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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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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

Monday 24 April 2023

2.30 pm

Prayers—read by the Lord Bishop of Guildford.

Water Companies: Licences
Question

2.36 pm

Asked by ***Baroness Bakewell of Hardington Mandeville***

To ask His Majesty's Government what assessment they have made of the announcement by Ofwat on 20 March of a change to the licences of water companies requiring that dividend payments are linked to performance.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, we support Ofwat's new measures, which were made possible by new licence modification powers that this Government gave to Ofwat via the Environment Act 2021. The measures strengthen the existing dividend licence conditions so that Ofwat can take enforcement action against water companies that do not make an explicit link between dividend payments and their performance for customers and the environment.

Baroness Bakewell of Hardington Mandeville (LD): I thank the Minister for his response. Since I tabled this Question, the Government have published their plan for delivering clean and plentiful water, which is to be welcomed and offers much hope. However, river pollution has blocked the development of 20,000 much-needed new homes, and more than 7,500 days' worth of raw sewage has been dumped in various Ministers' constituencies. Does the Minister believe that withholding dividend payments to water company executives and shareholders will really contribute to making the difference needed to improve long-term water quality? Surely something more robust is needed.

Lord Benyon (Con): My Lords, that is just part of a great many things that the Government are doing. The new power that the Environment Agency has to link the companies' licences to ring-fence provision on infrastructure spending is important. This comes as part of a plan that includes the Environment Act, as I said earlier; the *Storm Overflows Discharge Reduction Plan*; a strategic policy statement for Ofwat, in which the Government required very stringent new standards; and our recently published plan for water. No Government are doing more to tackle this issue.

The Duke of Wellington (CB): My Lords, I also commend Ofwat on its recent announcement that it will seek to take some powers over dividends, but what it actually says is that the company boards will be required to take account of their performance towards the environment. What worries me—I wonder whether it worries the Minister—is that it is up to the company to assess its own performance. Is that really a strong enough power?

Lord Benyon (Con): It is not just up to the company; it is up to the regulators, Ofwat and the Environment Agency. We are currently considering this, and there is a proposal to lift the cap on fines from the Environment Agency to an unlimited level. This is part of a concerted effort to tackle a serious problem.

Baroness McIntosh of Pickering (Con): My Lords—

Baroness Jones of Whitchurch (Lab): My Lords—

Baroness Williams of Trafford (Con): My Lords, it is the turn of the Conservative Benches.

Baroness McIntosh of Pickering (Con): My Lords, I welcome the Government's commitment to implement Schedule 3 to the Flood and Water Management Act 2010, but will my noble friend exercise a degree of urgency? Wales has already implemented this, making SUDS and sustainable drains mandatory in all new builds. That one measure alone will prevent sewage spilling over antiquated pipes and leading to river and sea pollution.

Lord Benyon (Con): My noble friend is absolutely right: this was a key recommendation of the Pitt review following the floods in 2007. The Government are implementing it. It is complicated, because it is about who owns and has responsibility for the maintenance of the SUDS. My noble friend is right that this will have an impact on the amount of unwanted effluent that flows from developments into watercourses and aquifers, and it is being implemented—we are taking it forward urgently.

Baroness Jones of Whitchurch (Lab): My Lords, following on from the previous question about the water companies marking their own homework, can the Minister explain how it is that the water companies themselves are responsible for monitoring and reporting? Will that change? He will know that a lot of the monitors do not work, so how can we be assured that decisions will be made on the basis of accurate reporting? It is not in their interest to provide that accurate information.

Lord Benyon (Con): There was no information on this until 2013, when I required water companies to publish a full list. We now have—or will have in a matter of weeks—100% of all the monitors. The Environment Agency investigates anywhere a fault is not being correctly measured. The telemetry will exist to measure the quality of water in all these outflows, above the outflow and below it, so accurate comparisons can be taken. That sharing of information, which was lamentably woeful but which we have corrected, will be a key part of our attempts to successfully clear up our rivers.

Baroness Altmann (Con): My Lords, the Government can be extremely proud of their record on the environment with regard to the Environment Act and a number of the measures to ensure improvement that I know my noble friend the Minister is personally committed to. Can he explain to the House whether he believes that Ofwat has sufficient powers to deal with this enormous problem that is exercising the public so much across the country?

Lord Benyon (Con): My noble friend raises a key point. The Government give direction to the regulators of utilities such as water companies, and we have given very clear direction, which has been manifest in the latest Ofwat demand that water companies tackle this. It is not the only regulator. As I said earlier, the Environment Agency has huge powers and will levy fines and make sure that water companies that fail are taken into account. Of course, Ofwat also has to balance the importance of the pressure of bills on households with an increasing level of investment in tackling these issues. It is a constant balancing issue and one that I hope we are getting right.

Lord Rooker (Lab): Can the Minister please explain how competition in the water industry is of direct benefit to the public?

Lord Benyon (Con): It allows us to make comparisons between good and bad performers and to ensure that they are able to operate in the open market and borrow on the capital markets in a regulated way. Dividends are really important because they pay for investment, and very often they are paid to pension companies that invest in these companies. The average dividend is around 3.8%, which is not massive, but we want to make sure we get that balance right. Competition is also in the customers' interest. Evidence shows that if it had not been for the kind of competition that we have created in the water industry, there would be higher bills for households and less money spent on infrastructure.

Lord Cormack (Con): My Lords, week after week we read about the Wye and other beautiful rivers—they are sewers, in some cases. The question we are constantly being asked is: when can we expect our rivers to run clear and pure? Is it 2040, 2050 or 2030? When can we expect this?

Lord Benyon (Con): We have set out dates by which we will expect to see different levels of improvement. We are requiring water companies to spend £56 billion, and most of that is being front-loaded. The date of 2030 is the first by which my noble friend will be able to see how successful we have been at that front-loading. On rivers such as the Wye, it is not just the water companies but farming that is the problem—a particular type of farming. We have had this debate many times, and action is being taken through the Environment Agency and grants that we are now offering through our environmental land management schemes to correct some of the issues that have gone wrong. We also need to look at planning, which has been part of the problem.

Baroness Merron (Lab): My Lords, the Minister has previously said that the Government are looking at a proposal from the Environment Agency that directors of water companies that fail to improve and continue to pollute our watercourses should face a prison sentence. Can he update us on what progress is being made?

Lord Benyon (Con): These are issues that require us to work across government, such as sentencing, but where a crime has been committed and it can be proved that an individual in a senior position in a company has directed that company to operate in an illegal manner, that is a criminal act and therefore sanctions should reflect that.

Baroness Parminter (LD): My Lords, the Government have said that they will use the evidence of enforcement and litigation in determining whether they will use this new power on dividends for companies, but that requires evidence. As the noble Baroness, Lady Jones of Whitchurch, said, it has recently been shown that of the storm overflow monitors that the water companies put in, one in six—2,300—are not working. Why are the Government not fining these water companies immediately if their storm overflow monitoring devices are not working, because otherwise no one can get the evidence and Ofwat cannot make these decisions?

Lord Benyon (Con): The Environment Agency has a suite of enforcement actions it can take in those circumstances, including criminal prosecution. Last year it reported 30 monitors that were not recording data properly. Faulty or inactive monitors are identified by the agency through its data monitoring, and where water companies are failing to meet expected levels of monitoring coverage, the agency is holding them to account by requesting plans and monthly updates on progress. Some 15,000 storm outflows exist in this country; we now know where they are and we can monitor them.

Brain Tumours

Question

2.47 pm

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

To ask His Majesty's Government what steps they are taking to improve the scale of research into the causes and treatment of brain tumours.

Lord Evans of Rainow (Con): My Lords, I am hugely grateful to the noble Lord for bringing this challenge to my attention and pay tribute to the work that he does on the APPG. We are working closely with research partners. I am pleased to say that more research is being funded, as we continue to encourage more researchers to become involved in what remains a challenging scientific area with a relatively small research community. I am confident that the Government's continued commitment to funding will help us make progress towards effective treatment.

Lord Hunt of Kings Heath (Lab): My Lords, this is a devastating disease and I welcome the Government's doubling of the £20 million grant for research to £40 million in memory of my late friend Baroness Jowell. Unfortunately, of that £40 million, I understand that only about £8.8 million has so far been allocated. Can the Minister assure me that that £40 million fund will be ring-fenced purely for brain tumour research? Secondly, will the National Institute for Health and Care Research give proper feedback to researchers who have had their projects rejected so that they can resubmit their applications with more hope of success?

Lord Evans of Rainow (Con): I thank the noble Lord and pay my tribute to Tessa Jowell. I remember her final speech in the House. It is one of the most moving speeches I have ever heard; I recommend that noble Lords look it up on YouTube if they missed it first time round.

Brain cancer poses major scientific challenges, requiring investment in basic science through to applied and clinical research. Progress is hard won but we are committed to finding solutions. We want to fund high-quality research to benefit patients. In the four years since the 2018 announcement of £40 million of funding, there have been 13 studies funded by the National Institute for Health and Care Research, with £10.7 million of funding, compared with just six studies in the preceding four years. We want to fund more, but this shows a positive trend.

The department of NIHR continues to work closely with the Tessa Jowell Brain Cancer Mission to grow capacity for brain cancer research. This means attracting new researchers, developing the community and supporting researchers to submit high-quality research funding proposals. As part of this, the Tessa Jowell Brain Cancer Mission will host a round-table event, with cross-party MPs participating to discuss the future of brain tumour research with leaders in the field. I extend an invitation to the noble Lord, Lord Hunt, to attend this meeting, which will be held on 16 May.

Lord Polak (Con): My Lords, I have three interests here. One is that my mother is currently suffering from brain cancer in a hospice in Liverpool. Secondly, I was successfully operated on 35 years ago for a brain tumour. Thirdly, I am an officer of the APPG on Brain Tumours; I was honoured to sit on the inquiry that produced the report, *Pathway to a Cure: Breaking Down the Barriers*.

In the other place, the Minister, Will Quince, said:

"I understand and share the frustrations that only a proportion of the £40 million on brain tumour research has been allocated".—[*Official Report*, Commons, 9/3/23; col. 510.]

Can my noble friend confirm that bureaucracy will not get in the way of releasing funds for research, so that individuals and families who are suffering know that every effort is being made to find a cure for the deadly disease of brain cancer?

Lord Evans of Rainow (Con): I pay tribute to my noble friend and wish his mother well. I was not aware of his fight with brain cancer 35 years ago. We are very lucky to have him in this place—long may it continue.

The NIHR generally does not allocate funding for specific disease areas or ring-fence. The level of research spend in a particular area is decided by factors including scientific potential and the number and scale of successful funding applications. In the four full years since the 2018 announcement of £40 million of funding, a commitment of £10.7 million has been spent on 13 studies, compared with six in the preceding four years. We want to fund more, but this represents a doubling of successful applications. The Government are committed to this but are reliant on good-quality projects being brought forward. I have spoken to my right honourable friend the Minister and more than £40 million will be allocated if the right projects come forward.

Baroness Finlay of Llandaff (CB): My Lords, do the Government have any plans for further proton beam therapy treatment centres, in addition to those in Manchester and at UCL, with consistent government and ethics research committee arrangements, so that the small research community can also benefit from cross-border working with the CUBRIC centre at Cardiff University, in which I declare an interest?

Lord Evans of Rainow (Con): I thank the noble Baroness for her question; she shows her expertise in such matters. The UK departments for cancer research are jointly funding a network of 17 experimental cancer medical centres across the UK, plus a network for children which is dedicated to early-phase research into childhood cancers; we invested a total of £36 million between 2017 and 2022.

Lord Allan of Hallam (LD): My Lords, can the Minister assure the House that the Government are committed to supporting research into brain tumours affecting children—in particular DIPG, which affects up to 40 children a year and for which, sadly, there is still no effective treatment?

Lord Evans of Rainow (Con): The Government are committed to trying to solve the problem of childhood cancers. I am not aware of that specific case, but I can assure the noble Lord that, as I said in my previous answer, government research into childhood cancers will continue. However, there is still a lot of work to do; as the noble Lord well knows, this is a complicated and difficult subject to follow. There is a small medical community looking into this complicated disease, but the Government are doing all that they can.

Baroness Sugg (Con): My Lords, is my noble friend aware of the wonderful charities that are undertaking important research into brain tumours, including the Brain Tumour Charity and Brainstrust? Will he join me in thanking the thousands of runners in yesterday's London marathon who raised such amazing amounts for charities such as these? I believe that my noble friend was one of those runners.

Lord Evans of Rainow (Con): I thank my noble friend for that question. I was indeed running the London marathon yesterday and took note of all the wonderful cancer charities, including those that my noble friend mentioned, as they were running past me—which is an indication of how slowly I was going. They were going a lot quicker than I was. However, the serious point is that the London marathon is a wonderful British institution that raises millions of pounds for charity, and an awful lot of cancer charities benefit from it.

Baroness Merron (Lab): My Lords, I congratulate the Minister and others in this House on their efforts yesterday and pay tribute to the tireless work of the Tessa Jowell Foundation. It deserves our support for how it presses home the need for urgent improvements in treatment research and training to combat the rising devastation of brain cancer. However, while

[Baroness Merron]
survival rates for glioblastoma are shockingly poor, and the numbers are described as an epidemic, this still is not enough for a business case to encourage companies to test new drugs. How will the Government encourage longer-term investment and action to develop new drugs, and will the Minister act to increase the numbers in clinical trials?

Lord Evans of Rainow (Con): I thank the noble Baroness, who is right to point out that the number of people surviving brain cancer has not moved in recent years. I assure her that the Government are doing all that we can. The money is there. Working with the charitable organisations, we must attract more projects and investigations on this very complicated and difficult disease.

Lord Kakkar (CB): My Lords, I refer to my registered interests. Is the Minister content that there is sufficient investment in the basic infrastructure to deliver clinical research in the NHS to ensure that novel therapies to treat brain cancers can be evaluated in a timely and efficient fashion, especially within the context of the substantial challenges that the NHS is facing as it deals with clinical backlogs?

Lord Evans of Rainow (Con): There is already a significant investment in people and facilities for cancer research. The research infrastructure supports brain tumour research studies, mainly in the NHS. This infrastructure is instrumental in the delivery of research funded by the NIHR, charities and others, so it is important in supporting and building the research community. However, resources are significant, and it is difficult to disaggregate brain tumour spending and add to the £10.7 million that we have already allocated.

Baroness Blackwood of North Oxford (Con): My Lords, it is very impressive to see the Minister at the Dispatch Box after his efforts in the marathon.

All of us all in this House want to see progress in responding to this hard-to-treat cancer. However, the Minister's answers on this topic are not that dissimilar to those that I would have had to give when I was responding back in 2019. Can he go back to the Question from the noble Lord, Lord Hunt, go back to the department and challenge civil servants on whether they are giving the right feedback to researchers on how they can improve their research proposals so that we can start taking research forward and get the solutions for cancer patients who really deserve progress on that research?

Lord Evans of Rainow (Con): I thank my noble friend, who is absolutely right to point this out. Perhaps we can discuss this further at the round table next month. Prior to these questions, I had a meeting and pressed the government department officials on this to ensure that the money is there. I am reassured that the money is indeed available if we get a sufficient number of projects that will have a significant impact on curing this terrible disease.

Hate Crime

Question

2.58 pm

Asked by ***Baroness Gohir***

To ask His Majesty's Government what assessment they have made of the incidence of each of the five monitored strands of hate crime in respect of the sex of the (1) victims, and (2) perpetrators; and why annual hate crime data are not routinely disaggregated by sex when published.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, police-recorded hate crime data, published annually on GOV.UK by independent Home Office statisticians, are not routinely disaggregated by sex of victim or perpetrator. On 1 April, police forces started to identify and record any crimes of violence against the person, as well as sexual offences, that are deemed to be motivated by hostility towards the victim's sex.

Baroness Gohir (CB): I thank the noble Lord for his response. Will historical data be made available on the government website? Looking at the last 10 years of hate crime data, it has increased every single year. Between 2021 and 2022, it increased by 26%. What action are the Government taking to reduce hate crimes for all groups affected?

Lord Sharpe of Epsom (Con): On the noble Baroness's latter point, she is right: in the year ending March 2022, there was a 26% increase compared to the previous year. Although the latest data does indicate that increase, the most recent Crime Survey for England and Wales figures, which were published in 2020, indicate a downward trend in overall hate crime incidents over the past decade. It is felt that the biggest driver for the increase in police-reported crime is likely to be general improvements in the recording of the crime. The police are also better at identifying whether a crime is a hate crime, along with increased victim willingness to come forward. As regards the publication of the data that we are collecting as of 1 April, I cannot say for sure yet. It is for 2023/24. It is voluntary at the moment, but it will be part of the annual data requirement. The Home Office statisticians will make an independent judgment as to whether it is fit for publication or not.

Lord Browne of Ladyton (Lab): My Lords, hate crimes have developed incrementally. First, they were targeted at racially motivated offences, before broadening into the five strands to which the noble Baroness's Question alludes. So this should remind us that their current state is a snapshot in time. We must always review these things to extend further protections where they are necessary; that is how we got to where we presently are. So surely the routine disaggregation of annual data by sex would enable us to review whether there is a necessity of extended protections offered by hate crime laws to women and girls, in a way that is better informed than it apparently is at present?

Lord Sharpe of Epsom (Con): The noble Lord raises a good point. Of course, the Law Commission did look into this—a subject to which I am sure I will

return. But the recording for hate crimes in terms of the sex of the perpetrator is actually very complex. The Ministry of Justice holds court criminal data; the sex of perpetrators is published for all crimes prosecuted that are specified in legislation, including hate crime offences such as racially and religiously aggravated assault, as the noble Lord has suggested. But where a sentence uplift is used because there is evidence of a hate element in the offence, it will be recorded under the offence legislation, not the uplift. Therefore, the sex of the perpetrator, while published, is not always linked to hate crime. Consequently, the data is not a complete representation of all hate crime and will not provide an accurate picture of the sex of the perpetrators.

Lord Singh of Wimbledon (CB): My Lords, would the Minister agree that the whole point of collecting statistics on so-called hate crime is to use them to determine remedial action? But we already know the causes and the action required. So-called hate crime is unacceptable behaviour, not only against the five listed strands, but also against the very tall, the very short, the thin, the fat, people with red hair—anyone seen to be different from a questionable norm. We do not need statistics to lay down norms of acceptable behaviour in schools, the police and wider society.

Lord Sharpe of Epsom (Con): I entirely agree with the points that the noble Lord has made. I am not sure that was a question, but I entirely agree.

Lord Hannan of Kingsclere (Con): My Lords, the hate crimes legislation seems to me to violate one of the general principles of common law, in that it defines crime subjectively: it defines crime as anything perceived to be a crime by the victim or by anyone else. Does my noble friend the Minister believe that the increase in reporting correlates exactly with an increase in actual crime? If it does, then what evidence is there that this legislation has been of value in combating discrimination and prejudice?

Lord Sharpe of Epsom (Con): My noble friend asks an interesting question. I referred earlier to the Law Commission, which we asked to undertake a wide-ranging review into hate crime legislation. On the specific question, the Law Commission found that adding sex and gender to hate crime legislation could have made it more difficult to prosecute the most serious crimes that harm women and girls, including rape and domestic abuse. It would also treat sex unequally to other characteristics in scope of relevant hate crime laws, such as race or religion. So, while I cannot necessarily specifically answer my noble friend's point, I would say that it is an incredibly complex area that needs very careful thought.

