through multiple safe countries in which they could and should have claimed asylum. Many came from safe countries, such as Albania. The vast majority—74% in 2021—were adult males under the age of 40, rich enough to pay criminal gangs thousands of pounds for passage.

Upon arrival, most are accommodated in hotels across the country, costing the British taxpayer around £6 million a day. The risk remains that these individuals just disappear. And when we try to remove them, they turn our generous asylum laws against us to prevent removal. The need for reform is obvious and urgent.

This Government have not sat on their hands. Since the Prime Minister took office, recognising the necessity of joint solutions with France, we have signed a new deal providing more technology and embedding British officers with French patrols. I hope Friday's Anglo-French summit will further deepen co-operation.

We have created a new small boats operational command, with over 700 new staff; doubled NCA funding to tackle smuggling gangs; increased enforcement raids by 50%; signed a deal with Albania, which has already enabled the return of hundreds of illegal arrivals; and we are procuring accommodation, including on military land, to end the farce of accommodating migrants in hotels.

But let us be honest: it is not enough. In the face of today's global migration crisis, yesterday's laws are simply not fit for purpose. So to anyone proposing de facto open borders through unlimited safe and legal routes as the alternative, let us be honest: by some counts there are 100 million people around the world who could qualify for protection under our current laws. Let us be clear: they are coming here. We have seen a 500% increase in small boat crossings in two years. This is the crucial point of this Bill. They will not stop coming here until the world knows that if you enter Britain illegally, you will be detained and swiftly removed—back to your home country if it is safe, or to a safe third country, such as Rwanda.

That is precisely what this Bill will do. That is how we will stop the boats. This Bill enables detention of illegal arrivals, without bail or judicial review within the first 28 days of detention, until they can be removed.

[Lord Murray of Blidworth]
It puts a duty on the Home Secretary to remove illegal entrants and will radically narrow the number of challenges and appeals that can suspend removal. Only those under 18, medically unfit to fly or at real risk of serious and irreversible harm—an exceedingly high bar—in the country we are removing them to will be able to delay their removal. Any other claims will be heard remotely, after removal.

When our Modern Slavery Act passed, the impact assessment envisaged 3,500 referrals a year. Last year, 17,000 referrals took on average 543 days to consider. Modern slavery laws are being abused to block removals. That is why we granted more than 50% of asylum requests from citizens of a safe European country and NATO ally, Albania. That is why this Bill disqualifies illegal entrants from using modern slavery rules to prevent removal.

I will not address the Bill's full legal complexities today. Some of the nation's finest legal minds have been and continue to be involved in its development. But I must say this: the rule 39 process that enabled the Strasbourg court to block, at the last minute, flights to Rwanda, after our courts had refused injunctions, was deeply flawed. Our ability to control our borders cannot be held back by an opaque process conducted late at night, with no chance to make our case or even appeal decisions. That is why we have initiated discussions in Strasbourg to ensure that its blocking orders meet a basic natural justice standard, one that prevents abuse of rule 39 to thwart removal. That is why the Bill will set out the conditions for the UK's future compliance with such orders. Other countries share our dilemma and will understand the justice of our position.

Our approach is robust and novel, which is why we cannot make a definitive statement of compatibility under Section 19(1)(a) of the Human Rights Act 1998. Of course, the UK will always seek to uphold international law, and I am confident that this Bill is compatible with international law. When we have stopped the boats, the Bill will introduce an annual cap, to be determined by Parliament, on the number of refugees the UK will resettle via safe and legal routes. This will ensure an orderly system, considering local authority capacity for housing, public services and support.

The British people are famously a fair and patient people. But their sense of fair play has been tested beyond its limits as they have seen the country taken for a ride. Their patience has run out. The law-abiding patriotic majority have said, 'Enough is enough.' This cannot and will not continue. Their Government—this Government—must act decisively, must act with determination, must act with compassion, and must act with proportion. Make no mistake: this Conservative Government will act now to stop the boats. I commend this Statement to the House."

My Lords, that concludes the Statement.

6.57 pm

Lord Coaker (Lab): My Lords, here we go again, as the Government launch yet another Bill to deal with their catastrophic failure on asylum. We have record backlogs, claimants waiting sometimes years for claims to be sorted, children lost, and claimants bundled into hotels with no or little local consultation. Last year, a record 45,000 people crossed the channel on small boats, up from four years ago, as convictions for people smugglers have halved. It is a public policy failure.

Just last year, the Nationality and Borders Act was passed. The Home Secretary said:

> "Anyone who arrives illegally will be deemed inadmissible and either returned to the country they arrived from or a safe country."

Can the Minister update us on how that is going? How can it work with no return agreements and the shocking Rwanda plan, as it should be, stuck in the courts? Last year's Act led to 18,000 people deemed inadmissible because they travelled through safe countries. Without the return agreements, which the Minister never mentioned, can he confirm that just 21 were returned—or if he prefers, 0.1%. The other 99.9% were placed in shocking hotels, or similar, at the cost of £500 million and more boats arriving. It is chaos—chaos with shocking human consequences and potential rises in community tensions.

What is different this time? Where are the return agreements? Where are all those to be detained for 28 days going to be housed? What happens after the 28 days? Let us remember, among those people, there will be torture victims, those fleeing war and persecution, Afghan interpreters and families with children. It is chaos, unworkable, but it gets the Government the cheap headlines they crave—even if it means potentially excluding victims of modern slavery or trafficking. Where are the safe and legal routes that many in this Chamber have been asking for? To take one example, what route exists under the existing rules or under this Bill for Afghan interpreters who fled Afghanistan, and were told by the Government to flee Afghanistan, to avoid capture by the Taliban?

Let us put in place an alternative, one that will no doubt be mocked by those seeking sensationalism. This would include: giving asylum caseworkers the support and help they need to speed up the process, rather than criticising them in emails; putting in place proper new agreements with France, Europe and others, including returns; properly controlled and managed legal routes, such as family reunion and reform of resettlement. What is wrong with competent and sensible public authority? What about the plan to tackle gangs by establishing a cross-border policing unit—why has that not happened? Have we got to the point where, as a people smuggler told Sky News yesterday, three-quarters of the smugglers live in the UK? Is that right? What is the figure? What are the Government doing to arrest and prosecute them?

All of this is being done in a Bill that drives a coach and horses through international law, leading to a potential withdrawal from the ECHR. What does the Minister think one of its architects, Winston Churchill, would think of that? How does the Minister justify the unbelievable statement about the ECHR on the front of the Bill? I have never read something like this on a Bill before:

> "I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill."

That is written on the front of the Bill. It is unbelievable that a British Government should put on the front of a Bill that they should ignore international law and

the legal system in this country. This is an absolutely disgraceful disregard for international law.

What will other countries think of us? Are we as a country not about upholding the principle of respecting international law? Is that not one of the things that we campaign for across the world? Of course, we have a difficult issue to deal with around small boats, and we have outlined, as I just did, some sensible ways forward. But it cannot be right to seek to solve this issue through strategies rather than solutions, or by gimmicks, quick headlines and recycling harmful rhetoric. The Bill is not a solution and is not in the finest traditions of our country, which we are all so proud of. It risks making the chaos worse. Is it not true that the only people to blame for that will be the Government themselves, but the people who will suffer are those seeking asylum from horror and tyranny?

Baroness Ludford (LD): My Lords, I thank the Minister for repeating the Statement. I came across an article that said:

> "The longer the queue, the worse the administrative confusion, the greater the incentive is for racketeers to target their efforts on Britain. There is a direct link between Government incompetence in managing asylum cases and the surge in applications to stay here."

This was written in 2000 by William Hague, then the leader of the Conservative Party and now of course the noble Lord, Lord Hague of Richmond. He was criticising the then Labour Government, but, in the ministerial letter we received, referring to plans to

> "clear the legacy initial decision asylum backlog by the end of 2023",

there was a complete failure to acknowledge that this legacy was created by a Tory-run Home Office, which has never got a grip over the last 13 years. Nearly 100,000 people have been waiting for a decision on their asylum claim for over six months—that is four times the number in 2019. We need a minimum service level in the Home Office.

We all want to see an end to dangerous channel crossings, but the Bill and the hullabaloo surrounding it are just more of the same gimmicky gesture politics, not the practical and sustainable solution that is actually needed. The Bill is not only unworkable but illegal and immoral. It treats people as criminals simply for seeking refuge. In the article I quoted from, the noble Lord, Lord Hague, said:

> "We believe Britain has a moral as well as a legal duty to welcome here people who are fleeing for their lives."

That "we" was the Conservative Party 23 years ago. No wonder that even some Tory MPs are now upset at the xenophobic and dehumanising rhetoric and intentions to breach the refugee convention and the European Convention on Human Rights.

In her enthusiasm to make the demonisation of refugees an election selling point, the Home Secretary appears to have broken the Ministerial Code: a fundraising email sent in her name to Conservative Party supporters disgracefully tarred civil servants as part of an "activist blob" that has "blocked" the Government from trying to stop the small boat crossings.

Why is the Bill needed, when the ink is barely dry on the Nationality and Borders Act 2022, which was supposed to be the magic solution that would stop the boats? This plan will punish the victims of persecution and human trafficking, but it will do nothing to stop the evil criminal gangs who profit from these small boat crossings. Not only are the majority of men, women and children who cross the channel doing so because they are desperate to escape war, conflict and persecution; most of them are in fact granted the protection they need. Four out of 10 people arriving on boats last year were from just five countries, with an asylum grant rate of over 80%—the Home Office recently decided to fast-track applications from a similar list of countries. How does the plan to deem inadmissible any claims from people who arrive on small boats from countries such as Afghanistan or Syria accord with these facts?