Lord Ponsonby of Shulbrede (Lab): My Lords, the Question from the noble Baroness, Lady Gohir, asked why hate crime statistics are not disaggregated by sex. But the question could equally be asked about why the data is not disaggregated by the age of the victim and the perpetrator. I well remember, when I sat on the pre-legislative scrutiny committee for the Domestic Abuse Bill, we had a lot of lobbying about violent acts against older people by younger people. Does the Minister agree that reporting the interaction of these characteristics, both sex and age, would allow resources to be better allocated for the victims and to prevent these types of crimes?

Lord Sharpe of Epsom (Con): Again, the noble Lord raises an interesting point. He will be aware that age is not one of the five protected characteristics—as I get older, I am beginning to think that that is a mistake. I cannot answer his question in greater detail than that at the moment but I will certainly take it back to the department.

Baroness Burt of Solihull (LD): My Lords, we await the Second Reading of the Protection from Sex-based Harassment in Public Bill, a Private Member's Bill that, if it passes, will create an offence of causing intentional alarm and distress to a person in public because of their sex or presumed sex. Can the Minister tell the House when this Bill will be introduced and whether such an offence will be recorded as a hate crime?

Lord Sharpe of Epsom (Con): I am afraid I am not sure when the Bill will be introduced. I am aware that the Government support that Bill, which was introduced by Greg Clark. I do not have the answer as to how the crimes will be recorded, but I will find out.

Lord Dobbs (Con): My Lords, Saturday was the occasion of Stephen Lawrence Day. I pay tribute to the noble Baroness, Lady Lawrence, who is in her place, for all the dedicated work she has done to build on the memory of her son. What a pity that it should have coincided with the outbursts of Diane Abbott, which left me cold in our modern world. We have hate legislation. Does my noble friend really think that that legislation is effective? Is it really reducing the amount of hate in society, or is it encouraging us to concentrate on the wicked things that are going on rather than allowing us the opportunity to celebrate and build on all the many good things that are going on in terms of race relations in this country, of which the Stephen Lawrence Day Foundation is one?

Lord Sharpe of Epsom (Con): I associate myself with my noble friend's remarks about the noble Baroness, Lady Lawrence, and the work she has done in that area. As regards whether hate crime legislation increases, improves or takes away from the current situation, there are plenty of reasons why hate is present in society—you can start with Twitter and move on. I am not sure that the legislation makes an enormous difference to that, but it is something that will remain front and centre of public debate for many years.

Special Educational Needs: Employment Support

Question

3.07 pm

Asked by ***Lord Addington***

To ask His Majesty's Government what plans they have to ensure that anyone identified as having a Special Educational Need in the education system is passported through to the appropriate support when looking for employment in adult life.

Lord Addington (LD): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I remind the House of my declared interests in the register.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, we recently set out plans in the SEND and alternative provision improvement plan to ensure that every young person with special educational needs and disabilities achieves good outcomes and is prepared for adulthood. As part of this, we are developing good practice guidance to support consistent, timely, high-quality transitions for young people with SEND, including into employment. We are also supporting the Department for Work and Pensions to pilot an adjustments passport, which will to help smooth that transition.

Lord Addington (LD): My Lords, I thank the Minister for that response; I appreciate that she is primarily answering for a department that is not her own. At the moment, if you talk to anybody in employment going through this, they will give you a list of things that do not happen: people do not know what an adjustment is or how to find out what it is, and employers do not know exactly what they are supposed to do. Can we have a guide to what will happen when somebody goes into employment and, for instance, goes for Access to Work, where they are not required to get the job first, apply and then require the employer to ensure they are prepared to sustain them, without being at full capacity for a period of time before they get the benefit of it? Unless people can get some form of passporting or labelling system that says that they are entitled to it as they go to work, they are going to be in trouble.

Baroness Barran (Con): The Department for Education is piloting the use of the adjustment passports in a number of settings. We started with higher education, and we are now looking at supported internships and apprenticeships. We need to understand how useful they are in that setting, and then we will look at whether they will apply more widely in future.

Lord Touhig (Lab): My Lords, I declare my interest as vice-president of the National Autistic Society. Just 29% of autistic people are in paid work, and a recent IPPR report revealed that nearly one-third of unemployed 18 to 29 year-olds are autistic. The Government have a £151 million Access to Work budget intended to encourage employers to engage people with a disability. Can some of that funding be used to expand schemes such as supported employment and supported internships, which will directly benefit autistic people seeking work?

Baroness Barran (Con): First, I thank the noble Lord for his work in this area. On Access to Work, as the noble Lord knows, this is a demand-led and discretionary grant for disabled people. My understanding is that in some cases, autism is defined as a disability and in others not, so there may be eligibility criteria. On the noble Lord's wider point, he will be aware that Robert Buckland is leading a review of employment for people with autism, trying to understand the barriers and to raise the figure from the 29% to which the noble Lord referred.

Baroness Bull (CB): My Lords, work experience is an important window on the world of work for all young people, but the figures we heard from the noble Lord opposite suggest that it is particularly important for young people with learning disabilities and autism in raising their expectations of and aspirations in the workplace. Are the Government confident that students with learning disabilities have the same work experience opportunities as their peers? What steps are they taking to encourage employers to make the necessary adjustments to provide placements for young people with learning disabilities and autism?

Baroness Barran (Con): The noble Baroness makes an important point. The guidance on the support for young people with disabilities in relation to the Gatsby benchmarks, and on the support the National Careers Service offers, tries to address some of the issues she raises. However, without question, if we look at the evidence on employment rates for young people with disabilities, there is more to be done.

Lord Sterling of Plaistow (Con): We have been discussing for many years the ways in which we can improve employment for youngsters on the spectrum. My grandson is on it, and I therefore spend a lot of my life trying to find some answers. As I have said before, every headmaster at every school throughout the country should have been trained in SEND and in identifying the problems of autism, as indeed should everybody in education. The SEND aspect is hugely important. I have had the pleasure of discussing this issue with my noble friend the Minister, who has her own very warm feelings on it and knows that something needs to be done. The key is educational psychologists. In my view, identifying at a very early age that somebody is autistic, establishing the possibility of sending them to a normal school, and in due course giving them the training to get a job, are key. I have discussed this with the Minister and I look forward to her response.

Baroness Barran (Con): I know my noble friend feels very strongly about this, and I hope he welcomes the Government's commitment to introducing a new national professional qualification for SENDCOs that will replace the existing qualification, and the commitment to increasing the number of educational psychologists in our schools, which we have already started to deliver on.

Baroness Wilcox of Newport (Lab): My Lords, I thank the Minister for her answers to date, but I would like to probe a little further. Last month, in the SEND and AP improvement plan, the Government committed to publish guidance to support

"effective transitions between all stages of education, and into employment in adult services".

Given that the Secretary of State acknowledged that parents have lost trust in the system, is the Minister able to give parents a timeline for when they might get this important guidance?

Baroness Barran (Con): The first guidance we will deliver will be on early language support, autism and mental health and well-being. Those practice guides

will be available by the end of 2025. I do not have the date for the transitions guidance but I will be happy to write to the noble Baroness with that.

Lord Storey (LD): My Lords, I appreciate that this is not the Minister's department, but she will be aware that jobcentres have work coaches who provide support, particularly to young people. In my view, those work coaches have very limited training and provide very limited time. Can she assure us—or go back to her colleague's department and then assure us—that young people with special educational needs get quality time and that the staff giving that support and time are properly trained?

Baroness Barran (Con): Everybody who meets with a work coach should expect to get quality time, and my understanding is that the vast majority of individuals do. Of course, this is important for young people with SEND. DWP has a huge amount of experience in dealing with long-term health conditions and disabilities. Secondly, part of the work we are doing together with the DWP is to understand and knit together where education meets employment, to make sure that we get the best outcomes for young people.

Baroness Butler-Sloss (CB): My Lords, my granddaughter, aged six, was identified with quite severe dyslexia. She went to the Eleanor Palmer School, where the headmistress said that no one in the school knew how to deal with it, so she sent two of the staff to be trained. My granddaughter did brilliantly at primary school and ended up at Edinburgh University with a good degree. So support really needs to start at primary school to ensure success in education.

Baroness Barran (Con): I can reassure the noble and learned Baroness that it does start at primary school. The work we are doing to help teachers identify dyslexia early on—in particular, the early phonics screening test—allows us to do just that. Through our English hubs, we are helping primary schools and their teachers to support children like the noble and learned Baroness's granddaughter.

Lord McCrea of Magherafelt and Cookstown (DUP): What assurance can the Minister give that those with special educational needs will be guaranteed the same opportunity for lifelong learning as others within society?

Baroness Barran (Con): Our aspiration is to make sure that all those who wish to access lifelong learning, including those with special educational needs, can do so. Obviously, we are in the early stages—we have not started to implement the policy in detail—but it will be a key focus for us.

Licensing Act 2003 (Coronation Licensing Hours) Order 2023

Motion to Approve

3.18 pm

Moved by ***Lord Sharpe of Epsom***

That the draft Order laid before the House on 6 March be approved. *Considered in Grand Committee on 19 April.*

Motion agreed.

Microchipping of Cats and Dogs (England) Regulations 2023

Motion to Approve

3.18 pm

Moved by ***Lord Benyon***

That the draft Regulations laid before the House on 13 March be approved.

Relevant document: 35th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 19 April.

Motion agreed.

Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023

Motion to Approve

3.19 pm

Moved by ***Baroness Penn***

That the Order laid before the House on 13 March be approved.

Relevant document: 35th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 19 April.

Motion agreed.

Shark Fins Bill

Order of Commitment

3.19 pm

Moved by ***Baroness Jones of Whitchurch***

That the order of commitment be discharged.

Baroness Jones of Whitchurch (Lab): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the Order of Commitment be discharged.

Motion agreed.

Energy Bill [HL]

Third Reading

3.20 pm

Relevant document: 4th Report from the Constitution Committee

The Lord Privy Seal (Lord True) (Con): My Lords, I have it in command from His Majesty the King and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Energy Bill, have consented to place their interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

3.20 pm

Motion

Moved by ***Lord Callanan***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, I will update the House on the legislative consent Motion process for the Energy Bill. The UK Government are seeking legislative consent Motions from the devolved legislatures for the Bill, in line with the Sewel convention. My officials are working with devolved government officials and will continue to do so throughout the Bill's passage.

The Scottish Government have requested amendments to the Bill and are currently withholding support for legislative consent. We will of course continue to work with them regarding their concerns. The Welsh Government have not yet laid a legislative consent memorandum. It is not possible at present to obtain a legislative consent Motion from the Northern Ireland Assembly, but the UK Government are engaging with officials in the Northern Ireland Civil Service. The UK Government welcome the interest that the devolved Governments have shown in the Energy Bill and will continue to work closely with them on proposed changes in order to progress legislative consent Motions for the Bill.

Lord Lennie (Lab): My Lords, this huge Bill leaves the House in far better shape than when it arrived. A combination of Labour, the Liberal Democrats, other parties, individuals and, most importantly, Cross-Benchers have secured measures that should see ISOP's independence assured, community energy export markets develop, warmer homes and an efficiency plan to achieve that, the Gas and Electricity Markets Authority strengthened, and the ceasing of any further coal mining in this country—thanks to the noble Lord, Lord Teverson. It is to be hoped that the Government will support these changes in the other place and will not bring this Bill back for ping-pong. The range of supporters across the House should be sufficient to convince the Minister to back the changes to the Bill made by this House.

In the meantime, my thanks go to the Minister—remarkably, he has stayed the course while his Government have changed leadership three times and his Secretary of State twice since we began in September 2022—and his advisers from BEIS, and subsequently DESNZ, who have continually briefed and been available to answer questions and clarify intentions as we wended our way through this tome of a Bill.

My appreciation goes to my noble friend Lady Blake for her continuing support and to the noble Lord, Lord Teverson, on the Liberal Democrat Benches, with whom it has been a pleasure to work on the Bill. My thanks are also due to a number of Back-Benchers and Cross-Benchers, mainly drawn from the Peers for the Planet group, particularly including the noble Lord, Lord Ravensdale, the noble Baronesses, Lady Hayman, Lady Boycott, Lady Bennett and Lady Worthington—sadly temporarily departed from this House—and my noble friend Lord Whitty. Thanks also go to the House staff and the doorkeepers for arrangements during delays in advancement of the progress of the Bill, which were not of their making, and for keeping the quick-quick-slow dance rhythm to the Energy Bill.

My biggest thanks go to the remarkable Milton Brown in Labour's legislative team of advisers for always being up to date with the progress of the Bill, for his liaison with the other place and for his political briefings and judgment, which allowed my noble friend Lady Blake and me to keep focused on this Bill over a long period. We wish it well on the next stage of its journey.

Lord Teverson (LD): My Lords, one of the things that strikes me most about the passage of the Bill through this House is that it is has been the opposition parties saying to the Government, "Get on with it. We actually need this Bill through to give the powers that we need to meet decarbonisation and modernise the energy production system in this country". I agree with the noble Lord, Lord Lennie, that the amendments that have been made by this House are absolutely in line with the Government's decarbonisation objectives. I hope that the Commons, as well as the Government themselves, will consider them as positive rather than negative.

I will not go through the long list of other Peers named by the noble Lord, Lord Lennie. What I will do is to say a great deal of thanks to Peers for the Planet for its work in the House, to the noble Lord, Lord Lennie, and to the noble Baroness, Lady Blake, whom I have enjoyed working with very much indeed. From our own offices, I thank Sarah Pughe and Sarah Dobson.

We look forward very much to not having to play ping-pong on this Bill. Maybe that is too much to hope for but I thank the Ministers, the noble Lord, Lord Callanan, and the noble Baroness, Lady Bloomfield, for their co-operation during the passage of the Bill. I also thank their teams. I look forward most of all to the Bill being implemented, so that the country as a whole can move ahead in its aims and objectives.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend on steering such a major Bill through. I am mindful of the fact that it was originally going to be an energy security Bill. I know that I and a number of noble Lords focused on the environmental aspects, particularly the mitigation hierarchy. I welcome the fact that this is to be enshrined in the levelling-up Bill, and look forward to pursuing it further on that Bill with my noble friend on the Front Bench.

I ask my noble friend to be mindful of the fact that the Scandinavian countries, led by Denmark, have raised a flag about Russian vessels masquerading as fisheries vessels. These are, it is assumed, purposefully undertaking spying operations, particularly to look at the underground cables and the major offshore wind farm operations, notably operated by Denmark. I understand that we are to have a major operation where a lot of this work will co-ordinate around the Dogger Bank, so I urge him to be mindful of the security risk associated with such a major area of the North Sea, where we are extremely vulnerable to such operations by Russian and other forces which may not be so conducive to our energy security as we might wish.

Baroness Liddell of Coatdyke (Lab): My Lords, I am grateful to everybody who took part on the Bill because I never expected to see carbon capture and storage—I am the honorary president of its association—getting such a good hearing in this House. I put on record my appreciation of the £20 billion that the most recent Budget has decided to expend on carbon capture and storage. We cannot reach the targets on net zero without carbon capture and storage; the noble Baroness, Lady McIntosh, referred to the Danes, who are making fantastic progress on that in their fields. My last point is that we have the capability to capture 7,000 tonnes of carbon in the North Sea and elsewhere. Only Norway has more capacity than that. There is a great future here and, frankly, I am still pinching myself to accept that this House has got behind the Bill. I thank everyone who took part in it very much.

Baroness Hayman (CB): My Lords, I feel that I should say something as everyone else has. There will be two things and they are very brief. One is to echo the hope that we will not have to fight battles again at ping-pong on issues which are absolutely mainstream and in line with the Government's objectives. They are common-sense measures, particularly on insulation and energy efficiency, and on the remit of Ofgem. The other is that, in declaring my interest as chair of Peers for the Planet, and simply because this is an opportunity to thank those who give us support, I also record my thanks to Emma Crane, Kyla Taylor and David Farrar at Peers for the Planet for the work that they did on the Bill.

3.30 pm

Lord Callanan (Con): My Lords, let me add my thanks to all noble Lords who contributed to a very detailed and proper scrutiny of the Bill. We received lots of helpful suggestions—some unhelpful suggestions as well, but that is in the nature of the debate. Everybody engaged positively in the process and has been very thoughtful in their contributions. The Bill leaves this House in good shape.

Let me formally thank the Opposition Members, who have co-operated well. It is fair to say that they had no grief with the fundamental structure and idea of the Bill, but, as is the nature of opposition, wanted to make some improvements and push the Government to go a bit further. The Liberal Democrats—particularly the noble Lord, Lord Teverson—along with the noble Lord, Lord Lennie, and the noble Baroness, Lady Blake, have engaged really positively in the process and have been constructive. I thank them.

Let me also thank the many Back-Benchers who took part, including the noble Lord, Lord Ravensdale, the noble Baroness, Lady Worthington—who has sadly departed these shores for somewhere sunnier and nicer—and the noble Baronesses, Lady Hayman and Lady Liddell. I assure the noble Baroness, Lady Liddell, that I share her passion for CCUS. She will have seen in the announcement just before the Easter Recess that the Government are moving on with the track 1 negotiations. I am sure she will welcome that. Many across the House have contributed very much to the Bill and I am extremely grateful for all their contributions.

She is sadly not with us today, but let me also thank my Whip, my noble friend Lady Bloomfield, who has kept us all to order and taken a number of groups through herself. We are all immensely grateful that none of us managed to fall asleep during the proceedings and were therefore spared some of her acerbic interventions in such circumstances.

The Bill comes at a critical time for our country. Record high gas prices, Russia's illegal invasion of Ukraine and the challenge of climate change all highlight why we need to work to boost Britain's energy independence and security through the development of low-carbon technologies. Secure, clean, affordable energy for the long term depends on a transformation of our energy system.

That, fundamentally, is why we brought forward the Bill—the most extensive piece of primary legislation in a decade. The Bill delivers on our key commitments from the British energy security strategy, the *Powering Up Britain* paper, which brings together the energy security plan, the net-zero growth plan and the net-zero strategy. All have come together in this legislation. The Bill will help to drive an unprecedented £100 billion of private sector investment by 2030 into new British industries and support around 480,000 jobs by the end of the decade.

I must also thank the House of Lords Public Bill Office, the House clerks, and the Office of the Parliamentary Counsel—Richard Spitz, Lucy Baines and Ben Zurawel—for their extremely hard work drafting the Bill. It is a very long piece of legislation.

My thanks also go to all the policy, analytical and legal officials in the Department for Energy Security and Net Zero, the Department for Environment, Food and Rural Affairs and the Department for Transport, for their expert advice and resilience.

I also thank my Private Secretary, Angus Robson, the senior responsible officer for the Bill, Jeremy Allen, and the expert Bill Team: Jessica Lee, Safia Miyanji, Nicholas Vail, Salisa Kaur, Amanda Marsh, Abi Gambel, James Banfield, Matthew Pugh, Laura Jackson, Anthony Egan and Phaedra Hartley. They are extremely talented public servants. They worked long, hard and tirelessly on this important legislation and we owe them all our thanks.

Let me also thank the Department for Energy Security and Net Zero's departmental lawyers, in particular the lead lawyers Mike Ostheimer and Martin Charnley for keeping me legally correct. It is a tough job; somebody has to try and do it. They do it nicely, well and tirelessly. That is the end of the debate so far in this House. It is my extreme pleasure to hand it to my ministerial colleague Andrew Bowie, who will commence the debate in the House of Commons.

Bill passed and sent to the Commons.

Levelling-up and Regeneration Bill

Committee (11th Day)

Relevant documents: 24th and 31st Reports from the Delegated Powers Committee, 12th Report from the Constitution Committee

3.34 pm

Clause 104: Completion notices

Debate on Amendment 261 resumed.

Lord Best (CB): I think it falls to me to intervene at this point. I will speak to Amendment 269, which concerns the development of larger housing sites. I reiterate declarations of interest: I am vice-president of the Town and Country Planning Association and of the Local Government Association. I thank the CPRE, whose excellent legal advisers devised this amendment. I am delighted to see the good work being done by the CPRE in partnership with Shelter, the TCPA and others, to improve decisions on what and where new development takes place.

Amendment 269 seems a fairly innocuous and technical one, but actually it fundamentally changes the dynamics of new development on larger sites. It seeks to bring into play some of the recommendations from the 2018 review of housebuilding practices by Sir Oliver Letwin, who was working on behalf of the Government. The amendment addresses issues of diversification of housing and infrastructure on larger sites, as advocated by Sir Oliver. Diversification of providers and provision would replace the housebuilders' model of one developer cramming in the maximum number of homes of the same house type for the same house buyers and selling them at the very slow but profitable buildout speed that the market will absorb. Instead, larger sites, said Sir Oliver, should be subject to a diversity of housing provision, where a number of different developers, including SME builders, housing associations, self-builders and so on, would build a variety of different sorts of housing for families for rent and for sale, perhaps student housing and certainly accommodation for older people, to which we have made reference under other amendments, with green spaces and infrastructure, as well as transport links for walking and cycling and public transport, not just private cars.

Those other providers would work together at the same time, building out the total development at a much faster rate than with single ownership by one volume housebuilder. That approach would diminish the dominance of the oligopoly of volume housebuilders, which have failed to deliver what society needs. Instead, the variety of developers and housing providers would work simultaneously in meeting the needs of the locality. The detail of the diversity of types and tenures of the new housing, including social housing, would be enshrined in the local plan—now the local development plan.

Sir Oliver saw much merit in local development corporations, at arm's length but wholly owned by the local authority or combined authority. They could acquire sites and parcel them out within a master plan. In cases where the development corporation is unable to reach agreement with the landowner on the site's value, compulsory purchase may be the only way forward. If so, the terms for the CPO would be set by the same requirements to meet the obligations laid out in the local development plan and national policies. The value of the site is thereby moderated by the necessity of complying with local and national mandates.

Where no development corporation is involved, and, indeed, whether or not a CPO is needed, a similar outcome could be achieved if this diversification and specificity was required for planning permission to be granted for any development of a site of more than 500 homes. In these cases, the value of the land would always be deeply affected by the insistence, built into the system by this amendment, that the local plan and national policies must be adhered to.

This amendment is one of a pair with my Amendment 312A, which we debated earlier in Committee. Both amendments seek to capture land value and enable a real shift in the social benefits that can flow from development of new housing in the UK. Amendment 312A was concerned with land in public ownership, seeking to ensure that it was made available for optimal economic, social and environmental use rather than being sold off to the highest bidder. This amendment is concerned with land in private ownership; again, to enable its development to serve the public good, not simply to achieve the maximum profit for the developer. The amendment will also secure in law clarity on the long-standing arguments around "viability". It would make it clear that compliance with the requirements of the local plan and national duties is an essential part of the basis for valuing the land. Developers would no longer be able to claim that they are unable to meet the local authority's demands for affordable housing or other amenities simply because of the price they paid for the site.

In fact, the courts have already made it clear that this argument must prevail. The now famous Parkhurst Road planning case concerning a site in Islington shed light on the legal position last August. The developer argued that because of the price it had to pay for the site, it could not afford to provide the affordable housing sought by the council, but the judge, the honourable Mr Justice Holgate, ruled that this excuse could not stand. Indeed, he took the RICS to task for not providing clearer guidance on such matters.

This amendment is intended to radically improve the development of all larger sites. It seeks to take back control from the housebuilders and developers which propose and build developments that do not make optimal use of land. The amendment would mean that all new developments would at last have to meet the policy objectives contained in local and neighbourhood—if they exist—plans, specifying the social affordable housing requirements and the mix of types and sizes of accommodation, and taking account of national policies. Land values would have to reflect these realities.

I realise that, as with my amendment on publicly owned land, the approach of this amendment is dependent on local authorities having and finalising local plans, but when they do this, when they have those plans, this makes them much more meaningful. The Minister may feel unable to accept my amendments, but perhaps consideration of this way forward, the follow-through of the admirable work of Sir Oliver Letwin, could start us down a path that achieves the same desirable outcome. I commend the amendment.

Baroness Pinnock (LD): My Lords, I thank the noble Baroness, Lady Taylor of Stevenage, and the noble Lord, Lord Best, for raising these important points about buildout.

I will address the noble Baroness's amendment first. Too many developers choose to land bank having achieved planning permission on a particular site. We know from Local Government Association data that there are more than 1 million housing units with existing planning consent that have not been built. The question we need to ask is: why, when as a country we are desperate for new houses, are we failing to take action to ensure that sites are developed promptly? Is the Minister able to provide any explanation for the long delays in developing sites? Will the Government provide proposals to prevent such delays?

I think we are all keen to have more housing units built, so we should focus on any delays in the system and try to improve buildout. From local experience I am aware of some of the reasons for delay. Where there are several sites with planning consent in the same locality, developers choose to delay construction in order not to have too many units on the market at the same time. That is an understandable commercial decision, but it delays the building of units of housing, which we desperately need. Developers also, understandably, want to create a steady flow of sites to develop as part of their business plans. These extend into several years, so it is not surprising that there is a slow output of new homes. What actions do the Government intend to take to address this issue?

3.45 pm

The key issue in these amendments is the rate of buildout. One site in my locality has consent for 300 houses and plans to build out over an eight-year timescale. It wants only 30 to 40 new units on the market at any one time, to maximise its profit. That is a commercial decision, which I can understand, but it does not help the country in building a number of new homes very quickly, which is what is needed. It would be interesting to hear from the Minister how the Government can address that issue.

Amendment 269 in the name of the noble Lord, Lord Best, raises the important issues, which we have discussed to some extent in previous debates, of how we get more social housing on a site, how we get more housing appropriate for older people and how we get sites developed that reflect the needs of a particular locality. I agree totally with the objective of his amendment, but currently we have a landowner-led, developer-led process for building homes. At the outset of a local plan, the first step is the request to landowners to bring forward sites. Landowners do this because, once they get planning consent, the value of their land rises considerably.

The whole housing development process is in the hands of the providers, which provide what people may want and not what communities need. All our debates on planning so far have been about how we address need. The way the planning process is currently constructed enables developers to build what is wanted and not what is needed. There are very few levers, as I have tried to explain, to push developers to build what local areas need. Can the Minister explain how local and national plan policies can be enforced or at least implemented, which they cannot be to any great extent now? A negotiation goes on between the local planning authority and a developer; each pushes and negotiates, but in the end the commercial interest has the upper hand, in my experience.

For me, those are the issues at the heart of this. We have an urgent need for new housing in this country. The Government are not using the levers that the country needs to enable housebuilding to occur and to provide for the needs of our communities, rather than the needs of commercial construction and development companies.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, Amendment 261 tabled by the noble Baroness, Lady Taylor of Stevenage, proposes two fundamental changes to Clause 104, which modernises the procedure for serving completion notices in England. While I appreciate the intention, I remind your Lordships that completion notices—when served by a local authority or the Secretary of State—must provide the recipient with an opportunity to complete development. It is a "use it or lose it" power. Removing this opportunity for the developer to use the permission, as this amendment does, raises the prospect that compensation from the loss of the permission will be necessary as it is a revocation of a planning permission. I believe this would make completion notices less appealing to local planning authorities.

The second proposed effect of the amendment relates to the removal of finished parts of a development where a site could not be completed in full. Local planning authorities already have the power to require the removal of unfinished developments by order under Section 102 of the Town and Country Planning Act 1990.

The noble Baroness, Lady Pinnock, brought up one or two important issues. In the clauses already in the LURB, we have introduced two further provisions to ensure a better buildout rate of planning permissions in this country. First, the Government will require housing developers to report annually to local authorities on their actual delivery of housing. This will enable them to identify where sites in their area are coming forward too slowly. It will also help to inform whether to sanction a developer for failure to build out their schemes promptly. Secondly, the Government have introduced a new power that will allow local planning authorities to decline to determine planning applications made by developers that failed to build out at a reasonable rate earlier permissions on any land in the authority's area.

To strengthen the package further, we will publish data on developers of sites over a certain size in cases where they fail to build out according to their commitments. Developers will be required to explain how they propose to increase the diversity of housing tenures to maximise development schemes' absorption rate, which is the rate at which homes are sold or occupied. The NPPF will highlight that delivery can be a material consideration in planning applications. This could mean that applications with trajectories that propose a slow delivery rate may be refused in

[Baroness Scott of Bybrook]
certain circumstances. We will also consult on proposals to introduce a financial penalty against developers that are developing out too slowly.

I disagree with the noble Baroness, Lady Pinnock, on houses that are not what a particular local authority wants. I believe that is up to the local authority. If the local authority has a local plan saying that it needs specific types of housing in the area, it needs to make sure that the planning applications that go through will have that in them. Local authorities know their area best, so it is up to them to make sure that their local plan is up to date and reflects what is required.

Baroness Pinnock (LD): I thank the Minister for the information she has provided about sanctions and so on. I wait to see how firm those sanctions are. On the issue of local planning authorities having the power, basically, to dictate to a commercial enterprise what is developed on a site that the commercial enterprise owns, I would love to hear what powers the LPA will have in that regard.

Baroness Scott of Bybrook (Con): The whole system is designed, after the LUR Bill, to be plan led. Therefore, planning applications should be in accordance with, first, national policies and, as importantly, local policies. If local policies say that you need, for example, houses for older people or disabled people, one should be agreeing only those planning applications that have those types of tenure within the developments that are coming forward through planning. If the system is plan led, I would have thought that the inspector should stick to the locally produced plan. On that basis, I hope this reassures the noble Baroness opposite that Amendment 261 is not necessary.

Amendment 269, tabled by the noble Lord, Lord Best, seeks to ensure that the development of large housing sites—defined as sites of 500 or more dwellings or more than five hectares in size where the predominant use will be housing, or designated as a large housing site within a development plan—is diversified in such a way that it provides a mix of new housing that reflects local needs, including social housing, in line with a local authority's local plan requirements and national development management policies. While we agree with the sentiment of this amendment, we believe that there are better ways of achieving its objectives. The Government are of the view that diversification is best achieved by making this a stronger material planning consideration in the assessment of any housing application, and by requiring a buildout and diversification statement in all prescribed applications. We believe that this is best achieved via a new national development management policy, as that can be applied more flexibly compared to legislation and therefore address the different planning circumstances and housing needs that occur across the country, and that such a measure should not necessarily be limited to larger housing sites.

That is why the Government announced in December 2022—as part of the consultation *Levelling-up and Regeneration Bill: Reforms to National Planning Policy*—that developers will be required to explain how they propose to increase the diversity of housing tenures to maximise a development scheme's absorption rate, which is the rate at which homes are sold or occupied. We invited views on the design of this policy, which will help to inform our thinking as part of our fuller review of national planning policy later this year. In these circumstances, while I very much agree with the objective of this amendment, there is a better way to achieve it via national planning policy, and I believe that it should be applied to a greater range of housing sites. This will ensure faster buildout rates and the diversification of those housing sites.

Government Amendment 261A will amend Clause 105 to strengthen the existing powers and hold developers more to account for unreasonably slow delivery or non-implementation of planning permissions. Currently, Clause 105 gives local planning authorities the power to decline to determine planning applications made by a person connected to an earlier planning permission on that same land which was not begun or has been carried out at an unreasonably slow rate. This amendment will enable authorities to exercise the power where an applicant is connected to an earlier permission on any land in their area which has not begun or has been built out unreasonably slowly. This change will send the message to developers that local planning authorities, as well as the communities they serve, expect new residential developments to come forward at a reasonable rate before new planning permissions are considered. This amendment will give greater powers to local areas to tackle cases of slow buildout.

4 pm

Lord Best (CB): I am encouraged by the tone with which these issues are being approached. As regards the placing of penalties upon those who are not getting on with the job by refusing future applications from that firm, I can see some hazards here, not least if the delay is happening in one area and the applications for further schemes are somewhere completely different. Is this new power of withholding permission for new applications because you have been so slow in building out the ones you already have to be transferred from one local authority to another, or is it confined to a local authority acting only with regard to interests within its own boundaries?

Baroness Scott of Bybrook (Con): I believe it is in one local authority, but I will check that. I will let the noble Lord know and make sure that everybody else in the Committee is aware.

Baroness Taylor of Stevenage (Lab): I am grateful to noble Lords who have taken part in the debate and to the Minister for yet another thorough and thoughtful answer in response to the amendments.

When I moved my amendment last week, I said that I was pleased to see that the government amendment seemed to be complementary to my amendment, and therefore it was good to hear that some new steps are coming forward as regards placing some more requirements on developers in this respect. The Minister outlined some of those, such as publishing data on developers and diversity, the proposal on slow delivery and how it results in turn-downs, and financial penalties that we would be able to impose from local government, and so on. However, it would be good to see the details of those and how they are going to be incorporated.

I assume they may go into the National Planning Policy Framework, but again, to echo the point we made several times, so far we have not seen that.

I remind noble Lords that the Local Government Association has said that it did not believe that "tangible powers" had been brought forward in the Bill to enable councillors to encourage developers to build out. I hear what the Minister said about secondary applications from those builders, but local authorities need powers to deal with current applications, where the buildout is slow too, so I hope some more thought might be given to that. The noble Lord, Lord Best, referred to the fact that builders may operate across different areas, which is a good point. However, if we take action on developers in the first instance, perhaps they will be encouraged not to go and apply elsewhere if they think that there will be action and that financial penalties will be imposed where they are too slow to build out.

I reiterate our strong support for Amendment 269 in the name of the noble Lord, Lord Best. On the issue of diversification in larger developments, I take the Minister's point that that might also apply to other developments in terms of making sure they include all types of accommodation. We have had long debates in your Lordships' House around supported accommodation, but it can also apply to student accommodation—I have a particular passion for social housing. That is important. I also wanted to make the point that those types of accommodation being requirements, whether it is through the local planning authority or as part of the National Planning Policy Framework, would also help encourage the development of specialist builders and help us to get a wider picture across the country with specialist builders who have great experience in developing for those particular areas.

The noble Baroness, Lady Pinnock, spoke about the viability issue, which I am sure has and will be the subject of discussions. On the Islington example she gave, those questions have arisen across the country. It is important we continue to debate that as part of the Bill, because I believe it is an opportunity to try to crack some of these issues around viability that we have been trying to wrestle with.

The noble Baroness, Lady Pinnock, gave examples of the huge failure to build out, which means that 2.8 million permissions have been granted since 2011 but only 1.6 million homes have been built. We desperately need those homes, so we need to do whatever we can to push that forward and end the delays in the system—from land banking but also from other issues.

I come back to the issue of diversification of property. If we are not going to have a proper diversification strategy built in, we need a proper definition of affordable housing, because the current definition just does not work; that has been a theme throughout discussion of the Bill. As the noble Lord, Lord Best, said, the affordable housing definition does not work for lots of people in our communities, as we have discussed many times in this House. For the moment, I beg leave to withdraw the amendment.

Amendment 261 withdrawn.

Clause 104 agreed.

Schedule 10 agreed.

Clause 105: Power to decline to determine applications in cases of earlier non-implementation etc

Amendment 261A

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

261A: Clause 105, page 137, line 29, leave out "all or any part of the land" and insert "land all or any part of which is in the local planning authority's area at the time the current application is made"

Member's explanatory statement

This amendment enables a local planning authority to refuse to determine an application for planning permission in certain cases where there was a previous application relating to land within the authority's area and the development was not begun or has been carried out unreasonably slowly. The current power in the Bill would only be available if the previous application related to all or part of the same land.

Amendment 261A agreed.

Clause 105, as amended, agreed.

Clause 106 agreed.

Amendments 262 to 265 not moved.

Amendment 266

Moved by ***Baroness McIntosh of Pickering***

266: After Clause 106, insert the following new Clause—

""Agent of Change": integration of new development with existing businesses and facilities

(1) In this section—

"agent of change principle" means the principle requiring planning policies and decisions to ensure that new development can be integrated effectively with existing businesses and community facilities so that those businesses and facilities do not have unreasonable restrictions placed on them as a result of developments permitted after they were established;

"development" has the same meaning as in section 55 of TCPA 1990 (meaning of "development" and "new development");

"licensing functions" has the same meaning as in section 4(1) of the Licensing Act 2003 (general duties of licensing authorities);

"provision of regulated entertainment" has the same meaning as in Schedule 1 to the Licensing Act 2003 (provision of regulated entertainment);

"relevant authority" means a relevant planning authority within the meaning of section 84 of this Act, or a licensing authority within the meaning of section 3 of the Licensing Act 2003 (licensing authorities).

(2) In exercising any functions under TCPA 1990 or any licensing functions concerning development which is or is likely to be affected by an existing business or facility, a relevant authority shall have special regard to the agent of change principle.

(3) An application for development within the vicinity of any premises licensed for the provision of regulated entertainment shall contain, in addition to any relevant requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595), a noise impact assessment.

(4) In determining whether noise emitted by or from an existing business or community facility constitutes a nuisance to a residential development, the decision-maker shall have regard to—

(a) the chronology of the introduction of the relevant noise source and the residential development, and

(b) what steps have been taken by the developer to mitigate the entry of noise from the existing business or facility to the residential development."

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to speak to Amendment 266, in my name and those of the noble Baroness, Lady Henig, and the noble Lord, Lord Foster of Bath, and I am extremely grateful to them both for co-signing. The genesis of this amendment, on the "agent of change" principle, came from the post-legislative scrutiny of the Select Committee on the Licensing Act 2003, which I had the honour to chair, and on which I served with the noble Lords in question and the noble Lord, Lord Brooke of Alverthorpe, who I am delighted to see in his place this afternoon. We did a great deal of work, assisted by our then clerk, Michael Collon, and our specialist adviser, Sarah Clover, and I thank them for their help in drafting the amendment before us today. Latterly, we were delighted to work with Hannah Murdoch in the follow-up to that committee.

Like so many policies, planning is about trying to achieve a balance between alternative and potentially conflicting uses, and this lies at the heart of what we are trying to achieve in the amendment before us. Modern planning policies, both local and national, encourage the regeneration of urban centres and the reuse of brownfield sites, formerly known as previously developed land. This preserves our greenfield countryside sites, which include the green belt and are a diminishing resource.

Urban centres already contain industrial, business and cultural land uses, including the night-time economy. Many of these uses are noise generators or sources of noise. Many have been in situ for a long time and are not contained in buildings that are suitable for mitigating their sound output. The law of nuisance does not protect those pre-existing businesses from incoming noise-sensitive, typically residential development. It does not matter how long those original businesses have been there; on the contrary, the law of nuisance tends to curtail and limit the noise-generating land use—for example, in noisy businesses such as pubs and music venues—and protect the new occupants who have chosen to come and live nearby. The same is true for any type of nuisance, including overlooking, light and odour.

This modern change in the way we develop our urban spaces—for example, converting office space into residential units under committed development and such—represents a significant shift away from the assumptions of the regulatory regimes, including planning, licensing and environmental protection law. Those are based on noisy businesses being located in urban areas and residential areas being located in quiet suburban spaces, with residents commuting between them, but that is no longer suitable as we seek to limit unnecessary travel to preserve air quality, protect the climate and more. Indeed, that is why we sought to draw the planning and licensing regimes together and encourage them to work more closely—a fundamental recommendation of our original inquiry and follow-up report. Our current regulatory regimes do not adequately protect existing businesses and the night-time economy.

Those of us who served on the committee that looked at the Licensing Act 2003 are extremely mindful of the highly difficult circumstances experienced by the night-time economy and the hospitality sector during the Covid pandemic and, more recently, through the cost of living constraints and—if I may say so—the disruption caused by rail strikes.