The only way to stop these dangerous crossings is to create safe and legal routes. The Government talk about such routes, but where and what are they? Will the Government commit to granting humanitarian visas to people needing to flee? We are told that the Bill will introduce an annual cap on the number of refugees whom the UK will accept, but how would that work? If the next person arriving is escaping the terrible cruelty of the Taliban or the appalling regime in Iran, will they just be refused? The number of family reunion visas issued in the year to September last year was more than a third down on 2019, so safe routes are in fact being constricted. Will the Minister assure me that the Government will commit to supporting my Refugees (Family Reunion) Bill, which recently passed this House, when it progresses through the other place?

Instead of locking up asylum seekers or forcing them to stay in hotels, will the Government commit to ending their absurd ban on asylum seekers working after they have been waiting months for their claims to be processed? If so, they could pay their way.

We are expected to proceed with a Bill of which the Government themselves say there is more than a 50% chance that it is incompatible with the ECHR. Quite how they can say they

> "remain confident that this Bill is compatible with international law",

when simultaneously believing that it is only 50% likely to be, is a mystery. How can a law actually designed to circumvent human rights possibly be fit for purpose? Lastly, speaking of human rights, can I ask for a list of countries to which people would not be returned?

Lord Murray of Blidworth (Con): My Lords, it is clear that the need for reform is obvious and urgent. The problem in the channel has grown over the last two years. Since 2018, 85,000 illegally entered the UK by small boat—45,000 of them in 2022 alone. Many of them came from safe countries, such as Albania, and all travelled through multiple safe countries, in which they could and should have claimed asylum. The vast majority, 74% in 2021, were adult males under 40, rich enough to pay criminal gangs thousands of pounds for passage.

Noble Lords will not have noticed or been able to discern from the speeches of the noble Lord, Lord Coaker, and the noble Baroness, Lady Ludford, any policy from either the Labour Party or the Liberal

[LORD MURRAY OF BLIDWORTH]

party to address the crossing of the channel. The noble Lord, Lord Coaker, suggested that the delays in the asylum process were causing the mass migration—this is simply not the case. As the UNHCR says, there are 100 million refugees in the world at the moment. This requires an urgent and sustainable solution.

The noble Lord, Lord Coaker, asked me whether the Nationality and Borders Act was not a complete answer. I can reassure him that it was never said that that Act would be a silver bullet. This Bill builds on that Act, which laid the foundations of our approach but, because the situation has got worse, we now need to go further. The Nationality and Borders Act was about changing how we processed asylum claims in the current system to streamline it and reduce late and spurious claims. It made progress, and it is right that we did that, but this is different. We are now going to move these cases out of the system entirely, so they are heard elsewhere in a safe country. Illegal entry will no longer be a route to making a claim to settle in the UK—it is only by making it clear that if you come here illegally you will not have the ability to stay here that we will stop the boats. That is a measure of compassion, because it will stop people embarking on dangerous journeys across the channel.

Furthermore, as the noble Baroness, Lady Ludford, has suggested that creating safe and legal routes is the answer, I can reply to her that it is no answer. If Parliament set a cap of, say, 30,000 that it was going to take by means of the safe and legal routes that already exist, all that would happen is that the demand would remain from those who do not fall within the cap, and the criminal gangs would still be there to feed that demand.

The noble Lord, Lord Coaker, and his right honourable friends in the other place, suggested that the answer was to put more money into the NCA to break the criminal gangs. We have already done that: the NCA funding has been doubled, but that cannot on its own be any answer. The only answer is one to be made in legislation.

For all those reasons, I do not accept the criticisms advanced by noble Lords.

7.11 pm

Lord Kerr of Kinlochard (CB): Last year, 50% of those who crossed the channel came from only five countries—Afghanistan, Eritrea, Syria, Sudan and Iran. If I were a young woman in Iran being hunted by the authorities for demonstrating and had relatives in this country, how could I come here? What safe and legal route is open to me? I believe that there is none. If we want to put the smugglers out of business, as of course we all do, the way to do it, contrary to what the Minister has just said, is to open safe and legal routes. It is absurd to suggest that a flow of 100 million would come in; that is just wild and ridiculous talk.

Has the Minister considered the likely cost of this policy? It seems to have three defects: first, it wrecks our reputation; secondly, it will not work because it will not put the smugglers out of business; and, thirdly, it could have considerable economic costs. Has the Minister considered Article 692 of the trade and co-operation agreement with the EU? If the EU believes that we have broken the European Convention on Human Rights—and the Home Secretary says in the Bill, as the noble Lord, Lord Coaker, pointed out, that she cannot confirm that we have not—and if it turns out that we have, as I believe we have, the Commission has the right to denounce the trade and co-operation agreement. I do not know how much of that it would denounce, but it has been in the press this afternoon that a commissioner contacted the Home Office today. Could the Minister tell us what assessment he has made of the form of action that the Commission would ask the European Union to take against us, and what economic cost that would have?

Lord Murray of Blidworth (Con): I thank the noble Lord for his questions. First, I can reconfirm that safe and legal routes exist. As I have repeatedly told the House—

Lord Liddle (Lab): From Iran?

Lord Murray of Blidworth (Con): Perhaps the noble Lord could listen for a moment. As I told the House, the UK resettlement scheme is one that permits the Government to accept refugees who have been approved by the United Nations High Commissioner for Refugees and are taken directly from conflict zones. This scheme grew out of the Syria and Jordan schemes, and it is a principled and fair way in which to resettle those in need of protection. It has the advantage, as noble Lords will immediately notice, of providing protection to those who need it, not based on their ability to cross Europe and pay a people smuggler to get them across the channel on the basis that they are in sufficiently good health to survive the journey. The present safe and legal routes that exist are much fairer and more appropriate.

In the second part of the noble Lord's question, he gave a list of countries from which people crossed the channel, but he omitted, of course, Albania, a safe third country which is a NATO member and EU accession country. Given the vast numbers who come by that route from safe third countries, I simply do not accept the premise of his question.

As to his suggestion that in some way the trade and co-operation agreement would be renounced as a result of this Bill being passed, I do not accept that contention for one moment. The Government are of the view that the measures in this Bill are compatible with our international obligations—and time will tell.

Lord Robathan (Con): My noble friend the Minister is an experienced lawyer, and we have heard a lot about how this may or may not be in contravention of international law. I am not an experienced lawyer, but perhaps he could help me out. A lot of the critics are saying that we should let all these people in and then determine things and possibly reward them with British citizenship. Does he think that, if we let people into this country who break the law to come here and then rewarded them with British citizenship, it would undermine everybody's respect for the rule of law in this country?

Lord Murray of Blidworth (Con): I entirely agree with my noble friend. The reality appears to be, from the policy vacuum on the Labour Benches, that the

Labour Party is in favour of open borders, which appears to be entirely out of step with the views of the British people.

Lord Blunkett (Lab): My Lords, the notion that the Labour Party is in favour of open borders is a complete calumny. It is a disgrace that we should argue such an important issue in this way. Article 692 has been referred to, and it is clear from the evidence that the Justice and Home Affairs Committee of this House received earlier this week that it is likely that Part 3 of the TCA would be disestablished. The consequences of that would be absolutely catastrophic.

Let me put this to the Minister: when his boss, the Home Secretary, talked about the 100 million people displaced, and in the next sentence said, "These people are coming here"—that is what she said—did she not believe that she was throwing a match into an oil tanker? Did she not understand the Donald Trump playbook of creating a crisis then believing that other people can be blamed, such as the Civil Service, the opposition parties and this House?

I suggest that it is worth at least thinking about the idea that, while we might take this Bill through Committee, we do not vote it down, because that is exactly what this Conservative Government want. Let us have a sensible debate about sensible policies agreed with the French, starting next Friday, to do what we did 20 years ago and stop the flow.

Lord Murray of Blidworth (Con): As the noble Lord will recall from his time in this department, the policy of stopping asylum is not straightforward, and that of stopping people from entering illegally and claiming asylum is not straightforward. The Labour Party failed in its time in office to answer this question, and the problem has only got worse, particularly over the past two years. It is with this legislation that we are addressing the issue that has arisen. In the absence of a policy from the Labour Party, we can do no other than to conclude that it is in favour of open borders.

As to the noble Lord's second point in relation to international co-operation, it has been vital, alongside the creation of this new legislation, to liaise internationally both with the French and the Albanians. As the noble Lord is aware, the Prime Minister is meeting President Macron on Friday to discuss these issues.

Lord Deben (Con): Does my noble friend accept that this is too serious a matter to try to turn it into party politics? Does he further accept that international law is crucially important for Britain and for the establishment of a whole range of other things? The Conservative Party is intended to be the party of law and order. I must say to him that many of us accept the seriousness of the numbers of people concerned. If you are concerned with climate change—as I am—it will increase and be worse, but we cannot do this by breaking international law.

I will go along all the way with my noble friend on the tough measures that have to be taken, but he has to accept that to propose something that is against international law will undermine all the other things that we have to do throughout the world. It does not help to say things that are, frankly, somewhat distant from the truth. I happen to think that the Labour Party has got it wrong, but it does not mean that, because it has got it wrong, it does not have a policy. On this occasion, unusually, it does.