The agent of change principle is designed to provide the protection we are seeking. The amendment clearly states that it is

"the principle requiring planning policies and decisions to ensure that new development can be integrated effectively with existing businesses and community facilities so that those businesses and facilities do not have unreasonable restrictions placed on them as a result of developments permitted after they were established".

So far, the agent of change principle is represented only in policy. It appears in paragraph 187 of the National Planning Policy Framework and in paragraph 14.66 of the Secretary of State's Section 182 licensing guidance in virtually identical terms, with the same definition of "agent of change" given there as in the proposed new Clause, which I have just rehearsed. In my view, we need to put those protections in primary legislation, and this Bill provides a useful opportunity to do so.

Policy protection in itself is not enough. Planning and licensing policies compete with each other in a balancing act, as I referred to earlier. The decision-maker on each occasion must place weight on the competing policies on a case-by-case basis. Some policies, such as the need for new housing, may be deemed to outweigh the need to protect existing businesses. It is an important part of the planning and licensing regulatory regimes to place restrictions on developers and land users by way of conditions and obligations that they would not otherwise voluntarily adopt. Developers, perhaps not unreasonably, seek to maximise profit. Enhanced mitigation in the new development to protect local businesses from having unreasonable restrictions placed on them will cost the developer more.

It is precisely for that reason that it is for the regulatory regimes to impose that where necessary. The imposition of appropriate conditions and obligations must come from primary legislation. The strength of policy guidance is not enough. By way of example, primary legislation provides appropriate levels of protections for our heritage assets—listed buildings and national monuments, among others. Developers and decision-makers have statutory duties set out in primary legislation to protect heritage assets in any development decision. The same level of statutory protection is now required for existing businesses, particularly hospitality and cultural venues, that are placed under increasing pressure from the intensification of residential use of urban centres.

4.15 pm

The impact of new residential development on the night-time economy and cultural spaces cannot be overemphasised. The phenomenon of residential complaints about music and other noise resources, exasperated by the coronavirus lockdowns to which I

referred, has increased exponentially. Long-standing pubs, clubs and music venues have closed in alarming numbers, often due to residential complaints and resulting local authority enforcement action. Therefore, the agent of change policies of themselves are not enough. Amendment 266 would enshrine the agent of change principle in primary legislation and impose clear duties on planning decision-makers and developers to take full account of the environment into which the development will be introduced. This need not necessarily act as a dampener to new development, but it will ensure that all land uses can be integrated harmoniously together from the outset.

This is by far the best time to address these issues, rather than months or years down the line when complaints begin to arise. Appropriate mitigation can be built into the new development to insulate it from noise or other impacts of its environment. If required, mitigation can also be added to the existing businesses. Effective steps can be taken at an early stage using the new statutory agent of change principle which we set out, to ensure that existing and new land use can be made compatible and allow both to continue and flourish without future conflict, in the interests of both residents and the economy. This represents a long-term saving to local authorities, who typically must mediate or enforce the conflict that arises, perhaps years later, from incompatible neighbouring land uses. It represents a vital protection for businesses, including valuable cultural and hospitality spaces that are a fundamental element of the vibrancy of local areas and communities.

-The proposed amendment has three parts to it. First, in proposed new subsection (2) there is the duty of the decision-maker to address the agent of change issues appropriately at the decision-making stage. Secondly, there is a duty upon a developer intending to build near a licensed premises to ensure that a noise assessment is produced as part of the application. Thirdly, there is a potential defence for an existing noisy business if complaints arise from the new residential development in circumstances where the agent of change principle was not appropriately observed in granting that development.

I hope that my noble friend the Minister and her department will look favourably on this amendment. I beg to move.

Baroness Henig (Lab): I am extremely pleased to support the noble Baroness, Lady McIntosh of Pickering, who introduced this amendment in, if I may say so, an extremely detailed speech, which means that I can be somewhat briefer. I think noble Lords will be pleased about that, because I have a dreadful cough which might manifest itself in the next five minutes. I apologise if it interrupts what I want to say.

I was a member of the committee that was so ably chaired by the noble Baroness, Lady McIntosh of Pickering, to carry out the post-legislative scrutiny of the Licensing Act 2003. There was an extremely strong team on that committee, quite apart from the chair and the House of Lords back-up team; Sarah Clover was an extremely helpful special adviser. I am grateful to Sarah for sharing with me her vast legal expertise on this topic, and for guiding me through the more arcane elements of this particular legal element.

The agent of change principle was one of the issues that came up during our proceedings. The Government professed themselves to be sympathetic to the problems being faced by the night-time economy. Indeed, their response to our recommendation that the agent of change principle should be adopted in both planning and licensing guidance was that they were consulting to see whether the agent of change principle should be emphasised by changes to the National Planning Policy Framework. That was in 2017; perhaps the Minister could tell me what the outcome of that consultation was, since the trail seems to have gone a little cold and I have not heard whether there has been any follow-up. I would be most grateful if perhaps the Minister could bring us up to date on that particular matter.

Now, of course, since 2017, the landscape has changed considerably for the worse as far as the night-time economy is concerned, as the noble Baroness, Lady McIntosh, quite rightly pointed out. It was decimated by Covid and is only just recovering from the impact. Along with the rest of the economy, the night-time economy faces critical staff shortages and considerable inflationary increases. Frankly, it needs all the help it can get. It needs the Government not to just pay lip service to helping the economy in these difficult times but to actually do something to assist.

This is one obvious way that the Government can help. Here is the Government's opportunity to enshrine in primary legislation the agent of change principle, so that the interests of the night-time economy, local residents, and possible new local developments are all taken into account equably in planning decisions. It seems to me that that is a very important principle. Furthermore, it seems to me absolutely right, and very important, that this happens right at the outset of new developments, so that all interests at local level can be fully taken into account, difficulties can be pinpointed and ways to mitigate these difficulties can be identified early on.

Really, this is a very straightforward amendment to try to assist in the current process, and to improve it. Therefore, I commend it to the Minister as one which could bring great benefits up and down the country at, as far as I can see, hardly any cost. I very much hope it will be taken on board by the Government.

I will just add that the noble Baroness, Lady McIntosh, and I have some form in putting forward amendments which are then taken on by the Government and presented subsequently as government amendments. I am therefore extremely hopeful that this might happen in relation to this very constructive and helpful amendment, and I commend it to the Minister.

Lord Foster of Bath (LD): My Lords, I too served on your Lordships' Select Committee on licensing in 2017, and on the subsequent follow-up committee. I join with the noble Baroness, Lady Henig, in heaping praise on the absolutely able chairmanship of the noble Baroness, Lady McIntosh of Pickering. As we have heard, both committees concluded that it was important to incorporate the agent of change principle in planning policy and guidance.

In case anybody is in any doubt what this means, the agent of change principle ensures that a new development must shoulder responsibility for compliance

[Lord Foster of Bath]
when situated near, for example, an existing music venue. Similarly, if a music venue opens in an existing residential area, it would be responsible for complying with residential requirements to minimise nuisance. For example, based on this principle, an apartment block built near an established music venue would have to pay for soundproofing, while a live music venue opening in an existing residential area would be responsible for the cost of soundproofing.

The committee was therefore very pleased that the Government agreed that the agent of change principle should be reflected in the National Planning Policy Framework and in Section 182 guidance. That has now happened. However, the follow-up committee heard that the principle as it stands, reflected in those documents, does not sufficiently explain the duties of all parties involved. The committee argued that the principle needs to go further to protect licensed premises and local residents in our changing high streets, and that a lack of consistency between the planning and licensing systems—something that it believed needed to be changed anyway—has led to, for example, live venues not being guaranteed to be protected. I will give two quick examples.

The Night & Day Café is a live music venue in Manchester's Northern Quarter. It opened in 1991 and is the venue that launched the careers of, for example, Elbow and Arctic Monkeys. In November 2021, the venue was served with a noise abatement notice from Manchester City Council. This followed ongoing complaints from local residents who had moved into a new development—warehouses converted into flats—during the Covid pandemic when the venue was temporarily closed. The case provoked a huge degree of interest. Some 94,000 people have signed a petition asking for the notice to be withdrawn, with one signatory describing the situation as

"like moving to Leicester Square and complaining about there being too many cinemas".

Night & Day Café's appeal over the order has been adjourned until later this year. It has still not been resolved.

The Jago is a venue in Dalston that hosts live music events, screenings and workshops. It is registered as an asset of community value and is very highly regarded in the local area. It has hosted musicians for almost two decades, but since the pandemic many surrounding buildings have been converted into residential properties, which has led to an increase in noise complaints and, in June 2022, it received a noise abatement notice. It too has been the subject of a petition trying to help, with over 2,500 signatures. Again, its problem has not yet been resolved.

The committee recommended that, to resolve issues such as these, the Government should review and strengthen the agent of change principle and consider incorporating it into the current planning reforms in the Levelling-up and Regeneration Bill. The Government did not disagree, and themselves pointed to the then upcoming Levelling-Up and Regeneration Bill as a vehicle to address these concerns. This amendment is simply by way of helping the Government achieve what they agreed was needed: greater clarity about what is expected of councils and businesses. In that light, I hope the Minister will see that the amendment is designed to support and help the Government. I hope she too will support it.

Lord Brooke of Alverthorpe (Lab): My Lords, I am grateful to the noble Baroness for moving the amendment and to others who have spoken. I too was a member of the original committee, although not the follow-up committee. It is amazing to look at how life has changed so quickly since the report in 2017 and the subsequent report. Since then we have had the pandemic and a whole new experience of living in a different world entirely, including a different world of work, from what we had in the past.

Leaving aside nightlife, look at what is happening with online trading and with the high street. When one wanders around Oxford Street one sees quite large premises now empty and not being used. The Strand has been transformed completely from what it was like 20 years ago. Companies that had been there for almost a century and a half have disappeared, yet the properties remain empty. What will happen to them? Without any doubt, if they fail to get commercial operatives they will be converted into residential premises in due course.

4.30 pm

The issue that we have before us—leaving aside the nightlife—is one that was going to confront the Government anyway. I believe they have still not come to terms with the fact—I am not sure whether my party has—that the party that tells people they can work from home at least two, three or four days a week is going to get the votes of workers in this country. They do not want to travel, with all the inconvenience that goes along with it. They do not want to be in the city centre, with all the pressures. They want to be working at home, close to their families, and to have greater freedom and control of their lives. That is going to happen, particularly as we start moving into the metaverse and the completely different way of working that comes with that. That has a knock-on effect on accommodation, with changes at home for people to work there and, more particularly, with what happens to empty offices and the nightlife that takes place around them.

The present arrangements are far from suitable for dealing with changing circumstances. For example, if something else came along quite unexpectedly, like Covid-19 did, we could again see massive changes taking place in a very short space of time, when we have not even coped with the knock-on effects from the last change. I hope the Government are going to be reasonable this time around. This is a reasonable amendment that should not be lightly dismissed or ignored in the way that it has been previously.

The Earl of Lytton (CB): My Lords, the noble Lord, Lord Brooke of Alverthorpe, raises a matter which concerns me. I congratulate the noble Baroness, Lady Pickering, on this amendment. I am not, and never have been, a member of the licensing committee, but I am bound to admit that I have enjoyed many of the venues that are facilitated by the licensing process.

My example is a little different, because this is not just a matter of licensing. It concerns the 24/7 use of an urban industrial area not very far from one of London's major international airports—hence it is 24/7. It is an older industrial estate that had been subject to periodic, sporadic, upgrades of buildings. However, the local authority, in its infinite wisdom, gave consent for a piece of land on the edge of this industrial area, which I think had previously been residential back gardens, to be used for a residential development. This triggered a change of policy within the local authority, such that every time somebody wanted to do anything on the industrial estate—change a roller shutter door, have a better loading canopy or something like that—an hours of work restriction would be imposed, so preventing it being used 24/7. I challenged a local elected member on this, who was unaware of what his council had done and what the implications were.

I accept that that is a different situation from what one might call the shared space of a town centre, but I think it is relevant that we have—sorry to use the awful phrase—joined-up policies in relation to all these things, unless we want situations happening on our high streets such as those to which the noble Lord, Lord Brooke of Alverthorpe, referred to. Later on, we will get to what happens with vacant properties in high streets when—when—we get to the group that is currently number 28 on the Marshalled List before your Lordships. My Amendment 426 in that group is on this issue.

One other issue is what we might call the administrative framework aspect of all this. I think of circumstances to do with the way in which local government or contractors organise such things as waste collection from premises in urban centres; refuse collectors can turn up in the small hours of the morning and cause disruption. I wonder whether we are not sometimes making a rod for our own backs by not thinking ahead about how we organise these things. Some are displaced by concepts such as core time servicing and other such matters relating to our town centres. There tend to be rather individual, single-issue decisions, without looking forwards, backwards or sideways.

I offer a word of caution to the noble Baroness, Lady McIntosh of Pickering, on the wording "can be integrated" in the amendment. The phrase "can be integrated" does not necessarily mean that a new development will be integrated. I interpret "can" as facilitative, "will" as something more demonstrative. If the administrative rollout is subject to all manner of change going forward, without a statement of principles and constant monitoring of the unfolding process, we may end up with decisions made on a "moment in time" principle rather than having the dynamic under constant review and consideration.

There is obviously a resource implication here but, unless we do this, as the noble Lord, Lord Brooke of Alverthorpe, says—given what has happened in just the last few years and post Covid, with the changes in demand, journeys to work and work-life balance—we will not be anywhere near ahead of the curve in getting this right. Other than that, I strongly support the principle of this amendment; I think it a really worthwhile amendment for consideration by your Lordships.

Baroness Hayman of Ullock (Lab): My Lords, this has been an interesting debate; I thank the noble Baroness, Lady McIntosh of Pickering, for bringing it forward. I also thank the licensing committee and its members for their considerable work on this. Listening to the debate, one thing that comes over very clearly is that it is time to review the status and look at the current situation. As the noble Baroness, Lady McIntosh, said, we now have the change of use from office to residential space in town centres, and my noble friend talked about the many empty town centre premises. There will be a lot of change in ways that we have not seen before and new challenges, especially for the night-time economy, as has been discussed.

As I said, the agent of change principle has been with us for some years now, which, again, is why it is time to look at this. We know that it is in the National Planning Policy Framework, but what strikes me from the debate is the question of whether it is fit for purpose. I have a number of questions for the Minister following on from this. Is the agent of change principle having a meaningful impact at the moment? Does the licensing guidance reflect the principles in the NPPF itself? We need to ensure that the NPPF is fit for purpose, as well as the agent of change principle within it. The question on my mind is: will the NPPF, when we get to see it, reflect the likely focus of future planning decisions? How will it all fit together?

As my noble friend Lady Henig said, this is an opportunity to enshrine this principle in legislation. We need to make sure that we get this right—that it is fit for purpose and does what it is supposed to do: work to protect both sides. It is important that the Minister is able to assure us on that matter.

My noble friend Lady Henig also asked about the current status of the consultation that took place in 2017 on the housing White Paper in relation to this issue. Not to have heard back from that consultation in 2017, six years ago, is a bit concerning. Since then, as my noble friend Lord Brooke mentioned, we have had the pandemic and so much has changed, so is that consultation even still relevant? Perhaps the Government need to revisit that completely. I would appreciate the Minister taking that back to her department.

Baroness Scott of Bybrook (Con): My Lords, Amendment 266, tabled by my noble friend Lady McIntosh of Pickering, tackles the important issue of the agent of change principle in planning and licensing—that is, the principle that existing businesses should not be negatively affected by restrictions on them resulting from new development in their area. National policies and guidance already provide strong support for that principle, and we will continue to make sure that authorities have the tools needed to deliver it. The Government therefore do not consider the amendment necessary.

I agree with my noble friend that preventing this happening is important to so many businesses, especially in the night-time economy, where these issues most regularly occur. That is why we amended the National Planning Policy Framework in 2018 to embed these principles, with paragraph 187 of the current framework saying:

[Baroness Scott of Bybrook]

"Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established".

In answer to the noble Baronesses, Lady Henig and Lady Hayman of Ullock, that came after the consultation, so it was partly a response to it. The framework goes on to highlight that, where there could be "a significant adverse effect", the onus should be put on the agent of change proposing the new development to provide suitable mitigation before it has been completed.

We are also introducing national development management policies through the Bill. In future, and subject to further appropriate consultation, these will allow us to give important national planning policy protections statutory weight in planning decisions for the first time.

We believe that the proposed requirement for a noise impact assessment to be undertaken for relevant development would duplicate existing guidance for local planning authorities. Planning practice guidance published by the department is clear that the agent of change will need to clearly identify the effects of existing businesses that may cause a nuisance to future residents or users of the development proposed.

The guidance also sets out that the agent of change is expected to define clearly any mitigation that is proposed to address any potential significant adverse effects, in order to try to prevent future complaints from new residents or users. Many local planning authorities also make this assessment of effects a part of their local lists of information required to be submitted alongside relevant planning applications. After such assessment of the effects, reasonable planning conditions can be used to make sure that any mitigation by the agent of change is completed, as agreed with the local planning authority when planning permission is granted.

Importantly, the Government agree that co-ordination between the planning and licensing regimes is crucial to protect those businesses in practice. This is why in December 2022 the Home Office published a revised version of its guidance, made under Section 182 of the Licensing Act 2003, cross-referencing the relevant section of the National Planning Policy Framework for the first time. Combined with our wider changes in the Bill, we will make sure that our policy results in better protections for these businesses and delivers on the agent of change principle in practice.

I hope I have demonstrated that the Government's policies embed the agent of change principle and that we will continue to make sure it is reflected in planning and licensing decisions in future.

4.45 pm

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to all who have spoken in this debate, particularly those who gave their strong support to this amendment. A number of questions were raised, in particular by the noble Baroness, Lady Hayman of Ullock, which have not necessarily been answered in the debate. The noble Baroness, Lady Henig, and the noble Lords, Lord Foster and Lord Brooke of Alverthorpe, have stated why, in the Committee's view, it is very clear that this amendment is needed. As I tried to explain to my noble friend, the policies and planning guidance on their own are not sufficient. So I would like to go back and discuss with those who have spoken whether there is cross-party support for bringing this forward at a later stage—but, for now, I beg leave to withdraw the amendment.

Amendment 266 withdrawn.

Amendment 267

Moved by ***Lord Young of Cookham***

267: After Clause 106, insert the following new Clause—

"Local authorities and development management services

(1) A local planning authority may set a charging regime in relation to its development management services.

(2) In setting the amount of a charge under subsection (1) a local planning authority must secure that, taking one financial year with another, the authority's income from charges does not exceed the cost to the authority of delivering the development management services for which the charges are imposed."

Member's explanatory statement

The amendment would allow local authorities to develop a planning fees schedule that would enable the full costs of delivering its development management services, including the processing of planning applications, to be recovered.

Lord Young of Cookham (Con): My Lords, Amendment 267 is in my name and that of the noble Baroness, Lady Thornhill. This amendment has the support of the LGA and it would enable local authorities to charge planning fees that met the cost of providing the service, but would prevent them making a profit from it.

One of the themes of our debates on the Bill has been the importance of local authorities providing up-to-date plans. Indeed, my noble friend has made the point that up-to-date plans are more likely to produce the increases in housing that the country needs. But if we are to do that and have up-to-date plans, we need properly resourced planning departments. We also want to see planning applications promptly processed so that development can go ahead, again to meet housing need. That requires properly resource planning departments, but we know that they are all under pressure. Of the respondents to the Home Builders Federation's recent SME development survey, 92% said that lack of resource in local planning authorities was a major barrier to growth—up from 90% in 2021.