Lord Murray of Blidworth (Con): I can reassure my noble friend that, as I have already said, the Government do not believe that they are acting contrary to international law.

Lord Alton of Liverpool (CB): My Lords, if it was so that the Government are not acting contrary to international law, as the Minister has just said, then the compatibility statement would be put on the face of the Bill.

Lord Murray of Blidworth (Con): My Lords—I am sorry, is the noble Lord finished?

Lord Alton of Liverpool (CB): No, I have not finished; I have a number of points that I would like to make to the Minister. It seems to me that, if we are saying that this is ultimately a matter that must be decided by the courts, that is no way to treat Parliament. Indeed, the process being suggested, that we should proceed with a Bill that is in contravention of the Human Rights Act, seems an insult to both Houses of Parliament and I am surprised that the Government would even contemplate that.

I have one or two question to follow what the noble Lord, Lord Deben, said about international law. The United Nations High Commissioner for Refugees has said, in terms:

> "This would be a clear breach of the Refugee Convention"

and would undermine

> "the very purpose for which the Refugee Convention was established."

Is the Government's position that the refugee convention should no longer apply in the United Kingdom or that it already does not apply in the United Kingdom?

Secondly, there are arrangements suggested in Clause 3 of the Bill on the removal of unaccompanied children. How could such a removal ever be compatible with our obligations under the United Nations Convention on the Rights of the Child? Clause 2(2)(a) will prevent anyone claiming asylum who has travelled on a forged passport—in fact, I think the Minister referred to this a moment ago. However, we know of course that many people fleeing persecution will have sought to deceive the authorities in the country from which they are fleeing—that is entirely to be expected in circumstances where they are being persecuted by that Government. Given that is the case, is not the UNHCR right to describe this Bill as destroying the right to claim asylum in the United Kingdom?

Lord Murray of Blidworth (Con): I will deal with that question in parts. First, as to the declaration on the front of the Bill—to which I draw the noble Lord's attention—he will note that the Secretary of State, Suella Braverman, made a statement under Section 19(1)(b) that:

> "I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill."

[LORD MURRAY OF BLIDWORTH]

As the noble Lord will be aware, when the Labour Government introduced the Human Rights Act, Section 19 provided for a ministerial statement as to compatibility. By way of a Statement, the then Minister in charge of the Bill, Jack Straw, provided that this test should be one of a 50% threshold. The effect is that a Section 19(1)(a) statement is that you are satisfied that the measures are absolutely compliant, and a Section 19(1)(b) statement is that you are less than absolutely sure. Therefore, by placing a declaration of this kind on the front of the Bill, it is not a statement that the Government believe that the measures in it are not compatible; it is clearly the case that there is a strong—in my submission—legal basis for contending that these measures are compatible. However, applying the principles enunciated by Jack Straw following the passage of the Human Rights Act, the Home Secretary has quite properly appended her name to the statement on the front of this Bill. That, I hope, deals with the noble Lord's first point.

I turn to the noble Lord's second point, in relation to the UNHCR's comments yesterday evening—I think the UK representative of the UNHCR made some comments. Plainly, His Majesty's Government disagree with that analysis. I draw noble Lords' attention to the passage in the judgment given by the High Court in the Rwanda case, in which submissions were made by counsel on behalf of the UNHRC in relation to its views on the scheme. The court did not say that those submissions were correct. It is clear that this is no infallible statement as to compatibility with international law.

Baroness Williams of Trafford (Con): My Lords, before noble Lords continue, there are a lot of people wanting to ask questions, so I implore noble Lords to ask short questions that will elicit short answers from the Minister. Let us continue with the noble Lord, Lord Campbell.

Lord Campbell of Pittenweem (LD): My Lords, the Minister mentioned the rule of law. Why is it, then, that every time this Government find themselves in difficulty, they seek refuge in illegality? They did so in Part 5 of the markets Bill, they did so in relation to the Northern Ireland protocol, and now we have the admission, to which the Minister has just referred, that the provisions in this Bill may be illegal. Of course, we have to take that together with the opinion expressed by the United Nations High Commissioner for Refugees. The unwillingness to give certification in the usual form is, in a sense, corroborated by what the UNHCR has said.

Even the title of this Bill is ambiguous. It is called the "Illegal Migration Bill", but we are not clear yet —it is at least becoming clear to me—that it is not the migration that is illegal but the Bill itself. I finish by repeating a point already made: growing up in politics in this country, I have been told many times that the Conservative Party is the party of law and order. I have stopped believing that this evening.

Lord Murray of Blidworth (Con): I thank the noble Lord for his remarks. The Conservative Party very much remains the party of law and order. It is this Parliament that decides the laws for this country, and it is this Parliament that must decide who can enter and when they can enter. It is our view that these measures are compatible with international law. That does not—whatever the noble Lord might suggest—render the measures in this Bill in any way illegal.

The Lord Bishop of Durham: My Lords, I return to the Statement, rather than the Bill, which we will spend hours debating in due course. There was a lot in this Statement that worried me, but what worried me even more was that there was no reference whatever to children, unaccompanied children and their protection in this whole process. Can the Minister comment on why nothing was said about that in the Statement?

Lord Murray of Blidworth (Con): The Statement was intended to—and did—accurately set out the contents of the Bill. Indeed, in the exchanges that followed, which the right reverend Prelate will find in *Hansard*, it was clear that there was discussion of the status of children. I can confirm that the position is this: the removal of any under-18s will be delayed until adulthood except in certain circumstances. As the right reverend Prelate is aware, one issue that has arisen in relation to the exception for minors is of people claiming to be minors when they are not. This is of course an attempt to evade immigration control and can have serious safety ramifications if such a person is placed with children.

Lord Cormack (Con): My Lords, I express the hope that when the Prime Minister is discussing things with President Macron, they have two aims: first, to establish safe, simple, clean accommodation in France, jointly paid for by this country and France; and, secondly, to make a real attempt to arrest and punish those who pilot the boats. There is a big difference between them and those who sacrifice both their lives and their life savings to get across.

Lord Murray of Blidworth (Con): I thank the noble Lord for that question. It is not the case, I am afraid, that the people-smuggling gangs are responsible for piloting the vessels: quite frequently they will delegate the duty of piloting the vessels to other passengers; it is not uniquely the case. This means that it is in fact much harder to penalise the masterminds behind these organisations. Very great efforts are made, but the reality is that there is a massive demand to cross the channel. Lots of people want to come to our country, and when there is that untapped demand, unfortunately, the likelihood is that if one criminal gang is closed down, another will crop up, unless you attack the seat of the problem, which is the demand for illegal migration.

Baroness Williams of Trafford (Con): My Lords, my noble friend Lord Murray is going to hate me, but I have just had agreement through the usual channels that we will go an extra 10 minutes, given the demand for questions. So we will hear from the noble Baroness, Lady Bennett, from my noble friend Lord Balfe and from the Cross Benches.

Baroness Bennett of Manor Castle (GP): I am sure the Minister will wish to correct an erroneous statement that he made in responding to the Front-Bench questions.

He said there are 100 million refugees in the world. That is not what the Statement says. The figure from which the Statement draws comes, I believe, from the UNHCR: 100 million displaced people in the world, most of whom are in the countries of origin. I am sure the Minister will want to correct that. I am going to pick up on the question of children. Have the Minister or the Government considered what life would be like for a 16 year-old, a 15 year-old or a 17 year-old being held—warehoused—in this country and then, the day they turn 18, being thrown out, even though we know they are a refugee?

Lord Murray of Blidworth (Con): I thank the noble Baroness and I entirely accept her correction. She is quite right about the figure of 100 million: it is displaced persons. On her second point, I am afraid I do not accept that it would be appropriate to exclude everyone under 18 from the operation of the scheme, and it is obvious why that should be: sadly, such an exception would generate very great abuse.

Lord Balfe (Con): My Lords, this is certainly not an ideal Bill, but the problem it seeks to address has been around for a long time. In my view, it lost us the referendum, which was a big tragedy.

Lord Robathan (Con): It won us the referendum.

Lord Balfe (Con): It won the noble Lord the referendum, but it lost me the referendum. The key point surely is that we live in a democracy. The people are demanding action in this area loud and clear, and it is our duty as a Government to deliver what the public want. The public want the boats stopped, so I hope that we can have a discussion on the basis of making the Bill work, not wrecking it.

Lord Murray of Blidworth (Con): I entirely agree with my noble friend.

Baroness Fox of Buckley (Non-Afl): My Lords, I really hope we do not play party politics with the Bill. Earlier, it was said that the Home Secretary had created a crisis by the use of rhetoric and I just point out that, no, she did not: there is a crisis and that is that we are not controlling the borders. So we have to be very careful—on all sides, by the way. Will the Minister reflect, based on the Statement, that the very concept of modern slavery, for example, but even asylum and refugee status, are in danger of being undermined by the confusion caused by claiming that people from safe countries are fleeing war and persecution? People are becoming cynical when they hear the word "asylum". There is a gaslighting of the British public by people who challenge them and tell them they are inhumane and not compassionate. Will he reflect on the toxicity that has been created by that, with the trending of "Nazi Germany", "1930s" and all the rest of it? That is an insult to the British public, is it not?