Planning departments will also need to respond to proposals in the Bill, which has 47 clauses that relate to planning. They are going to have to get up to speed with that if they are to succeed in the Government's ambition to improve the planning system. They are going to need to digitise and streamline the planning process. They will have to understand the implications of the NDMP and the new NPPF. They will have to deliver the new environmental assessment procedures and the new procedures on heritage and for neighbourhood plans, along with other changes to the planning system that we have been debating—not to mention the implication of street votes.

At the moment, planning fees do not cover the cost of processing planning applications. According to the LGA, council tax payers subsidise the planning

system to the tune of £180 million per annum—money that could be spent on social housing. I know that the Government are consulting on an increase, but there are two problems. First, even if granted, the increase will not meet the gap or give us the well-resourced planning departments we need. Secondly, it will not enable individual local authorities that have active planning departments to set fees that cover their costs.

Recently, the Government have tabled Amendment 285C, but I am not sure that it addresses the problem. That amendment will allow certain bodies to charge fees for advice in relation to planning applications. My noble friend will explain what that means; I suspect that it is a response to Amendment 283 and will enable bodies such as the Environment Agency and Natural England to charge for advice on planning applications. In any case, the wording of the Government's amendment would not cover the ability for local authorities to charge fees for the processing of planning applications, because it refers to the ability to charge fees for "advice" in relation to applications, and, of course, the authorities can already do that.

However, there is a wider principle at stake here. This Bill was going to be called the "Devolution Bill". The Government want to decentralise and give local authorities the ability to respond to local needs, so here is a golden opportunity to put that policy into practice. I was rereading the foreword of the levelling-up White Paper published in February last year. It said:

"We'll usher in a revolution in local democracy".

It seems to me that here is a good opportunity to put that ambition into practice.

Finally, this central control sits uneasily with the freedom local authorities have to set building control fees, which are part of the same planning family. That is an anomaly I find difficult to explain. There is no central government control over parking charges, school meal costs, rents or swimming pool tariffs. Why are the Government so insistent on retaining control of planning fees? I ask my noble friend whether she is prepared to relax the Government's vice-like grip on local authority. I beg to move.

Baroness Parminter (LD): My Lords, in the absence of the noble Baroness, Lady Young of Old Scone, who cannot be here this week, I will introduce her Amendment 283, to which I and the noble Baroness, Lady Hayman of Ullock, have added our names. As it is her amendment, I will not do what I normally do and speak off the cuff. I have some notes from her, and I will, unusually, read from them.

A number of statutory consultees receive requests to provide expert information and opinion on planning applications and other planning cases. Indeed, the noble Lord, Lord Young of Cookham, just mentioned some of them. The main statutory consultees include Natural England, the Environment Agency, the Health and Safety Executive, Historic England and Highways England.

The volume of planning application requests has increased by 38% over the six years up to the financial year 2021-22. It is estimated that this trend will continue. Natural England alone received almost 18,000 requests in the last financial year. In 2019 the main statutory consultees estimated the total cost of providing this advice at approximately £50 million. Obviously, costs will rise with volume.

Amendment 283 inserts a provision into the Town and Country Planning Act. It would allow the Secretary of State to make regulations to allow statutory consultees to charge developers and others for the provision of such advice and information about planning applications and other planning cases put forward by developers and others to local planning authorities. This provision would bring the cost-recovery arrangements for the majority of planning applications under the Town and Country Planning Act, in line with the proposals in Clause 118, which will allow cost recovery in the case of nationally significant infrastructure projects.

Amendment 283 lays out what particular provisions the regulations may make, including who should pay, how much and when. It also defines an "excluded person" who cannot be charged, unless that person is the applicant for the planning permission. Broadly speaking, in at least the first instance, it seems that the charges would be for the planning applicant or developer to pay, and charges would not be levied on the planning authority. It is all very straightforward and essential if our hard-pressed statutory consultees are to provide a prompt and efficient service to both planning authorities and applicants in the face of the growing case load.

The Minister has ostensibly agreed, as the Government have laid what seems like a similar amendment, Amendment 285C. However, proposed new subsection (3)(b) in the government amendment could be interpreted as prohibiting a statutory consultee charging fees to a planning applicant in respect of the provision of advice to a local planning authority by any route. It could even prohibit current scenarios where a developer is willing to meet those costs under a voluntary agreement, for example under a planning performance agreement or a service level agreement. If that is not the intention in proposed new subsection (3)(b) in the government amendment, the ambiguity needs to be removed.

It would be good to have confirmation today from the Minister that the Government intend to ensure that the statutory consultees can recover their costs. I ask the Minister whether she might be prepared to meet the noble Baroness, Lady Young, and other interested Peers between now and Report to identify a mutually satisfactory and unambiguous version of these two amendments.

Baroness Pinnock (LD): My Lords, I speak to my Amendment 287, which would achieve a planning fee system that would cover costs for local planning authorities. It largely mirrors Amendment 267 in the names of the noble Lord, Lord Young of Cookham, and my noble friend Lady Thornhill. I concur entirely with his arguments, but have some additional points to make in support of the plea to enable local planning authorities to set their own fees.

Too often planning applications, especially those that are complex, such as a major commercial development, have a set fee that nowhere near covers the costs, simply because there is so much more to planning applications than simply considering the plan details submitted at the first stage. I give an

[Baroness Pinnock]
example of a recent application near me for a very large commercial development of 1 million square feet—probably a bit more than that—with a fee of £300,000. That is, and sounds, a considerable sum. However, in the end there were more than 200 different elements of the planning application to consider, 96 of which were amendments to the original plan. One of those, which I endeavoured to read, was of itself more than 100 pages long.

Understandably, these applications are hugely complex and require considerable expertise within the local planning authority to understand and respond to them. They are not just about the design and features of the building itself—there is also highway access, road safety, landscaping, biodiversity, trees, noise and light pollution, and the impact on the landscape. In my local authority, they have to consider drainage and, in this instance, 14 attenuation tanks had to be built in the end to deal with run-off from the development. Hugely complex issues are being considered, and it all has to be done within that set fee, regardless. It took nigh on two years for that application to be fully considered and ready for a planning committee. Clearly, the fee failed to cover the costs of the details of the application.

There are implications to all this. The Royal Town Planning Institute reckons that there were 42% cuts in planning budgets over the 10-year period from 2008. There have been increases since, not all of which have been directed towards day-to-day planning officers. Digitisation was one of the issues rightly being considered by the Government. As the noble Lord, Lord Young, has said, the information is that local council tax payers are subsidising planning applications. If I told local people where I am that that was the case, they would rightly be very concerned, when other vital services have insufficient funding.

The RTPI research showed that one in 10 planning officer roles was unfilled. The reason for that is that so many expert planning officers find life much better rewarded—in many ways, not just financially—in private practice. The draining of local planning officers from the system is putting immense pressure on dealing with planning applications, and the timeliness of those, which again is hindering the Government's aim to build more housing. None of this is helpful to achieving that.

5 pm

We need local planning authorities to be able to set their own fees, not to make a profit but to cover their costs. I obviously support the amendment in the name of the noble Baroness, Lady Young, which my noble friend spoke to, because that too makes good sense. Why should Natural England, Historic England and all the other statutory consultees have to fund advice to planning applications from their own budgets? That does not make sense when planning applications are a commercial business. There is a really good argument for enabling local planning authorities to set their own fees and the statutory consultees, such as have been described, to recover their costs as well. I hope the Minister will be able to respond positively to all the amendments in this group.

Baroness Thornhill (LD): My Lords, I do not want to take up too much time, because much has already been said, but I want to add a couple of points that have perhaps not already been made and expand on one point from the noble Lord, Lord Young. It is really important to acknowledge that the Government have found the means to increase planning fees for major and minor applications to 35% and 25% respectively. That is a positive move in the right direction and it has to be applauded.

As always, the noble Lord, Lord Young of Cookham, has nailed Amendment 267 and I want to expand on one of his comments, on devolution. In reality, councils are effectively asked—and in effect taxpayers are asked—to subsidise a whole range of services, not just planning services. Licensing fees are one, and the one that really gets my goat is supplying credit agencies with the electoral register. There is a statutory cap on what can be charged, regardless of the actual cost. Even with land searches, which councils have to do the work on, the Land Registry actually gets the cash. I think it is an area that is ripe for looking at, particularly as we are in cash-strapped times; other agencies and other companies, not just the taxpayer, should pay the bill.

My only caveat about letting each individual council area decide absolutely on its fees is that "To those who have, more shall be given". In areas where developers want to build—they are usually the areas where it is most lucrative and they will get the most profit—they will be able to get away with charging much higher fees simply because they can. I think the opposite should be true, so Amendment 267, which refers to the actual costs, is the fairest way of dealing with this, especially as salaries and other incidentals also vary depending on the geographical area that a council sits in.

Lord Moylan (Con): My Lords, I will speak briefly in giving general support to the thrust of the amendments, not only on the grounds advanced by other noble Lords but because they would mitigate something I regard as a positive evil. It has become possible in recent years for major developers proposing major projects to offer to local planning authorities to fund the salary of a planning officer to help deal with their case. When I had responsibility in a London borough for planning policy, I resisted accepting that sort of offer, but perhaps we could afford to do so.

This strikes to some extent at the heart of public confidence in the planning system, which is always a little fragile. Noble Lords who have been involved in it will know that there are always people who suspect that there has been a fix and that something corrupt is going on, but that is not the case in my experience. However, to allow a developer to fund a planning officer only exaggerates that perception and damages public confidence in the planning system. The way out of this, not least in the context of devolution, must be to allow the charges to cover the costs. It also seems appropriate if we want to empower elected officials in local authorities. It is open to the possibility of abuse, as the noble Baroness, Lady Thornhill, said, and a local authority could seek to deter applications by setting punitively high fees, but my noble friend Lord Young of Cookham's amendment broadly addresses that possibility. It might need a little refinement, but

the principle is none the less clear and acceptable. I encourage support for this amendment because we are not taking sufficient notice of the evil I mentioned, which harms the planning system.

Baroness Taylor of Stevenage (Lab): My Lords, Amendment 267 in the names of the noble Lord, Lord Young, and the noble Baroness, Lady Thornhill, was music to my ears; Amendment 287 from the noble Baroness, Lady Pinnock, is very similar. I have never understood why the public purse—the hard-pressed local government public purse at that—has to subsidise the development industry even for the very largest and most profitable developments. We have long spoken about a "polluter pays" principle in discussions on the environment; perhaps it is time we had a "profiter pays" principle in planning.

This issue has long been debated in local government. It is the subject of general incredulity that, at this time of financial crisis for local government, it is still allowed to continue. The Local Government Association has lobbied consistently on this point, stating in its recent response:

"We welcome the proposal to increase planning application fees, as it has for a long time been our position that there is a need for a well-resourced planning system. However, the Government should go further by allowing councils to set planning fees locally."

I do not think it is a surprise to any noble Lords that local authority planning departments are at full stretch already. The noble Lord, Lord Young, referred to how they will respond to the 47 clauses in this Bill, never mind the issue of street votes—they will have plenty of work to do, that is for sure. It is an area of specialism where there are considerable shortages of professionals. In spite of a great deal of work being done to encourage young people to consider planning as a career and increase the number of routes into the profession, there remain difficulties in recruitment and retention. This is even worse in areas surrounding London, where it is almost impossible for local authorities to compete with the packages offered to planning officers in London.

This is exacerbated by the pressure of work; I know that many noble Lords in the Chamber will have sat through contentious planning application hearings, and I do not think any of us would be surprised to learn that our officers subject themselves to considerable stress. Therefore, it is only right that the industry makes a fair contribution to the cost of processing applications where it will reap substantial developer profit. This will enable local authorities to ensure that their planning teams are resourced adequately.

We also strongly support Amendment 283 in the name of my noble friend Lady Young, and so ably moved by the noble Baroness, Lady Parminter. She is absolutely right that statutory consultees, often hard-pressed themselves, should be able to recover the costs from applicants. I understand that of the £50 million bill for this, cited by the noble Baroness, Lady Parminter, 60% was incurred by Natural England and the Environment Agency as the two statutory consultees dealing with the greatest number of planning consultations. It was as far back as 2018 that the top five statutory consultees came together to form a working group to identify potential alternative funding mechanisms to address the increasingly critical and unsustainable position. They made recommendations to DLUHC in March 2019. This work highlighted the need for a change in primary legislation to provide a broad enabling power under which statutory planning consultees could pass on the costs incurred in providing statutory advice to applicants, either as part of the existing planning fees or as an additional separate charge.

We welcome the inclusion of a power in the LURB to enable statutory consultees to recover costs incurred in providing advice on nationally significant infrastructure projects. That alone, though, makes only a modest contribution to addressing the challenge of establishing the sustainable funding model. I believe for Natural England, approximately 70% of the statutory consultation work will continue to be reliant on grant in aid. Will the Government introduce a power that will help us? If not, the Government are, in effect, committing to rely on the Exchequer as the primary means of funding the essential role that statutory consultees play in support of the operation of the planning system.

There is also the danger that we will create an inconsistent funding model between NSIP cases and non-NSIP cases that are of a comparable size or impact, such as large-scale housing developments. That could result in the need to prioritise resources for NSIP work over non-NSIP work, create inconsistency in service levels and potentially disadvantage large housing developments, which would be the exact opposite direction to the way we want to go. I hope that the strength of my noble friend Lady Young's amendment will be taken into account.

Consideration should also be given to other statutory agencies. We have seen similar pressures on colleagues in the National Health Service, for example, where they have to comment on planning applications. There is also pressure on the resources of county councils to respond to matters relating to highways, flood risk, education and adult and children's care provision—to name just a few—which is required on almost every major application and some smaller applications. It is simply not right that those costs should fall on public agencies whose funding is limited. If they were adequately recompensed, their ability to respond to applications in a timely manner might be improved.

Government Amendment 285C is similar to that proposed by my noble friend Lady Young—I hope we can at least agree on that—but, as the noble Lord, Lord Young, pointed out, this may not refer to charging for local authorities. We would want to see both local authorities and statutory consultees able to charge something like the recovery of the costs they incur in relation to the planning system.

Baroness Scott of Bybrook (Con): My Lords, Amendments 267 and 287 have been tabled by my noble friend Lord Young of Cookham and the noble Baroness, Lady Pinnock, respectively. I assure your Lordships that the Government understand the concerns about stretched resources in local planning authorities. However, we do not believe that enabling local planning authorities to vary fees and charges is the way to answer resourcing issues, and it does not provide any

[Baroness Scott of Bybrook]
incentive to tackle inefficiencies. Local authorities having different fees creates uncertainty and unfairness for applicants and, if set too high, could risk unintended consequences by discouraging development.

5.15 pm

My noble friend Lord Young of Cookham and the noble Baroness, Lady Pinnock, both brought up the question of whether we could loosen the local authority planning fees. As I have said, having different fees creates inconsistency, more complexity and unfairness for applicants, who could be required to pay different fee levels for the same types of development. Planning fees provide clarity and consistency for local authorities, developers and home owners. However, we are consulting on fees. We are seeking views on whether the additional income arising from the proposed fee increase could and should be ring-fenced for spending within the local authority planning department. Past increases have required a written commitment from all local planning authorities in advance of implementation.

The noble Baronesses, Lady Pinnock and Lady Taylor of Stevenage, also brought up the issue of capacity and capability in local planning departments. We recognise the challenge that many local planning authorities are facing. We aim to ensure that local authority planning departments can build the capacity and develop the skills to support the design of our neighbourhoods, in order to regenerate our towns, deliver levelling up and implement the changes proposed in the Bill. We continue to work with local planning authorities and the broader planning sector to design and, we hope, deliver the support needed so that planning authorities have the skills and capacity necessary to modernise and implement change. Some of those things are in the Bill—for example, in respect of using technology.

Our priority is to ensure that all local planning authorities are able to increase their fees through a national fee increase. As we have heard, we are currently consulting on proposals to support the greater resourcing of local planning authorities through an increase in planning fees by 35% for major applications and by 25% for other applications. Subject to the outcome of this consultation and parliamentary approval, we would seek to introduce a fee increase at the earliest opportunity this year.

Amendment 283, tabled by the noble Baroness, Lady Young of Old Scone, and introduced by the noble Baroness, Lady Parminter, seeks to enable statutory consultees, who are required to provide expert advice to local planning authorities and other planning decision-makers, to recover their costs from applicants seeking planning permissions. I thank the noble Baroness, Lady Young, for tabling this amendment. We share the view that there is an increasing need for further funding opportunities to help key statutory consultees secure the right resources at the right time, so that they can continue to provide expert and timely advice in respect of proposals coming forward through the planning application process. That is why we have tabled our own Amendment 285C, to enable more cost recovery for work dealing with planning applications. This amendment bears many similarities to the proposal of the noble Baroness, Lady Young.

Our amendment will also allow statutory consultees to set their own charges for applicants, subject to limitations, and ensure that there is transparency as to the services provided and what is being charged, as well as empowering statutory consultees to withdraw their services when fees or charges have not been paid. The Secretary of State will also reserve the right to make regulations to manage any impacts on applicants—for instance, in relation to SME developers and householders. As this government amendment is being brought before the House today, I gratefully request that the noble Baroness, Lady Parminter, on behalf of the noble Baroness, Lady Young of Old Scone, does not press her amendment. The noble Baroness, Lady Parminter, brought up the issue of ambiguity. We have been engaging with colleagues across His Majesty's Government. While we are satisfied that this does not inhibit applicants paying for advice provided on planning performance agreements, we would like to avoid ambiguity, so I am happy to take this into further consideration. Perhaps she could let the noble Baroness, Lady Young, know that.

On government Amendment 285C, statutory consultees play an important role in the planning application process, providing expert advice to local planning authorities and applicants on technical matters such as flood risk, biodiversity, heritage and highways safety. Going forward, they will continue to play an important role through our planning reforms. These bodies are pivotal in shaping development proposals, but such organisations face growing financial and resourcing pressures which will become more acute as the volume and complexity of projects increases.

Our estimates indicate that the main national statutory consultees currently deal with around 50,000 applications per year, many of which involve substantive engagement with the applicant to address the issues. We estimate that this overall service costs around £60 million per year. This does not include the thousands of applications dealt with by locally based but equally important statutory consultees such as local highways authorities and lead local flood authorities.

In the other House we moved a clause to introduce statutory consultee cost recovery within the nationally significant infrastructure project regime, and today I propose a similar measure to allow cost recovery on activities relating to applications under the planning Acts. This power will allow prescribed bodies named in regulations to charge fees for providing advice or information in connection with applications or proposals under the "planning Acts" as defined in Section 336 of the Town and Country Planning Act 1990. This includes activity related to planning applications under that Act, as well as applications for listed building consent and hazardous substances consent. This will cover substantive engagement throughout the process—from pre-app discussions all the way through to the discharge of conditions and reserved matters—between the statutory consultee and the applicants.

The Government recognise that many local planning authorities, as well as the wider planning sector, are facing capacity and capability challenges. That is why this power ensures that those who benefit from the advice foot the bill for it, so the cost of the advice will not be passed on to the decision-maker. In addition,

elsewhere in the Bill we are taking powers to speed up the planning system, and we also want to ensure that smaller-scale applicants are not priced out. That is why we are taking powers to make regulations which exclude certain advice, assistance or information from charging. This should allow us to create a system which does not create additional barriers to SME developers and householders.

This measure will enable the establishment of a system that allows key statutory consultees to recover costs for the planning advice they give to applicants on a wide range of applications and related activities. I hope that noble Lords see how important this is to enable more effective and self-sufficient statutory consultees within the planning application process, and that they will support this important amendment.