Lord Murray of Blidworth (Con): Yes. Taking the noble Baroness's points in order, I very much heed her words: it is very important that discussion of these issues happens in a calm and measured fashion. On her second point in relation to the cynicism that is born of the abuse of the generosity of the British people towards those seeking asylum and humanitarian protection, I could not agree more. Sadly, that has led to a reputation that these measures can be abused by those who are, in reality, wanting to come to Britain for reasons of economic migration rather than for genuine protection. Abusing those measures has led to a degree of cynicism among the public. Finally, on her final point as to whether there is toxicity, there is. The best way to deal with that is to stop the boats and have a system of asylum protection that brings people directly from neighbouring countries to those from which these people come and does not allow people to jump the queue by travelling across Europe and paying the people smugglers.

Baroness Butler-Sloss (CB): The Modern Slavery Act 2015 was a landmark Act, followed by many parts of the world. Do the Government appreciate the impact across the world, in countries that have followed us, of the extent to which we are reneging on that Act under Clauses 21 to 25?

Lord Murray of Blidworth (Con): I entirely agree that the Modern Slavery Act was a landmark provision, but sadly that too has been the subject of very extensive abuse. As we set out in the Statement, it is clear that people are being advised to claim that they are victims of modern slavery in order to avail of the respite and the long period for conclusive determination of modern slavery claims, which was passed by this House and the other place as a measure of compassion for modern slaves. The measures in this Bill do not undermine our principle of acting to stop this evil practice of modern slavery.

Lord Liddle (Lab): My Lords—

Lord Hodgson of Astley Abbotts (Con): My Lords—

Lord Liddle (Lab): We have had only one Labour person.

Baroness Williams of Trafford (Con): My Lords, it is the turn of the Labour Benches, but I hope that if people ask short questions and get short answers, we will get through everyone.

Lord Liddle (Lab): My Lords, does the Minister accept that we cannot solve this problem by unilateral domestic action alone? We have to have co-operation with European countries that are facing similar problems of asylum and refugees. Does he also accept that this co-operation is going to be very difficult to deliver if we are seen to be unilaterally going against the European Convention on Human Rights? This is fundamental, because it will not only stop co-operation in this area but threaten co-operation in areas such as trade. It is a foundation of the Good Friday agreement and is vital to Britain's standing in the world.

Lord Murray of Blidworth (Con): I agree that international co-operation is a vital part of the jigsaw; that is why we reached fresh agreements in December with the Governments of Albania and of France and why the Prime Minister is meeting President Macron

[LORD MURRAY OF BLIDWORTH]
on Friday. To that extent, I agree with the noble Lord. However, I do not agree that the United Kingdom cannot act unilaterally, because we need to stop people taking these risky journeys across the channel—one of the busiest and most dangerous sea lanes in the world. That requires special legislation to be passed by this Parliament, and this Bill satisfies that.

Lord Hodgson of Astley Abbotts (Con): My Lords, does my noble friend recall that, last year, we granted right of admission to 1.1 million people and gave right to remain to 504,000 people? Is it not unsurprising, given the scale of those numbers, that the British people are asking us to bear down on those who seek to jump the queue and arrive illegally?

Lord Murray of Blidworth (Con): I could not have put it better myself; I entirely agree with my noble friend.

Baroness Hoey (Non-Afl): My Lords, does the Minister agree with the noble Lord, Lord Balfe, who said what the vast majority of the British people will be thinking—that at last the Government are doing something to make sure that we can control our borders? Will stopping the use of hotels require legislation—if so, that could take some time—or are the Government committed to stopping it as soon as possible?

Lord Murray of Blidworth (Con): The Home Office very much wishes to stop the use of hotels. I hope there may be some announcements on that in the near future.

Lord Scriven (LD): Does the Minister think it is humane and shows the sense of Great British compassion that, under the provisions of this Bill, an unaccompanied child fleeing war and arriving on these shores at the age of seven will, 11 years later at the age of 18, be deported to another country and have no automatic right of return to the country in which he or she has been for 11 years and made his or her life?

Lord Murray of Blidworth (Con): This is a scheme to prevent illegal immigration. That person would need to have paid a people smuggler to bring them across the channel. For the scheme to be coherent, age alone cannot automatically exclude membership from the cohort for removal.

Education (School Teachers' Qualifications and Induction Arrangements) (Amendment) (England) Regulations 2022

Motion to Regret

7.42 pm

Moved by ***Baroness Twycross***

That this House regrets that the data supporting the Education (School Teachers' Qualifications and Induction Arrangements) (Amendment) (England) Regulations 2022 (SI 2022/1256) suggests that they will not prevent the continued fall in the number of overseas teachers qualifying to work in England over recent years (other than in 2021-22); and that the Regulations therefore demonstrate that His Majesty's Government lack a coherent, holistic plan for the teaching workforce in England.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Baroness Twycross (Lab): My Lords, my regret Motion is in response to the concerning report on this SI from the Secondary Legislation Scrutiny Committee. It should be noted that this is the second iteration of the supporting material, which had to be reissued because there was a

"lack of information in the original"

Explanatory Memorandum

"about many key aspects of the policy, and one error that described one aspect of the policy as the opposite of what it actually is."

This lack of rigour and thoroughness from the Department for Education is extremely concerning. I urge the Minister to investigate the factors that led to such poor material being published in the first place and to ensure that this does not happen again. The DfE is not the only department that has been subject to a flurry of regret Motions on concerning issues, but I would appreciate some assurances from her on the steps that she will take to prevent these happening again. Transparency and full information are crucial to our role as a revising and scrutinising Chamber. We simply cannot do this without being given the data we need—ideally, first time round.

Although process is important, my main source of regret concerns the detail of the policy in these regulations: first, that they will fail to prevent the continued fall in the number of overseas teachers qualifying to work in England and, secondly, that there is currently no coherent holistic plan for the teaching workforce. Can the Minister commit to ensuring that there is a workforce plan for schools and that it will be developed urgently and implemented in time to avert the growing crisis in teacher training, recruitment and retention?

7.45 pm

It is quite clear that teacher recruitment is falling far behind what is required. Retention is also an issue, with nearly one in three who started in the profession in 2014 having left within just five years. What is the Government's assessment of why this is the case? Have they looked into whether inflationary pressures and comparatively falling teacher pay is an issue?

The truth is that, last year, more teachers left our schools than new recruits started initial training. People qualifying to be teachers are at an all-time low; since 2019, recruitment outside London is down by 33%. This is especially true for some of the subjects critical to our economic competitiveness. Compared to the Government's targets, we are missing well over 3,000 maths teachers, 3,500 modern language teachers and a massive 6,367 physics teachers.

As the *Financial Times* has recently reported, we desperately need a determined effort to improve numerical and mathematical ability; to generate the maths graduates we need in the 2030s, we need more motivated and qualified maths teachers now. The Government have missed their secondary maths initial teacher training target every year for the last decade. It is not clear how this will change.

This goes beyond the life chances of students, which is enough of an issue in itself, to the heart of our country's economic recovery and UK competitiveness in the decades ahead. A new route to qualify is all well and good, but it will not rectify these huge shortfalls and does not form part of a much-needed holistic workforce strategy to get the teachers we need into classrooms.

We also need to ensure that the intended approach does not undermine developing countries. It would be useful to understand whether the Government have done an analysis of any adverse impacts that the changes from this SI might have on developing countries that also need good teachers. Anecdotally, I understand that the level of advertising by schools for teachers in the next academic year is far in excess of what is considered normal. Have the Government undertaken an analysis of the current levels of vacancies and what the pinch points are likely to be in the next academic year? How will the Government stop existing teachers sinking under the unbearable workload of fewer people doing more work and leaving the classroom due to burnout?

If money is the main issue to resolving the issues we face, the Government are very welcome to borrow Labour's proposal to end the madness of the private school tax loophole, to fund the teachers we so desperately need.

The ongoing pay dispute is also likely to exacerbate this issue. Can the Government update us on how talks with the education unions are progressing and whether the Secretary of State will approach them with a more empathetic approach than one of her Conservative predecessors, who claimed that teachers

"really really do just hate work"?

Lord Storey (LD): My Lords, the regulations must be seen against a backcloth of startling falls in the number of domestic teacher training recruits. In the last five years, 102,588 teachers have given up teaching before reaching their 40th birthday. One in eight maths teachers is not a trained mathematician. Some 400 schools will not have a trained A-level physics teacher.

We remember the Government's initial teacher training accreditation programme, which saw 68 trainers lose their expertise and capacity to train. In some areas, it led to a reduction in the number of trainees who were going to gain an ITT place at a time when subjects were already struggling to recruit suitably qualified teachers. The effects will be felt in particular in the east and north-west of England.

With regard to overseas students, the current legislation allows teachers who qualified in some countries to be treated as qualified in England, while others are not, even if they have the equivalent skills and experiences. Under the new policy, a new professional recognition system will be introduced that will set consistent standards, so that the qualifications and experience of suitable, qualified teachers from all countries can be fairly assessed for overseas teaching status, the intention being to create a consistent and fair approach for applicants from any country. We support that—of course we do.

The Government argue that the changes will increase the number of overseas teachers obtaining teacher status. The Lords Secondary Legislation Scrutiny Committee has challenged that conclusion, stating:

"The data suggests that the policy will only increase the number of overseas teachers if compared to 2021-22, when overseas QTS approvals were unusually low—compared to other recent years, overseas recruitment is expected to fall".