Lord Shipley (LD): May I ask the Minister to clarify one issue? I have listened very carefully to this debate but there is an issue that I have not fully understood. I heard her say that prescribed bodies will be able to secure cost recovery, but she has not said that local planning authorities will be able to recover their costs. She said that there could be an increase in the fees they are allowed to charge following the consultation, but that is not the same thing as permitting cost recovery; indeed, a lack, as yet, of a definition of cost underpins this whole debate. To my way of thinking, there is the immediate cost of administering and managing a planning application, with all the costs that may apply to that application. However, there is also the cost that a local planning authority might have in terms of the provision of IT services to the planning system, web services, office costs, heating, lighting, and so on—essentially, the overhead cost. As the Minister is going to think about all these issues, I hope very much to hear that the Government will consider full cost recovery for local planning authorities. However, as I say, I have not yet heard that during this debate.

Lord Young of Cookham (Con): My Lords, I am grateful to everyone who has taken part in this debate. There have been a lot of Youngs involved, and I will try to respond on behalf of both of them. Let me say straightaway that I very much welcome the government amendment, and I am sure that, in her absence, the noble Baroness, Lady Young of Old Scone, would also do so.

On the rest of it, I had hoped that, with this group of amendments, we might have found a chink in the Government's armour that has been deployed throughout our debates. I am disappointed that we have not been able to make progress, and I know that the Local Government Association will also be disappointed.

I am grateful to all those who took part. The noble Baroness, Lady Pinnock, made the valid point that the flat rate prescribed by the Government simply does not reflect the costs to a local authority of a complex planning application that spans a number of years; that point was not adequately dealt with.

I was most concerned to hear what my noble friend Lord Moylan said about developers offering to second to an overstretched planning department a planner who might assist them. That is rather like me saying to Test Valley Borough Council, "I understand your electoral department is under some pressure; I would like to second a returning officer to the forthcoming election".

Lord Moylan (Con): If my noble friend will allow me to say so, I did not suggest that they were offering to second somebody but to fund a planning officer who would be recruited from the pool of available planning officers.

Lord Young of Cookham (Con): I am grateful to my noble friend. None the less, the principle that he ended his speech with is still valid: a local authority should not be dependent on the good will of a developer to process that developer's planning application. That goes against most of the codes of independence for local government.

In response to my amendment, my noble friend the Minister said that she could not accept it because of the uncertainty that might confront developers and the costs might be too high. But the charge under my amendment could only reflect the costs. A local authority could not charge a fee as a deterrent if it was not substantiated by the underlying cost.

As for uncertainty, what developers, housebuilders and any planning applicant want is for their application to be processed promptly and efficiently by a well-resourced planning department. That is their priority. I do not think that uncertainty about future fees comes into it, or it is right down their list of priorities.

Also, I do not see how this central control of planning fees sits with the whole language of the Bill, which is about empowering local authorities and giving them more autonomy to reflect local needs. It appears that, despite all that, we cannot trust them to set planning fees. I think the Government's stance on this group of amendments sits uneasily with their whole philosophy, but, while I reflect on what to do next, I beg leave to withdraw the amendment.

Amendment 267 withdrawn.

Amendments 268 to 270 not moved.

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, as Amendment 270 has not been moved, I cannot call Amendments 270A or 270B, as they were amendments to the said Amendment 270.

Amendments 271 to 273 not moved.

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, as Amendment 273 has not been moved, Amendment 273A cannot be moved, as it was an amendment to it.

5.30 pm

Amendment 274

Moved by ***The Earl of Lytton***

274: After Clause 106, insert the following new Clause—

"Building Safety Remediation Scheme

(1) Planning permission must not be granted to any developer or associate responsible for the construction or sale of units in a building with a building safety risk until the Secretary of State has established a Building Safety Remediation Scheme.

(2) Schedule (Building Safety Remediation Scheme) makes further provision for the establishment of a Building Safety Remediation Scheme.

(3) This section comes into force six months after Royal Assent.

(4) "Associate" has the meaning given in section 121 of the Building Safety Act 2022."

Member's explanatory statement

This clause inserts a new Schedule to implement a building safety remediation scheme to ensure that buildings with building safety risks are put right without costs to leaseholders.

The Earl of Lytton (CB): My Lords, in moving Amendment 274, I will speak also to Amendment 318 in my name and that of the right reverend Prelate the Bishop of Chelmsford. In doing so, I draw your Lordships' attention to my professional interests.

I have two other amendments in this group: Amendments 320 and 325. They are on a related issue but, given the detail that I need to provide in relation to Amendments 274 and 318, I will do no more than signify my firm support for them and leave the heavy lifting on them to my co-signatory, the noble Lord, Lord Young of Cookham; I thank him very much for agreeing to do that.

While I am talking about the other amendments in this group, let me say that I agree that Amendment 504GJD in the name of the noble Baroness, Lady Hayman of Ullock, is certainly worthy of consideration in terms of providing better passive fire safety measures.

I turn to Amendments 274 and 318. I express my thanks to the Bill team for their engagement; to campaign groups across the country for maintaining awareness of the issues; and to the members of the policy team who have supported me. There are too many of them to name but they know who they are and I am very grateful to them. Most of all, I am grateful to the more than 200 individuals and leaseholder residents' groups who have written to me over the past four weeks both to support me and to tell me about the tragedies and individual concerns that have beset their lives. It is particularly to give them a voice that I raise this issue today.

Amendments 274 and 318 concern, I believe, matters of great social and economic importance. Despite the Government's measures in the Building Safety Act 2022, far too many leaseholders remain adversely and significantly affected by serious defects in the original construction of the buildings that they occupy or own. Although the BSA was a significant first step in solving the building safety crisis, it leaves significant numbers of leaseholders without adequate protection from, variously, cladding and non-cladding costs, and much of it is based on extra-statutory commitments of one sort or another. So we have a situation where enfranchised leaseholders and buy-to-let owners with more than three properties are excluded, while residents living in buildings below 11 metres in height receive no protection from non-cladding costs at all.

Correspondents tell me that the Government's remediation scheme is not working for them and that there is confusion about the process, qualifying interests and building height calculation, with gridlock until all the complex arrangements are in place. The most frequent comment is that owners are still locked into unsaleable properties with waking watch and massive insurance costs, as well as high remediation bills in prospect without any early or firm date for resolution. I now learn that many conveyancers may even be reluctant to take on work involving buildings over 11 metres high because of the complexity and professional risks that face them.

I welcome the announcement that many of the country's largest developers have committed to remediating buildings that they were responsible for, but I am concerned that their contractual obligations are limited to life-critical fire safety defects, rather than the wider definitions in the Building Safety Act. Furthermore, the developer contract apparently covers only around 10% to 15% of buildings that require remediation and appears to absolve developers of responsibility for those waking watch and other consequential costs.

Statutory liability for remediation itself is placed on landlords but without consideration of whether they have the resources to deal with this issue and are able to cover the costs. The DLUHC impact assessment admits that it has no cost estimates when it states:

"For buildings above 11 metres that have historical non-cladding fire safety defects, there is no reliable data"—

not even estimates—

"on the prevalence, or extent, of these costs".

However, an Association of Residential Managing Agents survey suggests that the non-cladding remediation costs in buildings above 18 metres are, on average, £25,671 per flat and, in buildings below 18 metres, £38,184 per flat. There appears to be no data on the sub-11-metre block remediation issues. We do not know how many we are dealing with. By my reckoning, more than 200,000 individual flats are significantly affected in England alone. Others have arrived at higher totals. So my first question for the Minister is: will she be kind enough to tell us what figure her department is working to?

Some landlords have the resources to meet these remediation obligations but it is not universal. Several large groups are in fact thinly capitalised or have significant indebtedness. For example, the three groups that comprise what is known as the Long Harbour fund appear to have relatively modest net assets, while the Consensus Business Group has significant borrowings from insurer Rothesay Life. They are unlikely to have the free cash to fund remediation works as well as servicing their bondholders and lenders if the incidence of defects and the average remediation costs, to which I have referred, are totted up.

As noble Lords will know, freeholds are typically valued by capitalising the sum of the net ground rents. In value terms, however, they are small by comparison with the collective of leaseholds. High remediation liabilities may make them worse than valueless. So if landlords' interests are negative and they become insolvent—bear in mind that some of them are dealt with through special purpose vehicles—these freeholds, with their negative value, are likely to be disclaimed by liquidators and escheat to the Crown, with all the delays and uncertainty that that entails. I foresee a legal limbo with unsaleable flats; although this would be unprecedented at scale, it is far from improbable, yet nobody in DLUHC admits to having done the calculations to assess the impact.

My fear is that the Government's approach creates new credit risks for lenders, particularly in relation to buy-to-let portfolios. If excluded leaseholders are unable to pay their share of the remediation costs, schemes of remediation risk simply being stalled. In such circumstances, leases could be forfeited, widening out their lender security unless extra capital is given. Such a forfeiture would providentially give landlords a windfall gain. Historically, few leases have been forfeited because rebalancing the mortgage has been the preferred course of action. However, it is one thing to have a debt of a few thousand pounds on a service charge in arrears; it is another thing to have the much more costly and complicated scenario of remediation costs, which may run into tens of thousands of pounds. I do not believe that historical forfeiture data gives an accurate picture of the new scenario going forward. Credit risk and mortgage interest recalibration are likely to have impacts on the wider financial system and, in turn, effects on other derivatives and insurance policies. I believe that this is something that has some way yet to unravel.

This is not only about the free market; it is about the social sector as well. Many shared equity owners have told me that, although they have a minority equity stake, they are being made responsible for a 100% share of the remediation applicable to their unit of occupation. That seems grossly unfair. Amendments 274 and 318 would avoid all this and provide for an alternative, comprehensive solution to the building safety crisis that protects all leaseholders from past and future issues.

Amendment 274 would mandate the Government to establish a building safety remediation scheme—BSRS. Amendment 318 would create a new schedule setting out guidance for its key features, all intended to dovetail with the principles of the existing building safety fund. The intention is to protect all leaseholders—indeed, all owners of buildings of whatever height and tenure—from the costs of remediating buildings that are unsafe in their construction and the interim safety measures in circumstances where they are entirely innocent of the causes of these defects.

Where a building constructed since 1992 did not comply with the regulations in force at the time, strict joint and several liability for remediation of all material building safety defects would be placed on a developer and principal contractor. If neither is able to pay, or if a building met the regulations that were in force at the time of construction but is now seen as unsafe, which can happen, remediation funding would come from a much wider levy on the construction industry and materials providers as a whole, rather than just developers, as is currently proposed by the Government. Once a significant effect is established, there is no need for property owners to apportion blame; the industry can sort that matter out for itself.

Remediation will be carried out to standards under the BSA to avoid concerns about remediators effectively policing themselves and, worse, using their own selected approved inspectors. These may be the same firms that previously signed off things that they should not have.

Noble Lords will excuse me for not explaining Amendment 318 line by line given its length, but I seek brevity. Anyone wanting further detail can go to a resource at tinyurl.com/earloflytton. The approach has been scrutinised by a leading construction counsel, a planning KC, parliamentary counsel and other legal minds, as well as by building control, construction and fire safety practitioners. I am extremely grateful to them all for their input. It has attracted support from Ted Baillieu, former state premier of Victoria, Australia, and co-chair of the Australian cladding task force. This matter is attracting international interest around where we go with these sorts of defects. It has also attracted the interest and support of other organisations, including the Association of Mortgage Intermediaries, ARMA, the British Property Federation, the Intermediary Mortgage Lenders Association, NAEA Propertymark, the National Residential Landlords Association, and many others.

Developers should have been the first stop in the Government's waterfall principle that we discussed just over a year ago. The BSRS bolts on to the existing government commitment, gives leaseholders and lenders more certainty of remediation, and puts them in a greater degree of control. However, it does not just deal with the present crisis. It covers similar situations in the future, and will, I believe, make short-cutting in building standards unworthwhile going forward. We all know that the race to the bottom on quality must cease. The BSRS provides a necessary layer of protection, especially as the Building Safety Act specifically excludes enfranchised leaseholders and commonhold unit owners from all its protections.

The Government do not have the money to solve the problem and are, at present, as I see it, unprepared to place the responsibility on the construction industry that has created this situation over decades of marking its own homework. I believe that the proposals I am advancing would deal with this. Echoing what one commentator said to me last week, if we do not get this right then the taxpayer could end up meeting the entire cost and we will go on building homes badly. We cannot allow that to happen.

All that apart, this is a fundamental matter of justice and equity. It is about protecting the innocent and vulnerable from the cost of failures by profitable enterprises—businesses that would be held liable for their actions in any other mercantile circumstances that one might conceive of. Indeed, the most basic function of government should be the protection of the citizen and society. Meanwhile, my mailbox continues to be filled with tales of individual tragedy, lives on hold, unsellable property, finances in disarray, fear of imminent bankruptcy, careers and retirements wrecked, mental health threatened, weddings shelved, the starting of families put off, forced evacuations—25 blocks is the tally since 2017—and much more misery besides. This crisis is not over until everyone is protected. I beg to move.

5.45 pm

Lord Young of Cookham (Con): My Lords, I am grateful to the noble Earl, Lord Lytton, for introducing this group of amendments, for setting the scene for this important debate on building safety, and for putting forward his own solution. I will try to respond to his exhortation to do some heavy lifting.

[Lord Young of Cookham]

The question underlying this debate is simple. Have the Government done enough to tackle the problems arising from the Grenfell tragedy or do we need to build on the Building Safety Act 2022 in the light of experience to address unresolved issues? I will argue that further action is essential.

I begin by recognising the progress that has been made by the Government. Some leaseholders have been given legal protection under the Act. Most developers who have been asked have agreed to pay up—well done to the Secretary of State—and the major lenders have agreed in principle to offer mortgages on blocks of flats with safety issues, although this does not seem to be reflected in practice. Good progress is being made with high-rise blocks that are owned by local authorities and housing associations. I know that my noble friend and her predecessor are sympathetic to those who have been in touch with them to discuss the issues that remain.

However, there is still a mountain to climb. A recent survey by the End our Cladding Scandal campaign in last month's *Inside Housing* magazine found that

"only 21.8% of leaseholders in dangerous blocks have seen remediation work start. For 44.1%, a date has not even been identified for work to begin … and only around 10% expect them to do so within the next 12 months".

As the noble Earl, Lord Lytton, has just said, hundreds of thousands of leaseholders face an indeterminate wait for complex remediation, and they cannot move in the meantime.

On top of the estimated 3,500 high-rise buildings which need remediation there are between 6,000 and 9,000 medium-rise buildings which need life-critical safety work. While 43 of the UK's largest developers have signed up, this covers only about 1,000 blocks. What about the rest of them? Some 90% are reliant on support from the building safety fund, which is slow to release funding, or from leaseholder contributions or from freeholders. The Government's funding stream for medium-rise blocks is not yet open for bids, but when it is it will cover only cladding removal, despite these buildings having other problems and serious compartmentation defects which need to be fixed. Non-cladding works can push costs up to £100,000 per flat.

The Government's response, if there is no developer to sue, is to charge the building owner, if the building owner has a stake in the building worth £2 million. However, this involves a complex remediation order under the Act. Can my noble friend say how many have been secured? Initial hearings for a remediation order for blocks in Queen Elizabeth Olympic Park were adjourned in February and are unlikely to commence this year. It is a long and legally complex process. Those who then enforce the process—the fire authorities and the local authorities—must at times deal with intransigent developers, who then challenge the assessment of what work is necessary, building in further delay and cost. Some large freeholders are claiming to have net assets of less than £2 million per building, as the noble Earl, Lord Lytton, said, or that they are not part of a wider group, meaning that they are not liable under the so-called waterfall provisions. We have seen the unedifying dispute with the well-resourced railway pension fund.

Furthermore, even if you get a remediation order, freeholders are liable only for the costs of qualifying leaseholders. Again, as the noble Earl, Lord Lytton, pointed out, if the non-qualifying leaseholders—the buy-to-let landlords—cannot afford their contribution then remediation of the block simply will not go ahead, and you have deadlock. If the freeholder does not have the funds to pay, the leaseholders must pay up to the cap, which is £15,000 in London, with the balance coming from a yet to be determined government pot; work will not start until this is established.

The position is even worse for those in blocks under 11 metres, whom I and others tried unsuccessfully to protect last year when the Bill went through. They are non-qualifying leaseholders and so have no protection and face uncapped bills. The Government have said these should not need work, as blocks below 11 metres are, in their words, on the whole safe, but the guidance that has been issued says otherwise. At least one building under 11 metres, in Romford, has identical cladding to that at Grenfell Tower—the primary cause of the rapid fire spread. An assessment under PAS 9980, which is the UK national standard, unsurprisingly reached the conclusion that the cladding should be removed. The developers have no liability for work under the Act or indeed under the remediation contract with the Secretary of State, so no help is available to the leaseholders. That is simply indefensible.

In several cases, insurers are insisting on work on buildings under 11 metres going ahead or they will withdraw insurance cover. That leaves the owner with no choice at all. They are actually excluded from the duty to pursue alternative routes for funding; they simply pass the costs on to leaseholders. Against that background, the fire at Richmond House—below 11 metres—burned it to the ground in less than 11 minutes.

Here is quote from a letter from a leaseholder in one such building:

"I am a leaseholder in a building well under 11 metres. We are three storeys high with 10 flats. We are therefore excluded from any support from the Government, yet our freeholder/managing agent is taking us to court on Friday to ask them to agree to us having to pay for the cost of remediation—a £26,000 service charge in 2022 per leaseholder. We are told the freeholder does not have the means or obligation to pay for these works that we need to reduce the annual insurance premium. We are told that the only way to pay for these works is via the leaseholder and that we will be legally responsible to fund the money and pay it upfront so that the management agent has the means to pay for works."

There are also reports of other leaseholders in buildings under 11 metres being forced to pay for remediation as a condition of continued insurance cover.

Last year, I was promised a case-by-case review of these blocks, but the evidence presented to the Select Committee in another place on 13 February this year said:

"We have not seen any progress with the case-by-case review in respect of under 11 metre buildings".

The position for leaseholders in blocks of flats who have followed the policy of successive Governments and enfranchised by buying the freehold is also indefensible. Despite repeated commitments given to

me by the Minister at the time that they would be treated as leaseholders and would therefore be entitled to protection under the Act, the Bill treats them as freeholders and penalises them for enfranchisement. This is what I was told in Grand Committee by the then Minister:

"They are effectively leaseholders that have enfranchised as opposed to freeholders. I hope that helps". [*Official Report*, 28/2/22; col. GC 262.]

My amendment to deliver that commitment on Report was resisted, and enfranchised leaseholders remain outside the protection available to other leaseholders.

There is an enfranchised block in Manchester with serious non-cladding defects, and there was a fire in a flat there last year. The enfranchised company, which is actually the leaseholder, is required by law to resolve these as soon as possible. Government policy is that blocks should enfranchise, but those who do are excluded from protection.

Looking at the picture as a whole, three years on from funding being made available, only 28 eligible buildings had been signed off by the Building Safety Fund by the end of last month, out of a potential 3,500 or so buildings eligible for support. In the meantime, most leaseholders are still unable to sell and move on with their lives. Despite six high-street lenders announcing in January that they would offer mortgages on flats with issues as long as the leaseholder protections were in place, this is just not happening on the ground. In the meantime, insurance costs have soared and service charges have escalated.

Freeholders and managing agents are refusing to withdraw service charges for items such as waking watches in buildings covered by the Act, but which were issued before the Act came into force. They also rushed to issue fresh demands on leaseholders before the Schedule 8 protection came into effect on 28 June last year. Leaseholders incurred the substantial costs of waking watches and increased insurance before the Act was implemented, but clause 6 of the final contract with developers excludes this. If money is to be recovered, the leaseholders have to litigate.

There are also early reports—the noble Earl, Lord Lytton, may have touched on this—of conveyancers saying they will no longer accept instructions to work on sales of leasehold flats in buildings of any height. That is because certain lenders—I have heard Nationwide mentioned—are imposing requirements on them to check the statements made in landlord and leaseholder certificates, which they are unable to do.

The original proposal of the Select Committee in another place was that there should be a comprehensive building safety fund, fully funded by government and industry, and the Government should establish clear principles regarding how the costs should be split between the two. Where we are sits uneasily with commitments given by Ministers last year. Last year, Michael Gove said:

"leaseholders are shouldering a desperately unfair burden. They are blameless, and it is morally wrong that they should be the ones asked to pay the price. I am clear about who should pay the price for remedying failures. It should be the industries that profited, as they caused the problem, and those who have continued to profit, as they make it worse". [*Official Report*, Commons, 10/1/22; cols. 283-84.]

The then Minister wrote to noble Lords on 20 January last year, when the Building Safety Bill arrived in your Lordships' House. Under the section headed "Protecting Leaseholders from Unnecessary Costs", he said:

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

Then there was the Statement on building safety made in the other place by the Secretary of State on 10 January last year:

"First, we will make sure that we provide leaseholders with statutory protection—that is what we aim to do and we will work with colleagues across the House to ensure that that statutory protection extends to all the work required to make buildings safe". [*Official Report*, Commons, 10/1/22; col. 291.]

As I have tried to show, where we are falls well short of the commitments given, but it is not too late for the Government to act. My amendment is a peg on which to hang the debate. I end with the two questions I started with. Are the Government satisfied with the current position? If not, what do they propose to do about it? I know my noble friend is sympathetic to the case I have made. I know that many leaseholders are watching this debate and hoping for a positive reply.

The Lord Bishop of Guildford: My Lords, for six years in the early 90s I was a priest in Notting Hill, in the Royal Borough of Kensington and Chelsea, and had never lived in a place where the vision of levelling up was quite so necessary and quite so localised. The very wealthy were often living cheek by jowl with the very poor, and meanwhile, on looking north from one of our churches was the unmistakeable sight of a brutalist 24-floor block of flats on Grenfell Road, which 25 years later was to become the scene of an unspeakable, though sadly not quite unimaginable, tragedy.

Making buildings safe for leaseholders has since become a priority for the Government, which is to be welcomed. As the noble Lord indicated, this support remains both limited and partial, creating a new distinction between the haves and have-nots of leaseholding when it comes to the most basic of principles: that the homes in which we live, work and raise our families should be safe. I happened to meet one of those have-not leaseholders this morning, for whom insuring his flat, let alone selling it, has become virtually impossible.

My friend Graham Tomlin, the Bishop of Kensington during the unfolding of those terrible events in June 2017, has written movingly in this regard. He speaks of how a "pattern of moral compromise" had become embedded in parts of the construction industry, as revealed by the public inquiry into the Grenfell tragedy. He goes on to suggest a firming up of the responsibility of developers to make good their work, along the lines of the amendments of the noble Earl, Lord Lytton. His insights have been fed into the second of the five basic principles of the Archbishops' housing commission: that

"Good housing should be sustainable, safe, stable, sociable and satisfying".

One of the very few cases I still vividly remember from my original legal training is the landmark decision in Donoghue v Stevenson in 1932, which involved a Mrs May Donoghue discovering a decomposed snail at the bottom of her bottle of ginger beer, and a

[The Lord Bishop of Guildford]
Mr David Stevenson, the owner of the ginger beer company. This famous snail resulted in a bout of gastroenteritis for Mrs Donoghue and a rather hefty fine for Mr Stevenson, while simultaneously forming the surprising basis of our modern law of negligence, and of a duty of care which does not depend on a direct contractual relationship between the parties involved. So how odd and morally indefensible it is, more than 90 years on, that the construction industry has been able to allow metaphorical snails to slide into its ginger beer bottles: to be negligent, bordering on reckless, when it comes to basic principles of safety, without a straightforward system of remediation which places responsibility where it patently lies.

The noble Earl's amendments seem both right and practicable in that regard, given the idea of a levy to the remediation fund, which helps to answer concerns about affordability. Developing new confidence in the construction industry and driving up its standards will also help to protect the long-term reputation of the industry itself, which can be only a win-win for all concerned, or at least for all committed to the vision of good housing rather than a race to the bottom. I therefore support the noble Earl's amendments and the principles behind them in this crucial area of our national life.

6 pm

Baroness Fox of Buckley (Non-Afl): My Lords, I thank the noble Earl, Lord Lytton, and the noble Lord, Lord Young, for explaining so very comprehensively what the issues are. The key question is whether the Government have done enough. I do not intend to go into all the detail but I have a couple of observations and a query, because I really do not know how to solve this crisis and I need to be convinced that what is being put forward is the solution.

One thing that has been very important is that so many categories of leaseholders were left out of previous arrangements. That has caused immense pain, hardship, a sense of unfairness and so on, as has been described. As we have heard, in the popular imagination this is all about solving the cladding crisis, but actually it goes far beyond cladding and covers a wide range of remediation work. Also, we have ended up in a ridiculous situation of people in the wrong size blocks of flats still having to pay but not being covered by protection and legislation.

I really appreciate all these different difficult dilemmas, and like everybody I had hoped that the work that had been done in the building safety legislation that many of us were involved in would be a great source of relief and excitement for leaseholders. It has not been. People are still absolutely in a very bad situation. The Government have to know that because I know they want to help. Therefore, we should consider our options.

These are my slight concerns. A lot of the problems that leaseholders face are based on the way that people are reacting to remediation work that will need to be done because of the building safety legislation that we passed. There is an atmosphere of risk aversion that means you cannot sell a leasehold flat now because of all the reasons that have been given. The lenders say, "Well, it's leasehold; there may be future remediation work to be done", and so on. It has become an absolute nightmare. It seems ridiculous, in the middle of a housing crisis, that people are unable to sell their flats, not because they are too expensive but because they cannot proceed. There is a kind of glut in the flat market at the moment: people cannot move on but people also cannot buy the flats that they urgently need to live in.

My concern is to make sure that we do not always describe this through the issue of critical safety work. Even during the building safety discussions, I was concerned that we would become too risk averse—that the whole process of building and construction would be so mired in fear of what might happen and the idea that fires would burst out at any moment that it would become impossible to build anything with the stipulations that were put forward. With the broader problem of housing supply and the housing crisis, I am terrified that we will end up with nobody building anything anymore because there will be too many risks in doing so because of the legislation that we have brought in. That is one problem.

The other thing that I am concerned about in relation to the polluter pays issue is that we might end up destroying the construction industry. I am more than aware of the fact that there are problems with parts of the construction industry. I do not doubt that there are what used to be described as cowboy builders and so on. I see serious problems when I look at all the work being done by the leaseholder groups to expose the terrible circumstances where people are living in flats that are not fit for purpose. I am not suggesting in any way that those things are not true but I am also very wary of demonising the construction industry and effectively destroying it at the very time when I want it to be hyperactively building houses all over the place to solve the problems of homelessness, the fact that people have nowhere to live, the affordability crisis and so on. Maybe the noble Lords could just answer how we deal with that.

So that we do not focus just on the construction industry as though it is solely the bad guys, I say that I am very frustrated about the fact that the banks are embroiled in holding things up. They will not lend to people who want to buy leasehold properties. That is a real problem; is it something we need to look at? As has already been discussed, and I have raised in past contributions, the role of the insurance industry has also been hugely problematic, with the cost of insurance. That all trickles down and the leaseholders end up being the people who suffer. As I said, I am very nervous about making our focus just on the construction industry.

The thing about the polluter pays model that I am concerned about is who gets labelled as the polluter. I have just walked past the demonstration in which the polluter in that instance apparently is the fossil fuel industry, the energy industry, or people who create cars. Those demonstrators say that the polluter should pay for all the problems in society. I am wary that this is oversimplistic as a solution. However, I say to the Government and to the Minister that saying that the status quo ante is sufficient is a betrayal of the promises that they, and in fact many of us, made to leaseholders last year.

Baroness Hayman of Ullock (Lab): My Lords, I have an amendment in this group that I shall speak to, but I will first make a few comments about the amendments in the name of the noble Earl, Lord Lytton. I thank him for his extremely detailed and thorough introduction to what is a very complicated issue.

As we have heard, the noble Earl proposed similar amendments to the then Building Safety Bill, which the Government rejected in favour of Schedule 8 and the other leaseholder protections that were eventually included in the Act. I commend him for his continued efforts in the work he does to support leaseholders, and the noble Lord, Lord Young. They have been absolutely unassailable in not wanting to give up on this.

I am sure that the Minister will repeat some of the reasons given during the passage of the Building Safety Bill as to why the Government are unable to accept these amendments in this legislation. My recollection of the reasons given is that the amendments would require a sizeable bureaucracy to be set up to deal with the thousands of buildings that would potentially be caught, and concerns about litigation risk. However, the noble Earl, Lord Lytton, is absolutely right to press that something should be done for buildings that are under 11 metres and resident-owned buildings. As was said during the passage of the Building Safety Bill, part of the problem is the number of buildings. Something has to be done to help all these people. During the passage of that Bill, the Government promised that something would be done. The noble Lord, Lord Young, quoted from the debate on the building safety Statement the Government's continued promises to help those leaseholders who have still been left out, but this has not been done.

If the Government are going to push back again on this issue, when are they actually going to address this, as they have has previously promised to do? As the noble Earl, Lord Lytton, said, there are still significant numbers of leaseholders unprotected from often huge costs, and the situation is not resolved until everybody has proper protection. The noble Lord, Lord Young, asked the very pertinent question, "Have the Government done enough?"—and then I think he answered his question, and the answer was no. The Government need to fulfil the promise made during the passage of that Bill and look at how that issue can be resolved.

It has been said that building safety remediation is very complicated. But it is not complicated at all and is actually something the Government could do very quickly and easily to improve the safety of buildings in multiple occupancy. My Amendment 504GJD states:

"Within 60 days of the passing of this Act, a Minister of the Crown must make a statement to each House of Parliament outlining their position on whether building regulations should require the installation of more than one staircase in large multiple-occupancy residential buildings for the purposes of fire safety".

This has been a concern for some time, and Grenfell made issues of fire safety even more important. But the reason I want to bring this up is because the National Fire Chiefs Council has argued that second staircases should be mandatory in blocks above 18 metres in height. It states:

"In the event of a fire, a correctly designed second staircase removes the risk of a single point of failure, buying critical time for firefighting activities, and providing residents with multiple escape routes".

It points to London Fire Brigade figures which show that from

"1 April 2019 to 31 March 2022 … 8,500 residents chose to evacuate buildings rather than stay put".

We are really pleased that the Department for Levelling-up, Housing and Communities has been carrying out a consultation to mandate second staircases in new residential buildings above 13 metres. The consultation paper states that

"the provision of a second staircase can provide some benefits for very tall residential buildings such as added resilience for extreme events and reduced conflicts between emergency responders entering a building and those trying to escape, reducing the risk of the smoke ingress into an 'escape' stairwell".

It also states that a second staircase would provide a second means of escape if one route were filled with smoke.

We welcome the fact that the department has been carrying out this consultation. It closed very recently. I would be very pleased if the Minister could give some update on when we are likely to hear the outcome and the Government's response to the consultation, but, in the meantime, if she were inclined to accept our amendment, it would help progress.

Lord Cromwell (CB): My Lords, I apologise to the Committee for not speaking in previous stages of the Bill: commitments elsewhere made it impossible. I shall speak briefly in support of Amendments 274 and 318 from the noble Earl, Lord Lytton. Reading the email circulated, citing powerful support for these amendments from expert commentators, government figures, individual leaseholders and associations from across the whole world, not just the UK, the rest of us can only look on in envy at the level of support that he has generated for his amendments. I congratulate him and the noble Lord, Lord Young of Cookham, on championing this cause and on the powerful and detailed speeches which they gave us earlier, along with the right reverend Prelate.

The approach taken in these two amendments, which are founded on the polluter pays principle, make complete sense in putting right work that was in breach of building regulations at the time across a wider range of premises and a wider range of defects. I have some sympathy with the points raised by the noble Baroness, Lady Fox, about looking after the construction industry. The fact is that, in a way, the polluter pays principle does not quite work here because, if building works were not done in accordance with the building regulations, it is quite clear who is responsible, whereas you could argue more widely about, for example, a leak from an oil tanker being a pollution incident. But, fundamentally, what this comes down to is, if not these solutions, what do the Government propose? I look forward to hearing.

6.15 pm

Baroness Pinnock (LD): My Lords, the Grenfell fire tragedy of June 2017 has rightly ensured that many of us in this Chamber have put our minds to the outrageous way in which the construction industry failed to meet

[Baroness Pinnock]
existing building safety regulations and how material manufacturers knowingly sold flammable cladding materials to be put on high-rise blocks of flats. That is not me saying that; the inquiry into the Grenfell fire said that.

We have over the past six years in this House tried two ways, so far, to address those issues, first through the Fire Safety Act and then through the longer, more detailed Building Safety Act. Right from the outset, I and others have said quite clearly that, whatever happens in putting right the wrongs of 20 years or more, the leaseholders are the innocent victims in this situation. They have done everything right in their lives and nothing wrong, and they should not be asked to pay a penny piece towards putting right the wrongs that have been done to them, which were concealed from them when they entered into a contract for their property.

We have, with the Government, tried hard to put this right. We have heard from the noble Earl, Lord Lytton, and the noble Lord, Lord Young of Cookham, who have been on this route march, as it seems, from the beginning, trying to find the answer to the question, "As the leaseholder must not pay, who must?" The noble Lord, Lord Young of Cookham, asked the right question—of course, he always does—which is, "Has the Government done enough?" Some of us, including him at the time, said we did not think so, and so it is proving.

Not only we in this Chamber but thousands of leaseholders are saying that the Government have not done enough. Not only is the construct in the Building Safety Act of the waterfall of responsibilities failing to ensure that remediation takes place promptly or at all, but, meanwhile, as we heard from the noble Earl, Lord Lytton, many leaseholders have awful tales to tell about anxiety caused, mental health that has broken down, financial burdens that cannot be met, ensuing bankruptcy and life chances blunted—and no responsibility of theirs.

Why would any of us involved in legislation allow thousands of our fellow country men and women to be put in this position, where they are being seriously adversely affected, in emotional, financial and social ways, and not do anything—or enough—about it? The noble Lord, Lord Young of Cookham, rightly said again that the Building Safety Act, despite our best efforts, excluded certain groups of leaseholders: those living in blocks under 11 metres, enfranchised leaseholders and, indeed, some buy-to-let leaseholders. That is clearly not acceptable, because those leaseholders are suffering immensely; the noble Lord, Lord Young of Cookham, gave a vivid example of that.

So the challenge to the Government and to the Minister, which I hope she will take up and respond to, is: what, then, can be done? The Government have tried to put in place a series of funding mechanisms and responsibilities, but that is clearly failing to help thousands upon thousands of leaseholders.

The Minister was unfortunately—or fortunately, for her—was not part of the long discussions on what became the Building Safety Act. We were promised at the time that leaseholders would not be expected to pay, but that is clearly not bearing out in practice. Therefore, I hope the Minister will go back to her department and ask those fundamental questions. The Government's purpose, as expressed by the Secretary of State Michael Gove, was that it was morally reprehensible for leaseholders to pay. If that is the case, let us put that into practice and find a route through, so that no leaseholder pays anything. They have done nothing wrong and they should not be expected to pay.

In his proposed new schedule to the Bill, the noble Earl, Lord Lytton, has made a very detailed proposal about the polluter pays principle. I concur with the principle that those who cause the damage—the construction companies and the materials manufacturers—must pay. We have to find to find a way for that to work in practice. I am hoping that the Minister will come up with some answers.

Finally, the noble Baroness, Lady Hayman of Ullock, has once again raised the issue of second staircases in high-rise buildings and houses in multiple occupation, which we debated during the progress of what became the Fire Safety Act and also the Building Safety Act. Most of us said that, yes, that was the expert advice from the fire service chiefs and that is what we should do; but, unfortunately, that was not accepted by the Government.

I agree with the noble Baroness's amendment, but I go back to the key to all this. My view—and that of all who have spoken, through all the outcomes that followed the Grenfell fire tragedy—is that, however the remediation of these buildings, of all heights, is resolved, when it comes to the leaseholders, whether enfranchised or unenfranchised, whatever happens, they must not pay. I look forward to the Minister's response.

Baroness Scott of Bybrook (Con): My Lords, in his Amendments 274, 318, 320 and 325, the noble Earl, Lord Lytton, returns us to subjects that we debated extensively this time last year in what was then the Building Safety Bill. I say to the noble Earl, with the greatest of respect, that this House and the other place considered his arguments carefully last year and rejected them. I really do not think that this Bill is an appropriate place to try to reopen these issues.

Last year, the Government opposed the noble Earl's scheme and proposed an alternative, the leaseholder protection package, which was agreed by your Lordships and the other place. As your Lordships will be aware, the leaseholder protections in what is now the Building Safety Act 2022 have been in force since June 2022 and form part of the Government's response to the need to fix defective buildings, alongside a number of other measures that my right honourable friend the Secretary of State set out recently in a Statement in the other place, which was repeated for your Lordships.

Those protections are complex. I would be very happy to have a meeting with interested Peers to discuss the Government's actions in detail if that would be helpful. If any noble Lord would like to do that, they can get in touch with me or my office and we would be very happy to set that up. But, as I said, the protections are complex and it is true that it has taken time for the various professionals working in this space to get to grips with them. None the less, there is now progress on getting work done, getting mortgages

issued on affected flats and moving the conversation forward with the insurance industry to ensure that remediation can be undertaken and that building insurance premiums, which had been excessively high, reflect this reduction in building risk.

I want to be clear with your Lordships: the leaseholder protections are working. The first remediation contribution order to get money back for leaseholders has been made by the tribunal and is being enforced now. In response to my noble friend Lord Young of Cookham, I can say that there have been a further 12 applications for remediation orders to the First-tier Tribunal and nine for contribution orders; that is up to the end of December—we do not have any further updated figures.

The Government's recovery strategy unit is litigating against large freeholders, and leaseholders have the peace of mind that the remediation bills they were facing—sometimes for more than the value of their home—are no more. I emphasise to your Lordships that changing the basis on which leaseholders are protected would set back by months the progress of remediation work, which is finally happening at pace, and would create further uncertainty in the market.

In addition to the inevitable delay to remediation that would be caused if the noble Earl's proposals were adopted, I must emphasise that the objections set out by my noble friend Lord Greenhalgh, when he spoke from this Dispatch Box last year, are still relevant. The building-by-building assessment process that he proposes would be both costly and time-consuming, which would not be in anyone's interest.

While the noble Earl says that his scheme seeks to avoid litigation, our experience shows that the level of complexity and the sums at stake in this field mean that litigation is inevitable—and will necessarily take place in the High Court, rather than the expert tribunal already dealing with disputes under the leaseholder protections, increasing costs and the time taken to resolve cases. I should also make it clear that the Government's package of measures in this space goes much further than the leaseholder protections set out in the Building Safety Act.

At this point, I would like to answer a few questions. Both my noble friend Lord Young and the noble Earl, Lord Lytton, brought up the point of "under 11 metres", which I know has been an issue raised. I think I have said many times at this Dispatch Box that the views of the independent experts are clear: there is no systematic risk in buildings under 11 metres. However, we continue to look at these on a case-by-case basis and provide any help to those leaseholders accordingly. If my noble friend Lord Young of Cookham would like to let me have the letter that was sent to him, I would be happy for the team to look at it.

6.30 pm

There are other non-qualifying leaseholders, as we have heard, who are not protected under the Government's scheme. The protections were always intended to protect people from the cost of fixing their homes. They spread the cost among the various parties who have invested in property—be that developers, freeholders or commercial leaseholders—on the basis that all investments carry a degree of risk.