It said that inadequate information was provided and that the department omitted

"key information on the policy, how it was formulated and its implications for the teaching workforce … We asked for further details in several areas and the Department for Education (DfE) agreed to revise"

and delay the policy. The committee stated:

"In response to further questioning, and despite initially saying it could not provide the information, DfE has now published its projections about the effect of the policy on the number of overseas teachers being awarded QTS".

The data suggests that the new policy will increase the number of overseas students only marginally.

I have some questions for the Minister. Why did the Department for Education significantly hinder our ability to scrutinise this amendment through its reluctance to provide information when requested? Why was the department reluctant to provide the information on which it relied to formulate the policy? When published, the data did not entirely support the department's assertions. Surely it is a fundamental principle of transparency and accountability that any information relied on to formulate policy should be published alongside the instrument or, as a minimum, be made available to Parliament on request.

The Secondary Legislation Scrutiny Committee fairly said:

"We applaud the overall intention to provide a fair and consistent application process for overseas teachers from all countries … We have, however, noted that domestic recruits to teacher training are falling sharply and DfE's own projections suggest that overseas QTS recruits will be well below the levels of recent years … we are concerned about whether there is a holistic and coherent strategy to maintain the teaching workforce in England".

I regret that class sizes are going up. I regret that teacher shortages are going up. I regret that we are having real problems with the retention of teachers. Mention has been made of the industrial action planned for next week and the difficulties in recruiting teachers because of salaries. Does the Minister agree that the best way to resolve this issue is to refer it to ACAS?

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I thank the noble Baroness, Lady Twycross, for bringing forward a debate on this important issue; what a pleasure it is to stand across the Dispatch Box from her. I look forward to many more debates with her in future. I also thank the Secondary Legislation Scrutiny Committee for its role in considering these regulations, which are a part of my department's efforts to ensure that there is an excellent teacher for every child.

Both the noble Baroness and the noble Lord, Lord Storey, referred to the criticism from the Secondary Legislation Scrutiny Committee about the quality of, in particular, the initial Explanatory Memorandum prepared by the department. I absolutely acknowledge that the original version of the Explanatory Memorandum did not meet the committee's needs. My officials responded promptly and in full to the committee's queries and re-laid the Explanatory Memorandum when those issues were raised. We committed to publish our projections in response to the committee's original request and

[BARONESS BARRAN]
were in the process of doing so when the committee wrote to my right honourable friend Nick Gibb, the Minister for School Standards, to request them—so I do not accept the assertion made by the noble Lord, Lord Storey, that the department hindered this. There was absolutely no intent to hinder.

Lord Storey (LD): It is not my assertion; it is the assertion of the Secondary Legislation Scrutiny Committee.

Baroness Barran (Con): Well, I would just like to put on record that, although the department absolutely regrets the quality of the initial Explanatory Memorandum, there was no intent to hinder.

I turn to the wider issues and the content of the statutory instrument. As your Lordships know, qualified teacher status is seen as a gold standard globally. When fully rolled out, these regulations will introduce a level playing field in the recognition of overseas professional teaching qualifications. They will replace a system where some teachers can have their qualifications recognised with ease while others who may be equally qualified cannot. We initially projected that up to 1,200 more overseas teachers could be awarded qualified teacher status through these changes, but it is already clear that this is likely to be a conservative estimate; I will talk more about that in a moment.

The noble Baroness, Lady Twycross, said that she regretted the impact that this could have on the teaching profession overseas. We are taking a more cautious approach to the rollout of our policy and will initially allow applications only from teachers who are qualified in mathematics, the sciences and languages in certain countries. Of course, we will monitor very closely the actual level of migration to teaching posts in England by teachers from newly eligible countries. We are in close contact with the regulators in those countries to monitor and discuss the impact of this.

Since we launched the Apply for QTS service on 1 February, we have seen a very high number of applications from many teachers able to apply for the first time. This has been driven by news coverage of the scheme overseas, some of which has been inaccurate and led to some misunderstanding of the scheme as offering candidates a job directly. Our initial review suggests that there will be a large number of candidates who do not meet the eligibility criteria, which rightly prioritises quality and subject need. But the significant level of interest from those who will meet the eligibility criteria is positive and shows that international recruitment can help boost teacher recruitment in shortage subjects. We will be able to provide a fuller picture of award numbers in the coming months, once applicants have gone through our assessment process. That will mean that the information we provide gives a true picture of the numbers of teachers who may apply for jobs in our schools.

Further, to attract the very best teachers from around the world we have also introduced an international relocation payment worth £10,000 to help overseas teachers and trainees in physics and languages to relocate to England, for the reasons that both noble Lords set out, and we have made bursaries worth up to £27,000 and scholarships worth up to £29,000 available to non-UK trainees in the same subjects.

The noble Baroness questioned whether we had a coherent and holistic plan for the teaching workforce in England, and I say that international candidates are just one element of our plan. In 2019, we launched the first ever integrated strategy both to recruit and retain more teachers; that has been developed alongside, and welcomed by, teachers, education unions and professional bodies. We have made good progress on this: we opened the National Institute of Teaching, published the department's first ever *Education Staff Wellbeing Charter*, refreshed the content of teacher training, and introduced the early-career framework, with all the support that that offers to early-career teachers.

8 pm

We are also transforming training and support for teachers. By the end of 2024, we will deliver 500,000 training opportunities so that teachers can access world-class training and professional development at every stage of their career. We are implementing the School Teachers' Review Body's recommendations for 2022-23 in full, meaning that starting salaries outside London have increased by 8.9% this year to £28,000, keeping us on track to deliver our manifesto commitment of a £30,000 starting salary. Experienced teachers received at least a 5% increase, which is the highest pay award in the last 30 years. This year, we expect that around 40% of classroom teachers will have received pay rises of between 8.5% and 15.9%, when you take into account their pay award and the increases they receive through progression or promotion.

I also remind the House that the absolute number of teachers remains high, with over 465,000 full-time equivalent teachers working in state-funded schools across the country—24,000 more than in 2010. We are supporting teachers and leaders at all levels with their development. However, we know that there is further to go to improve recruitment in some subjects, as your Lordships pointed out. That is why, in addition to our international policies, we are boosting recruitment and retention in priority subjects through our £181 million teacher training financial incentives package, which is a 40%—£52 million—increase on the last cycle. As I mentioned earlier in relation to international teachers, in addition to the bursaries worth up to £27,000 and scholarships worth up to £29,000, the levelling-up premium is worth £3,000 tax-free for eligible maths, physics, chemistry and computing teachers. To be clear: the bursaries and scholarships apply in those priority subjects and for international trainees in languages and physics, as I mentioned earlier.

We have the largest number of qualified teachers since the school workforce census began in 2010-11, but we are absolutely clear that there is more we can do. Our commitment to attracting, retaining and developing highly skilled teachers, including those from overseas, who can inspire the next generation of students is a top priority for us. I thank all noble Lords for their contributions.

Lord Storey (LD): The Minister has not responded to the comments on the present pay negotiations, which seem to be locked and leading to further industrial action. Would not the best course of action be to refer this to ACAS?

Baroness Barran (Con): I do not think that it is for me to comment on the progress of the negotiations. The Secretary of State has been absolutely clear in the offer she made to the NEU to enter into intensive talks, and, as a department, we are very disappointed that it has not accepted that offer.

Baroness Twycross (Lab): My Lords, I thank the Minister for her response and her kind words; I also look forward to many debates with her in future. It is positive that the SI will create a level playing field for qualified teacher status, and I am pleased that the DfE will monitor the impact. I hope that the data and analysis will be made available to the House, along with an evaluation of the success of the incentive scheme.

I note and agree with the comments of the noble Lord, Lord Storey, about the lamentable number of teachers having to teach subjects they are not trained to teach, including the vital subjects of maths and physics. I share all the regrets he listed.

Despite the intention of the SI, I regret that I cannot agree that it will achieve exactly what the Minister describes. It is not sufficient simply that the number of teachers is high; there needs to be an adequate and sufficient number of qualified teachers to deliver a first-class education for our children. Unfortunately, I do not share her confidence that the SI will go far enough in resolving the issues identified. It is regrettable that we are in this position; however, on the basis that there is even the slightest possibility that this might improve the number of qualified teachers available to our young people, I beg leave to withdraw the Motion.

Motion withdrawn.

8.05 pm

Sitting suspended.

Retained EU Law (Revocation and Reform) Bill

Committee (5th Day) (Continued)

8.15 pm

Clause 20: Regulations: general

Amendment 134ZA

Moved by ***Lord Hodgson of Astley Abbotts***

134ZA: Clause 20, page 22, line 8, leave out "does not apply in relation to any power to make regulations under this Act" and insert "has effect in relation to any power to make regulations under this Act as if in subsection (2)(a) of that section, after "section 30)", there were inserted "which must require that a report setting out the conclusions of the review is published within the period of three years beginning with the day on which the regulatory provision comes into force""

Member's explanatory statement

This amendment would remove the disapplication under the Bill of section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) to the powers to make regulations under the Bill, and add a requirement to publish a review within three years, following the concerns expressed by the Secondary Legislation Scrutiny Committee in paragraphs 65 and 66 of its 28th Report 'Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform) Bill.'

Lord Hodgson of Astley Abbotts (Con): My Lords, I will move Amendment 134ZA and speak to Amendment 134B.

We have had pretty extensive debates over the past four days in Committee about how we need to improve the parliamentary involvement of both Houses on this framework, skeleton Bill. These two amendments shift the Committee's attention to the existing scrutiny procedures which, while generally regarded as inadequate, do at least provide some level of scrutiny, and therefore hold the Government to account. However, even with these existing procedures, the Government are, as I shall explain, behaving increasingly casually and often ignoring existing statutory obligations.

Amendment 134B concerns impact assessments, which are required to be produced at the same time as the relevant regulation is published. Amendment 134ZA is concerned with post-implementation reviews. Together, they implement two of the recommendations made in the Secondary Legislation Scrutiny Committee's report, *Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform) Bill*.

I will deal first with Amendment 134B, concerning impact assessments. This requires an impact assessment to be laid simultaneously—an important word—with the laying of each regulation. Impact assessments were introduced by the Small Business, Enterprise and Employment Act 2015—I think my noble friend Lady Neville-Rolfe was the Minister at the time. The impact assessments are to be produced whenever the impact of a particular regulation exceeds £5 million.

A good impact assessment should inform policy development and evolve with it. This enables both Houses of Parliament to see and evaluate the various methods for dealing with a particular policy issue that the Government have thought about and then explains why a particular selection was made to give the policy effect. No less important, publishing an impact assessment in a timely manner gives people outside Parliament who will be particularly affected by a proposal a chance to make their views known. This narrows the gap between the governors and the governed, which some people feel has grown in recent years. As people often say, law that has been consulted on is often better law and is nearly always better-accepted law, because people feel that they have a chance to make their views known.

I will give two examples of the sorts of issues that are affected by how the Government have been rather casual about impact assessments. The Misuse of Drugs (Amendment) (Revocation) (England, Wales and Scotland) Regulations 2022 may sound a dull title, but in this the Home Office was going to revoke the ability to license a chemical because it could also be used as a drug. The Home Office believed that there were only 65 firms that used it and would be affected by it. When they produced the impact assessment, they found that there were about 7,500. Therefore, the effect of the impact assessment was to make sure that those 7,500 firms were not deleteriously affected.

My noble friend the Minister will no doubt say that this shows that the system is working—to which I would reply that it is effective when the impact assessment is provided. Too often, impact assessments are produced

[LORD HODGSON OF ASTLEY ABBOTTS]
too late to be effective or, in some cases, not produced at all. Let me give an example of each, briefly: first, on an impact assessment being too late to be effective.

The Committee will recall that a big decision was made about whether we should require care home staff to be compulsorily vaccinated. There was considerable concern about how many members of staff would resign as a result, either because they had religious beliefs against vaccination or because they were young women concerned about the impact on their fertility. When the regulation was published, no impact assessment was provided at all, so the SLSC asked the Minister to give evidence and explain why. The regulation having been published in late June, he came to see the committee in July and, after what I like to think was a fairly thorough grilling, he agreed and undertook to bring forward an impact assessment. He did, but he brought it forward in November. By then, everybody had been vaccinated or had not been, and the reason for producing the impact assessment was completely vitiated.

As an example of the latter—no impact assessment at all—a Minister from the Department for Transport told the SLSC, during an evidence session on the draft Motor Vehicles (Driving Licences) (Amendment) Regulations:

"It did not cause delay because the regulations went through without the impact assessment."

In the committee's report, titled *Losing Impact: Why the Government's Impact Assessment System is Failing Parliament and the Public*, there are 20 or 30 examples. I have given just a couple to show the extent and prevalence of the problem.

Each department has a Minister responsible for making sure that SIs and their attached impact assessments are produced properly and to time. Each of those Ministers reports to a Minister at the centre. Until two or three weeks ago, my noble friend Lord Callanan was that luckless Minister trying to corral this herd of cats. He gave evidence to the committee and he said that he was keen to prioritise, and I do not doubt that at all, and that

"because we have no statutory means of enforcing the writ of impact assessments, we are relying on peer pressure to encourage and cajole departments to do it".

I hope that my noble friends Lord Callanan and Lady Neville-Rolfe—she is going to reply—are pleased to see Amendment 134B riding to their rescue by inserting the words "at the same time" into the clause. It says that

"under this Act … laid before Parliament, the instrument, or draft instrument, must be accompanied at the same time by a regulatory impact assessment";

in other words, no impact assessment, no regulation. By any measure, the level of parliamentary scrutiny of the outcome of the Bill is low. If the Government avoid producing IAs at the right moment, promptly, it will be another nail in the coffin of scrutiny. That was my amendment on impact assessments.

My Amendment 134ZA concerns post-implementation reviews—PIRs. I have long since lost count of the number of times I have sat in committees or in the Chamber and heard Members of your Lordships' House say that post-legislative scrutiny is a really important way of holding the Government to account. It measures performance against promises; it provides a Bill's institutional memory, as to what worked and what did not; and it enables those outside Parliament to understand the effect, deleterious or otherwise, of any particular regulation. In essence, PIRs are post-legislative scrutiny for regulations.

Sections 28 to 32 of the Small Business, Enterprise and Employment Act, to which I have already referred, require that any regulatory provision that passes the impact assessment test—the £5 million threshold—should be reviewed five years after commencement and every five years thereafter. Despite this being a statutory provision, it is something that we are very far from being able to rely on. We took evidence from Christopher Carr of the Better Regulation Executive. He suggested that between only 25% and 40% of regulations that required PIRs were getting them. In fairness to my noble friend, he wrote to say that he thought the figure was 72%, so I put that on the record.

However, with Clause 20(5) the Government are writing off the PIR system. It has gone. I strongly believe that this is a mistake. PIRs, properly conducted and publicised, play a very important role in monitoring, and so improving, government performance. If they play an important role in general, they do a great deal more in the particular circumstances of this Bill, because all parties, even the Government, recognise that we are entering terra incognita—unknown territory—with the provisions of the Bill. It is impossible to foretell how these decisions, inevitably taken quickly under the pressure of the 31 December deadline, will work out in practice. It must surely be sensible for the Government and Parliament to have in place a formal process to review the real-life results. This amendment simply restores the requirement for there to be a PIR, undertaken and published for each regulation, three years after the regulation comes into force.

To conclude, an age ago—actually a week ago, but it feels like an age ago—in my remarks on Amendment 32, I said that during my three years as chairman of the SLSC

"I have seen the sands of power and influence trickling through Parliament's fingers",—[*Official Report*, 2/3/23; col. 433.]

weakening Parliament's relative power against the Executive, the Government. This is yet another example of mission creep on behalf of the Government. It is wrong in principle and in practice, and I hope the Government think again. I beg to move.

Lord Fox (LD): My Lords, I thank the noble Lord, Lord Hodgson, for his very comprehensive review of two important amendments. It is a shame that we have got to the last sands of the Bill here. I am not going to add to what he has said, particularly on Amendment 134B, but I have a question that formed when I read the Bill in the first place: why is Clause 20(5) in the Bill; in other words, why did the Government actively choose to disapply this process? What made them think that they want to do this?

If I were a conspiracy theorist, I would say, with all the assurances that we have had that most things would stay the same and therefore not require the treatment that the noble Lord just described, this would not be an onerous task. However, if there was wide-scale

revocation of regulations—including those that go beyond tagging the ears of fighting bulls, reindeer and all the others we are told about—that have an effect in the United Kingdom today, and if there is reformation, another word for change, a great deal of reviews would be required for those regulations to continue. Why was it decided to include Clause 20(5) in the legislation as drafted?

Lord Collins of Highbury (Lab): My Lords, it is always a great pleasure to support the noble Lord, Lord Hodgson. It has been a frequent occurrence on my part because of his excellent work on the committee that he chaired; there have been some excellent reports that I think have done a great service to this House. I am not going to repeat the points he has made; he has done an excellent introduction. I just want to seek clarification from the Minister in relation to his response to the committee.

8.30 pm

I agree with the noble Lord, Lord Hodgson, that this is a requirement that should be undertaken. But the noble Lord, Lord Callanan, confirmed that instruments laid under the REUL Bill which make "significant policy changes" will be covered by an impact assessment. Is that a qualification of when impact assessments will be provided? Who is saying what a "significant impact" is? Surely the purpose of the impact assessment is to assess whether there is a significant impact, so somebody is making a judgment beforehand. I think that is something that we really need to challenge the Minister on. I hope that tonight he will be able to make a very clear commitment that statutory instruments will be accompanied by an impact assessment. I think it is quite clear that is what Parliament intended, and certainly what I think the noble Lord, Lord Hodgson, intended.

I also agree with him in terms of PIRs. Certainly, I have been on committees where he has made this point before. What we tend to have now under these skeleton Bills—I think that the noble Lord, Lord Lisvane, made this point—is legislation, then a debate on policy. Well, if it is going to be that way round, these PIRs are even more important and fundamental, particularly as we have heard in this debate. So we certainly support them, and I hope the Minister will be able to answer the question I have put to him.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): I thank all three speakers. I first thank my noble friend Lord Hodgson; I know he takes this subject extremely seriously, as do I. It was a pleasure, albeit a gruelling experience, to give evidence to his committee. He knows my personal commitment on impact assessments is substantial; I do believe that they are important. As he said, I did have responsibility for it before the machinery of government changes, and I did my best working with the Regulatory Policy Committee to impress on other government departments the importance of producing impact assessments for some quite major pieces of legislation. Some Secretaries of State have chosen not to. My noble friend Lady Neville-Rolfe, talking from a sedentary position here, has just said, "I hope you produced one for the Procurement Bill".

So, let me address the points that my noble friend has made on Amendments 134ZA and 134B. I hope to explain to my noble friend why we are taking the actions that we are. Starting with Amendment 134ZA, my noble friend's amendment seeks to reintroduce a duty to insert review provisions in secondary legislation by removing the Bill's proposed exemption to Section 28 of the Small Business, Enterprise and Employment Act 2015—which, as my noble friend said, was produced by my noble friend Lady Neville-Rolfe. It is amazing how these things come around.

It is correct that the Government should commit to review any new regulatory provisions that may arise from the use of powers in this Bill, including by secondary legislation. However, if we were to reintroduce Section 28, there are concerns that at a future date there will be a huge surge in the volume of reviews requiring assessment in a fairly limited window of time, which would put tremendous pressure on the Civil Service and independent resources. The amendment also calls for a requirement for a review within 3 years. This is in fact more frequent than the current review process of five years. It is my submission that, for some policies, a review at this point would be based on too small a data sample to make a meaningful judgment.

Finally, many of the relevant instruments are in an existing review cycle that is due to be undertaken within the next three years. I hope my noble friend will accept that forcing a further regulatory review would create duplicate or conflicting review cycles. Therefore, for new regulatory provisions introduced under this Bill, we are proposing a bespoke approach to our REUL analysis. Where applicable, such as when retained EU law is being amended significantly via a statutory instrument, departments may be subject to additional independent scrutiny. If the expected economic impact of REUL changes is of £5 million or more, departments will be expected to submit the impact assessment for independent scrutiny by the Regulatory Policy Committee, as in general happens now.

Where measures are being sunset, departments will undertake proportionate analytical appraisal. Each department will be expected to produce an aggregate analysis of REUL that it is choosing to sunset. This aggregate analysis will be published by departments. Each department's aggregate analysis will be divided into groupings, such as "inoperable" or "defunct". No doubt the noble Lord, Lord Fox, will study my noble friend Lord Benyon's famous examples with great interest for the impact on the fighting bulls of the West Country.

Should the total impact of any grouping exceed the de minimis threshold of plus or minus £5 million, which is the limit used, then the department should submit an impact assessment to the RPC for independent scrutiny. This approach balances efficiency by requiring reviews only where necessary, alongside delivering an ambitious programme of REUL reforms which we hope will deliver real economic benefit for UK businesses and citizens.

My noble friend's other amendment, Amendment 134B, seeks to introduce a duty for departments to conduct a regulatory impact assessment when they lay a statutory instrument or a draft of a statutory instrument containing regulations via the powers in this Bill. To address the

[LORD CALLANAN]
question raised by the noble Lord, Lord Fox, properly assessing the impact of government policy is an important principle of good governance, and this Government will continue to be committed to the appraisal of any regulatory changes relating to retained EU law. The nature of the appraisal will depend on the type of changes that departments make and the expected significance of the impacts.

Where applicable, such as when retained EU law is a regulatory provision and is being amended significantly via a statutory instrument, departments will be expected to put their measures through the Government's systems for regulatory scrutiny, which is the better regulation framework. Where measures are being revoked, departments will be expected to undertake proportionate analytical appraisal. We are currently exploring the appropriate steps we can take to appraise the resulting impacts. Furthermore, the Government have, as the Committee knows, published an impact assessment relating to the Bill as a whole. The noble Baroness, Lady Chapman, referred to it extensively. In addition, an internal exercise is under way between departments and the Ministry of Justice to appraise potential impacts on the justice system from the Bill.

However, given that proper and proportionate cost-benefit analysis will be undertaken by departments in relation to amendments to retained EU law, and efforts are under way to understand potential impacts of sunsetting, I hope my noble friend will agree that there is no need to include in the Bill the amendment that he has proposed. I hope I have been able to reassure him and that he will feel able to withdraw his amendment.

Lord Hodgson of Astley Abbotts (Con): I am grateful to the Minister, to the Opposition Front Bench for its support, and to the noble Lord, Lord Fox, for his inquiries. Clearly, my interviewing of my noble friend at the committee was not gruelling enough in the light of the answers he has given me, but never mind. I accept the three to five years issue.

Then I get quite excited, because I hear about a bespoke approach. That sounds quite good, but then we hear "proportionate" and "only where necessary". So we will set up something that we all would agree is great—even my successor as chairman of the SLSC, my noble friend Lord Hunt—but then we have so many escape clauses. Although I would not say that it is not worth the paper it is written on, I would say words to that effect. However, it is late. I will read carefully what my noble friend the Minister said, reflect on it, and then decide what further action needs to be taken. I beg leave to withdraw the amendment.

Amendment 134ZA withdrawn.

Amendments 134A and 134B not moved.

Clause 20 agreed.

Schedule 3: Regulations: restrictions on powers of devolved authorities

Amendment 135 not moved.

Schedule 3 agreed.

Schedule 4: Regulations: procedure

Amendments 136 and 137 not moved.

Amendment 138

Moved by ***Lord Callanan***

138: Schedule 4, page 37, line 37, leave out "1" and insert "(Exceptions to sunset under section 1)"

Member's explanatory statement

This amendment is consequential on the Minister's amendments at Clause 1, page 1, line 7 and After Clause 1. It also makes procedural provision in relation to subsection (1)(c) of new Clause (Exceptions to sunset under section 1).

Amendment 138 agreed.

Amendment 139

Moved by ***Lord Hodgson of Astley Abbotts***

139: Schedule 4, page 39, line 17, leave out "10" and insert "15"

Member's explanatory statement

This amendment, together with amendment 140, would extend the period available to committees of the two Houses to discharge the sifting function provided for under the Bill, as recommended by the Secondary Legislation Scrutiny Committee in paragraph 59 of its 28th Report "Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform) Bill".

Lord Hodgson of Astley Abbotts (Con): My Lords, the horse is running to the stables, so I will not speak for a moment longer than is necessary. I shall speak also to Amendment 140. I am grateful to the noble Baroness, Lady Randerson, for putting her name to these two amendments, and the noble Lord, Lord Hutton, who is not here, for also supporting them. They are concerned with ensuring that a proper amount of time is allowed so that both Houses of Parliament can scrutinise the proposed use of the serious powers given to Ministers under Part 3 of Schedule 4. They again follow recommendations made in the SLSC's report on the Bill.

The powers are listed in paragraph 7(2) of Schedule 4, and it is worth while noting what they are. They are powers in Clauses 8, 12 and 13 to amend, repeal or revoke primary legislation; powers in Clause 15(2) to make subordinate legislation; powers in Clause 16 to update legislation; and last but not least, powers to create a criminal offence in Clause 15(2). We are talking not about parking tickets but about things that are serious.

The exercise of these powers is under the negative procedure, so unless somebody objects it goes through on a nod; it is not debated at all. However, the Minister has to lay a draft of the proposed regulation explaining why he or she thinks the negative procedure should apply, and either House has an opportunity to recommend that the matters concerned are of sufficient importance to warrant an upgrade to the affirmative procedure, which, in turn, would at least allow the regulations to be debated.

Each House will have a committee charged with assessing whether there should be such an upgrade. The procedure follows that established for the European Union (Withdrawal) Act 2108, where the SLSC came to act as sifting committee of your Lordships' House. Experience under the 2018 Act shows that the two

Houses of Parliament generally ran on parallel tracks. Of the 329 proposed negatives under the Act, 50—15%—were recommended for upgrade by your Lordships' House, and 57—17%—were recommended for upgrade by the House of Commons, and the Government invariably accepted the recommendations from either or both Houses.

8.45 pm

Under the procedure of the Act, the period within which a decision or a recommendation to upgrade had to be made was 10 days. Experience under the 2018 Act was that the 10-day deadline could be pretty challenging, depending on a number of things: the business as usual that the committee has going through it, which has to be dealt with anyway in the weekly meeting; the 600 or 700 instruments that go through the committee every year; and the days on which the regulations were tabled or laid because, of course, Friday can be a sitting day or not. It can depend, and the period can be shortened quite a lot if two Fridays are counted as sitting days.

We pointed out in one of the committee's reports that the purpose of the proposed negatives laid under the 2018 Act was comparatively limited, in that they largely concerned instruments intended to deal with correcting deficiencies in a retained EU law. The Hansard Society has suggested that scrutiny of the proposed negatives under this Bill may well amount to a more substantial function. Dr Fox of the Hansard Society said:

> "What we are talking about here would be sifting of retained EU law regulations that delve into the realm of policy. They would be more politically salient than we have seen through the period since the EU withdrawal Act was passed."

This is not just an internal parliamentary matter, because outside voices want to make themselves heard. We had a long and passionate debate led by the noble Baroness, Lady Parminter, about the environment, and we can see that if there is a proposed negative about the environment—just to take one area—there may be a number of outside bodies that wish to write to the SLSC and the sister committee in the Commons explaining their views. It is likely to attract quite a lot of attention in various of the areas that we will be looking at. The committee will then need time to assess the quality of those submissions and to meet before reaching a conclusion as to whether an upgrade was appropriate.

Given the likely volume of the draft regulations to be scrutinised, together with their likely importance, it seems right that there should be an additional five sitting days in which the committee and outside bodies can make their views known to the House of Commons sifting committee and your Lordships' House. That is the reason for these two simple amendments to change "10" to "15" in the two places where "10" appears in the Bill. If the Government do not intend to try to marginalise further Parliament's involvement in the Bill, I can see no reason why they cannot accept this very small and important amendment. I beg to move.

Baroness Randerson (LD): I thank the noble Lord for his excellent introduction. As very much a new girl on the Secondary Legislation Scrutiny Committee now being very ably chaired by the noble Lord, Lord Hunt, I put my name to this amendment because I am convinced by his arguments for this basically very modest and very practical pair of amendments. The arguments are based on experience, as the noble Lord has explained. Earlier today, the Minister indicated that it is the Government's intention that a substantial number of pieces of legislation will be revoked and reformed and that we are not looking at a situation where there would be some exceptions to carry over.

Given the very tight time constraints—the Minister made it quite clear in an earlier letter to us that even he thought it was ambitious—we can confidently expect that the Secondary Legislation Scrutiny Committee will face something of an avalanche of legislation towards the end of the year. For it to get its thorough job done properly, there needs to be this simple expansion of time available from 10 to 15 days; otherwise, the danger is that the committee will have to act in a way that is precautionary and might well make more comments necessary than if it were given a little longer to consider it. I urge the Minister to take this into account and to accept this amendment at a later stage of the Bill.

Lord Hunt of Wirral (Con): My Lords, in January I had the privilege of being appointed chair of the Secondary Legislation Scrutiny Committee. In that capacity I support these amendments in the name of my noble friend and predecessor Lord Hodgson of Astley Abbotts—a very difficult act to follow, as he has just demonstrated once again. I greatly welcome the participation of the noble Baroness, Lady Randerson, who has already brought a ray of sunshine to the committee in dealing with some difficult and challenging problems.

Supported by our team of brilliant and highly experienced advisers, the committee reports week in, week out on secondary legislation laid before Parliament, covering every conceivable aspect of policy, directing your Lordships' attention to the most notable instruments and providing valuable information in support of subsequent debates on those instruments.

As we have heard, under the European Union (Withdrawal) Act 2018 the committee was charged with an additional function—the scrutiny of what are called proposed negative instruments laid under a new sifting mechanism. The committee had 10 days to report on these proposed instruments and, to its immense credit and that of its staff, it rose to the considerable challenge of meeting that demanding deadline under the leadership of my noble friend.

As we know from the committee's recent report on the Bill, however, this was not an easy matter. As the report warned,

> "depending on the day of the week on which a proposed negative has been laid, meeting that 10-day deadline could be challenging."

This Bill makes similar provision for a sifting mechanism. It will apply to the exercise of powers under Clauses 12, 13 and 15. As with the 2018 Act, the Bill does not name the Secondary Legislation Scrutiny Committee as the committee to be charged with this sifting function. That is, of course, a matter for the House.

I know your Lordships will understand that in making the following points I do not mean any discourtesy or to pre-empt any decision of the House. Under the

[LORD HUNT OF WIRRAL]

sifting mechanism in the Bill, the reporting period is again 10 days. If that period represented a challenge under the 2018 Act, which involved regulations with the limited purpose of dealing with deficiencies in retained EU law, how much greater will be the potential challenge where regulations under Clause 15, for example, may make "alternative provision" for secondary retained EU law? Such regulations may well require the sifting committee to probe further into the new policy underlying the alternative provision—a point made by the noble Lord, Lord Fox, I understand, and reiterated by my noble friend a few moments ago.

That in turn may include the committee having to solicit further information from departments and consider submissions from outside bodies before it can come to an informed and considered view. I realise that my noble friend the Minister may well be worried that, in giving any concession here, he might open the door for a read-across into other departments, but this is a very special case and I want to make it clear that there is no read-across here.

The capacity of the SLSC to meet a 10-day deadline has been amply demonstrated. The committee would not expect the full 15 days for every proposed negative instrument—far from it. What is being asked for in Amendments 139 and 140 is an extension of the deadline in recognition of the fact that the Bill has the potential for generating more complex and far-reaching policy changes, through instruments subject to the sifting mechanism, than the 2018 Act has. From time to time, there will also be occasions when the longer period is needed if the House is to receive the full benefit of the opportunity for more effective parliamentary scrutiny that the sifting mechanism provides.

I very much hope that my noble friend the Minister and his colleagues will accept the force of the argument and take these considerations seriously. At the end of the day, we all want Parliament better to do its job in the public interest, so I support my noble friend.

Baroness Chapman of Darlington (Lab): My Lords, there is not really much to add, so I will not say very much. I notice that the noble Lord, Lord Fox, has denied himself the opportunity to speak on this last group, which is—

Lord Fox (LD): Surprising.

Baroness Chapman of Darlington (Lab): Uncharacteristic but very welcome—I hope he does not take that the wrong way.

We support this measure, for the reasons that have been very well laid out about giving stakeholders a chance to get involved. We do not think that accepting one of these amendments or something like them would affect the Government's ability to fulfil their objectives.

The noble Baroness, Lady Randerson, made some good points about the argument regarding practicality, based on experiences laid out very well in the committee report. I thought her concerns about the unintended consequence of sticking with 10 days—that it might actually make the process slower because more things would get referred—were strong. Her point about the need to probe policy that may come about as a result of the SIs coming from this Bill has persuaded us as well.

I would have thought this was something on which the Government could accept a change and bring something back on Report. If they do not, we will be happy to work with noble Lords on all sides to try to table something ourselves. I think this may perhaps be an occasion where the Government could show willing, and listen and respond positively.

Lord Callanan (Con): I thank the speakers. We have finally reached the last grouping, which is a source of considerable relief.

Amendments 139 and 140, tabled and ably moved by my noble friend Lord Hodgson, both propose introducing further scrutiny procedures for legislation made under powers within Clauses 12, 13 and 15. Both amendments would essentially do the same thing: they propose extending the period of time after which legislation is made under these clauses and is subject to scrutiny from the House of Commons and the House of Lords as part of the sifting procedure. Specifically, they seek to extend the time limit within which both Houses can make recommendations on the appropriate procedure used for the instrument laid as part of the sifting procedure.

As drafted, the relevant committees of the Lords and the Commons have 10 sitting days, as both my noble friends and others said, to make recommendations on the appropriate procedure after an instrument has been laid. This is actually in line with the level of sifting under the EU withdrawal Act. I note my noble friend's comments that it was not enough time, but I was impressed by the incredible work that the committee did during that time and I do not recall it being a particular issue.

9 pm

The sifting procedure has been purposefully drafted as a safeguarding measure, which allows for additional scrutiny for the use of the powers, while retaining the flexibility of using the negative procedure where there are good reasons to do so. However, the Government do recognise the importance of ensuring that legislation undergoes the appropriate level of scrutiny. It is certainly something that I am personally committed to.

I thought both my noble friends Lord Hunt and Lord Hodgson made powerful arguments, so I will undertake go away and reflect. I will probably have to do some difficult work to convince the business managers of this; they want to manage their programme of SIs accordingly, so I cannot make any promises. But I assure my noble friends that they made powerful arguments, supported by others across the House, so we will have a look at it, because the appropriate scrutiny is important. There will be a big programme of statutory instruments. I know that there are lots of suspicions about the Government having some malevolent objectives in all this, which is not the case, but it is important that Parliament has its say.

If my noble friend will withdraw the amendment this evening, I undertake to go away and consult further with colleagues in government and the business managers and see what we can do on this.

Lord Hodgson of Astley Abbotts (Con): I am grateful for all the support for this amendment. The noble Baroness, Lady Randerson, raised the issue of the precautionary principle: if in doubt, upgrade it if we do not have enough time to think about it. I think that is very important. My noble friend Lord Hunt rightly pointed out that it will depend on what committee does it. It might choose not to use the SLSC, but the 15 days would apply, whichever committee it was taken to, so I do not think it is taking anything for granted. I thank the noble Baroness, Lady Chapman, again for her support from the Labour Front Bench.

I say to my noble friend the Minister that, when you spend a lot of time on the Back Benches pushing hard on a door, if suddenly the door is opened you fly forward, all out of control. I am very grateful to him for agreeing to take this away and think about it. I am sure that, with his persuasive powers and his commitment, which he has given to the SLSC in the past, about the proper level of scrutiny through assessments and so on, he will be able to persuade the business managers, the Bill team and whoever else has to be persuaded that this amendment should be made. I am very grateful to him for concluding Committee on an upbeat tick, and with that I beg leave to withdraw my amendment.

Amendment 139 withdrawn.

Amendment 140 to 141A not moved.

Schedule 4 agreed.

Clause 21: Interpretation

Amendment 142 not moved.

Clause 21 agreed.

Clause 22: Commencement, transitional and savings

Amendment 143 not moved.

Amendment 144

Moved by ***Lord Callanan***

144: Clause 22, page 23, line 40, leave out subsection (5)

Member's explanatory statement

This amendment removes an exception from the Clause 1 sunset. The exception is contained in new clause (Exceptions to sunset under section 1).

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): My Lords, if Amendment 144 is agreed, I cannot call Amendments 145 or 146 for reasons of pre-emption.

Amendment 144 agreed.

Amendments 145 and 146 not moved.

Clause 22, as amended, agreed.

Clause 23: Extent and short title

Amendment 147 not moved.

Clause 23 agreed.

House resumed.

Bill reported with amendments.

Public Order Bill

Returned from the Commons

The Bill was returned from the Commons with amendments and reasons. It was ordered that the Commons amendments and reasons be printed.

House adjourned at 9.05 pm.