The leaseholder protections already provide a number of protections for those leaseholders who do not qualify for full protection. First, where landlords are, or are connected with, the developer, all leaseholders are fully protected. In other buildings, where some leaseholders are qualifying, the non-qualifying leaseholders cannot have their share of the costs increased to meet a shortfall in funding. Non-qualifying leaseholders are able to seek a remediation contribution order from the tribunal against a developer, contractor et al in exactly the same way as qualifying leaseholders. In addition, where a developer has signed the developer remediation contract, they will fund all necessary remediation work, both cladding related and non-cladding related, irrespective of whether individual leases in those buildings are qualifying under the protections or not.

My noble friend Lord Young of Cookham asked whether the Government have sufficient funds to pay for remediation. The purpose of the building safety levy is to raise funds to cover the cost of the remediation of historic building safety defects. The Bill was amended to expand the scope of the levy and raise the revenue required to fund essential remediation work, so there is enough money in the pot.

My noble friend is absolutely right about enfranchisement. We have been out to consultation. We are now considering the responses on enfranchised buildings and will bring forward proposals in due course.

The noble Baronesses, Lady Hayman of Ullock and Lady Pinnock, asked when the Government will resolve the issues of protecting leaseholders. We are carefully monitoring the operation of the leaseholder protections. If any changes are necessary, we will bring forward appropriate guidance or legislation to make those changes as soon as possible. We have a recovery strategy unit that is taking forward litigation against large property owners to ensure that they meet their responsibilities. So we have not forgotten them; we are continuing to monitor the issue and will make changes as required.

So far, so good. I shall now address Amendments 274 and 318 in detail. The amendments call for the creation of a building safety remediation scheme with powers to halt development through the planning system. I point out that the Building Safety Act already enables the Government to do that. Using powers provided by the Act, the Government intend very soon to lay regulations to establish and implement a responsible actors scheme and, subject to parliamentary approval, the regulations are expected to come into force in early summer 2023. To join the scheme, eligible developers will have to enter into, and comply with the terms of, the developer remediation contract. As of today, 46 developers have signed the developer remediation contract, including all the top 10 housebuilders.

The developers that sign the contract are contractually obliged to fix life-critical fire safety issues in all residential buildings over 11 metres in height that they had a role in developing or refurbishing in England in the last 30 years. The scheme will recognise the positive action of responsible developers. Eligible developers that do not enter into and comply with the terms of the developer remediation contract and join the scheme will be prohibited from carrying out major developments and gaining building control sign-off.

[Baroness Scott of Bybrook]

The scheme is an important step towards resolving the cladding crisis and is an important part of the overall strategy to protect leaseholders from bearing costs unfairly, while making sure that industry contributes to the cost of putting right historic building safety defects. Where developers or building owners do not take responsibility for cladding remediation, the Government have committed £5.1 billion, including £4.5 billion for the building safety fund, to address life-critical fire safety risks associated with cladding in high-rise residential buildings of 18 metres and over in England.

Amendments 320 and 325 would mean that proceeds from the infrastructure levy could be used to support building remediation. Using powers under the Building Act 1984, the Government will lay before Parliament affirmative regulations to enable a new building safety levy to be imposed. The purpose of the building safety levy is to meet building safety expenditure. The building safety levy funds will be used to offset the costs incurred by the public purse in providing financial assistance to improve the safety of buildings in England. The new levy will apply to new residential development unless the development is excluded. It is anticipated that the building safety levy will raise £3 billion to address cladding, as well as other building safety issues, in cases where developers do not take responsibility.

It is important that local planning authorities can use infrastructure levy revenues to fund local infrastructure in their area, such as affordable housing, GP surgeries, schools and roads, to mitigate the impact of development on an area. It is therefore right that the introduction of the building safety levy will support building safety matters separately.

Amendment 504GJD, tabled by the noble Baroness, Lady Hayman of Ullock, would require Ministers to make a Statement to Parliament outlining their position on single staircases in large multiple-occupancy residential buildings within 60 days of the passage of the Bill. The department has been clear in our commitment to ensure that residents are, and feel, safe in their homes. I agree with the noble Baroness that that is vitally important.

In December 2022, we launched a consultation asking for views on the provision of single stairs in residential buildings. Our consultation contained a clear proposal to introduce, for the first time in England, a maximum height threshold of 30 metres for using a single staircase in residential buildings. The consultation closed on 17 March. We have received over 280 responses, and it is right that we carefully consider the responses received to ensure that all the evidence is considered. We will set out further information on the timing and policy direction at the earliest opportunity.

In conclusion, I hope that the reasons I have set out provide sufficient assurance that the noble Earl, Lord Lytton, will be able to withdraw his amendment, and that he and other noble Lords will not press the other amendments. I hope this has also provided positive news for the noble Baroness opposite and that she will agree not to move her amendment when it is reached.

The Earl of Lytton (CB): My Lords, this has been an extremely interesting debate. I thank all noble Lords for their contributions on this group of amendments.

I thank the noble Lord, Lord Young, for covering all the technical bits that brevity forced me to omit; I am grateful to him for that. The right reverend Prelate the Bishop of Guildford gave an outstanding and thought-provoking commentary on, among other things, corporate motivation and where that should sit in the rules-based order.

The noble Baroness, Lady Fox, asked me some specific questions. I will give it a go in terms of giving her a brief response, but if she wants more information then I ask her to let me know because I may need to write to her. She asked me about the potential damage to the construction industry. My belief is that the construction industry should be able to build its way out of the liability—admittedly, probably at a lower profit margin, but that should be a viable option for it, so I do not see this as being a total loss. One of her later points was about market damage. The best estimate at the moment is that about 10% of the blocks are affected, which effectively means that 90% of them are built to good standards and do not present a problem. The risk is that if we do not deal with those forthrightly, and if the Government's programme is not continually ahead of expectation, the rotten apples will end up infecting a much wider cohort than would otherwise be the case.

The noble Baroness also picked me up on the demonisation of the term "polluter pays". I hope that I avoided using that term in referring to the building safety remediation scheme, but I know that outside it has attracted that moniker. That is of course a reflection on the environmental liability; coming further forward in time from that strict liability, we have a more direct example. It is of health and safety, particularly on construction sites. The strict liability that was imposed under that regime substantially improved the rate of death and injury in construction. I believe the same focus that this liability would generate is applicable here, bearing in mind that we are talking about vulnerable people in their own homes and that they are asleep and unconscious for maybe 25% to 30% of the time. They really need to know that that is their safe haven and not to feel threatened in it by issues of safety or finance, such as not being able to transact their property.

I thank the noble Baronesses, Lady Hayman of Ullock and Lady Pinnock, for their support. The noble Baroness, Lady Pinnock, has been an absolutely doughty supporter of the principle throughout. I pay tribute to that, as I do to my noble friend Lord Cromwell for his contribution. I am most grateful.

I thank the Minister for her response but I am disappointed. The fact of the matter is that a very large number of flats are excluded. There is no prospect of any early protection from costs that their owners are not responsible for. Litigation against freeholders is all very well, provided that the freeholders were those who were responsible for the problem in the first place. But if they are not, because they just happen to be from a pension fund that picked it up along the way, no doubt relying on the same sign-off and building warranties as all the occupiers, then I have to say that this looks like the Government plucking at low-hanging

fruit for the purposes of PR and marketing. I am sorry, but I do not buy the principle that letting others off the hook should necessitate going after people who may themselves be, beyond peradventure, innocent.

The Minister also referred to the comment made just over a year ago saying that the amendment I moved then, of which I hope this one can be regarded as a new and upgraded version, was not cost effective because it would require a building-by-building assessment. But you do not establish anything unless somebody goes and looks at the building on an individual basis; I know that as a surveyor. I have looked at hundreds of buildings in my professional life and that is where it starts. The Government's own approval to any sub 11-metre matters is described as being on a case-by-case basis, so what is the difference?

6.45 pm

The views of the independent expert panel were referred to, and a very worthy panel it is, but I saw that the issue of where this critical life safety came out had a different algorithm. It was a different function of the problem from the one that I am trying to address. The noble Lord, Lord Young, referred to the fire at Richmond House in Worcester Park, which happened about 11 months before the independent expert statement was published. My understanding is that fatalities there—mercifully there were none and, I gather, no injuries—would have been far more likely had the "stay put" instruction not been ignored by the residents, who got themselves out of the building, and just as well. But that exemplifies the fact that low rise does not mean zero risk; it is a matter of judgment as to whether the risk is acceptable. If you look at risk on the spectrum that we are considering, you simply would not accept that level of safety in a car or in many household goods.

I am sorry to say to the Minister that I do not follow the arguments here. I do not regard the rather labyrinthine approach that the Government are embarked on as satisfactory. I will ponder what she says but I may very well return to this issue later in the Bill's progress, as it is clearly not going away and there is a huge expectation outside this House that something is going to be done about it. The Government seem to be relying on levies and developer contributions. I am not clear whether that adds up to anywhere near what some industry observers, with no axe to grind, are suggesting will be the totality of billions that will be involved in remediation on a national scale. Having said that, I will consider this further and while I hope that the noble Baroness, Lady Fox, will tell me if I have not succeeded in answering her questions, for the time being I beg leave to withdraw the amendment.

Amendment 274 withdrawn.

Amendment 274A not moved.

Clause 107: Time limits for enforcement

Amendment 275

Moved by ***Baroness Taylor of Stevenage***

275: Clause 107, page 142, line 8, after "completed," insert "or 4 years if there is a significant impact on the local environment,"

Member's explanatory statement

This means that the extended time limits for enforcement of planning controls does not apply when there is a significant impact on the local environment.

Baroness Taylor of Stevenage (Lab): My Lords, I shall also speak to Amendments 277, 280 to 281B and 282 in the name of my noble friend Lady Hayman and in mine. I shall also make some comments in relation to Amendments 276, 278 and 279, in the name of the noble Earl, Lord Lytton, and Amendment 281C in the name of the noble and learned Lord, Lord Hope of Craighead.

The increasingly acrimonious circumstances in which planning is often discussed, debated and granted has significantly increased the burden of enforcement. This is combined with a contraction of local authority planning teams due to reductions in local authority funding, which is putting increasing burdens on the planning process, as we have already debated today in Committee. Our amendments are in recognition of that and to ensure that timescales, fines and practices are developed in a way that is proportionate to the current circumstances.

As one brief example, most local councillors will be familiar with their weekly planning list having a number of certificate of lawfulness applications—they are a particular bugbear of mine. These mean that the applicant has not applied for the appropriate permissions in advance and, having now built out their development, is only now seeking the approval of the planning authority. There is little if any appropriate sanction for this behaviour, which seems grossly unfair to all those who take the necessary steps to submit their applications properly in advance of building.

It is fair to say that such developers face the risk of the planning authority turning down their retrospective application, and there have been notable examples of authorities requiring buildings and/or alterations to be taken down. However, with the powers of enforcement diminished, both in this respect and for straightforward breaches of planning, simply by the lack of resources to deal with enforcement, the danger is that we continue to see from the worst offenders a cavalier approach taken to the planning process.

Amendments 275 and 277 in the name of my noble friend Lady Hayman of Ullock are designed to draw attention to the fact that it may be necessary to foreshorten the extended time limits for the enforcement of planning controls where there is a significant impact on the environment. We appreciate that the 10-year window is necessary for raising issues relating to planning enforcement, but it will be important that all involved in development understand that, if enforcement relates to an issue where substantial harm is being caused to the environment, planning officers will expect these to be dealt with more quickly. We hope this amendment will give them the power to do so. The amendment aims to prevent a delayed response from developers, not to limit the amount of time planning controls can be exercised over environmental matters. This should be 10 years, as for all other matters.

We have discussed previously in Committee the need for rapid digitisation of the planning process, where that has not already been done. Amendment 280 is a probing amendment to ensure that this is the case for the enforcement aspects of planning as well.

[Baroness Taylor of Stevenage]

As in other parts of the Bill, we believe that new burdens may be imposed on local authorities in relation to enforcement. Amendment 281 in my name is to flag up again that there will be a need for an overall assessment of all parts of the Bill to understand the likely financial impact on local authorities. We have received previous assurances from the Minister on new burdens funding. It would be good to know that relevant professional and representative bodies will be consulted on this important issue as quickly as possible after the Bill passes into law, so that no undue financial burdens are placed on already hard-pressed local authorities.

As we have discussed in previous clauses, the financial burden of planning does not fall proportionately on the developer, which is true of enforcement too. Amendment 281A in the name of my noble friend Lady Hayman of Ullock is included to ensure that we do not inadvertently create an enforcement fine regime where it is more cost effective for the developer to breach planning rules and guidelines because the cost of non-compliance is less than the profit they are likely to make from any breach.

My Amendment 281B seeks to introduce a very important provision that would prevent developers applying for an exemption to the provisions in a planning application to deliver affordable housing in a development. We are all very familiar with the long wrangles that planning authorities are having over viability. Our concern is that, if this exemption from enforcement clause were to apply to the delivery of agreed affordable housing, it would simply be another get-out clause in the armoury for developers, with their significant legal firepower, to avoid providing much-needed affordable housing.

Clause 116 is concerned with ensuring that the planning process works as efficiently as possible and makes best use of digital technology. My Amendment 282 seeks to set the purpose of this in the Bill, so there can be no doubt that it is the intention to avoid delays wherever possible.

Amendment 276 is in the names of the noble Earls, Lord Lytton and Lord Devon. Just as our amendments recognise the importance of a shorter enforcement period for environmental issues, it recognises the importance of changes of use to a dwelling house. We agree that, where enforcement relates to somebody's home, a shorter time period than 10 years would be preferable.

Amendment 278, in the names of the noble Earls, Lord Lytton and Lord Devon, recommends consultation with affected parties on extending the time limits for planning enforcement from four years to 10 years. We would always support such steps, as professional bodies and local government representative bodies can be essential consultees in ensuring that all consequences are understood from the outset and that any unintended consequences can be predicted and mitigated.

On Amendment 279, in the names of the noble Earls, Lord Lytton and Lord Devon, we will be interested to hear the Minister's response on whether it is the intention for the provisions of the Bill to be retrospectively applied to developments which, under current legislation, have reached the time limit for enforcement. Is the legislation to apply only to enforcement for developments started after the commencement of the Act? Will there be a transition period, or will it automatically apply to all developments that have reached the current four-year limit?

Amendment 281C in the name of the noble and learned Lord, Lord Hope of Craighead, seeks to insert in the Bill the explanation of the purpose of Clause 113, as is contained in the Explanatory Notes. We have had a number of examples during our examination of this Bill where the absence of these explanatory clauses could potentially cause ambiguity in their interpretation. Therefore, we support this sensible move to insert the explanatory clause in the Bill. I beg to move my amendment.

The Earl of Lytton (CB): My Lords, probing Amendment 276, and Amendments 278 in 279, are in my name and that of the noble Earl, Lord Devon, who is regrettably unable to be with us today. Apart from declaring an interest as a property owner, I must also explain that I have in the past been threatened with enforcement proceedings—so guilty as charged, or perhaps not guilty as charged. I am very grateful to a number of planning practitioners who explained some of the finer points of all this to me.

These amendments relate to Clause 107 and refer to what is known as the four-year rule. The current position is that, if works to a property have been undertaken more than four years previously, the owner is immune from enforcement action by the local authority. The equivalent period for changes of use, which of course may be harder to spot, is 10 years. A minimum of 10 years unchallenged enjoyment of both works and change of use is required before a lawful use certificate can be claimed. If you like, the entitlement at that stage becomes absolute.

I should add that, for works or changes of use to a listed building or, I think, for one in a conservation area, time does not run against the enforcing authority, and so protection of heritage is not an issue. Furthermore, works of development that are done secretively or by concealment are, I believe, also not protected by the four-year rule. So the building of a house within the confines of an agricultural barn, as happened in one rather infamous case, would not escape.

The system has operated for many years, quite successfully as far as I know. In the most recent review of the arrangements, the four-year cut off remained unamended. My own sense is that, if works have not been spotted after four years, it is quite unlikely that they will be spotted more readily in years five to 10. Indeed, one might conclude that, if it is that unobtrusive, it should scarcely be a planning concern anyway. It is more likely that it will crop up to ensnare an unwary owner who makes a subsequent application and some historic non-compliance is spotted at that stage.

The four-year rule also recognises that planning is complex, with many pitfalls for the unwary, and that it is not necessary or desirable to micromanage planning uses of land and buildings. For instance, erection of deer fencing, construction of ponds and the placing of certain structures on land may in some cases require consent but in others they do not. A movable item nearly always does not trigger a planning issue but leaving it in the same place for too long does.

Many households think that a permitted development right absolves them of the need for any consent at all. I believe it is government policy to reduce burdens on householders. Furthermore, where a local planning authority has issued what is known as an Article 4 direction, removing permitted development rights for certain types of development, owners may not be aware of this or be made aware, even in a purchase situation. As in one instance which occurred in my professional career, a shopkeeper might find that they are subject to enforcement procedures for displaying an internally illuminated sign fixed to the interior of their shop window glass, but not if it is a foot or two further back. The rules are opaque, convoluted and may be interpreted differentially per authority. As I see it, the four-year rule served to prevent this becoming a more serious issue.

But Clause 107 would remove this protection. I know of no justification for doing this, nor any public consultation that underpins that decision to include it in the Bill. I think that most householders, and possibly quite a few lenders, would view this with concern. But the removal would have, in my opinion, a somewhat more sinister side-effect. I know of instances whereby an annoyed builder has set out to shop a property owner who did not award him a contract of works, or shopped the successful contractor—or a neighbour averring to the authorities that works in non-compliance are taking place, either because of neighbourly detestation or, as in one case known to me, because the neighbour took umbrage about the builders' vehicle parking and plant-unloading arrangements in the street outside their home. So to leave the door open for an additional six years to this sort of risk of a snooper's charter is socially, economically and administratively undesirable.

7 pm

Other noble Lords may refer to specific instances that I have not covered, but one that seems to me to apply is the conversion of attic space into living accommodation, where permitted development may allow it and half the rest of the street may have done it. That might be one particular instance. The objection might be not the principle of the conversion but about the materials and finishes, hidden away in some local design code, with a footnote about not using, say, PVC, about which the householder could not normally be expected to know, having never been notified of any such requirement. Why would they inquire, given every other similar local project in the street had used PVC? I use that just as an example.

Planning should not be the stuff of oppressive or intrusive regulatory control, save in areas where it is necessary. In any event, I have severe doubts whether local planning authorities have the resources to make any better use of the enlarged timeframe. So these amendments attempt to modify the effect of Clause 107 and provide a better degree of fairness and balance.

There is a specific issue about dwellings and, especially as I perceive it, the lack of planning compliance of works not always being identifiable on normal property searches. It may not be at all clear how long some feature has been in place. Amendment 276 attempts to address this. I mentioned the lack of consultation, and Amendment 278 seeks to address that. I think that there should be consultation, and an analysis of responses, before Clause 107 is put in place. What happens to a property with unconsented works carried out five years ago, where under the existing rules they would be immune, but under the new rules, introduced by this Bill, they would not? There is no provision in the Bill for transitional process. That needs clarifying, and Amendment 279 seeks to do just that.

Lord Hope of Craighead (CB): I shall speak to Amendment 281C. I am grateful to the noble Baroness, Lady Taylor of Stevenage, for her introduction and support for that amendment. It is one of two amendments which I have tabled to give effect to recommendations by the Constitution Committee, of which I am a member, seeking to promote the principle of legal certainty. The problem which concerned the committee in this case relates to the width of the power in the new Section 196E, introduced by Clause 113.

The Explanatory Notes say that the position at the moment about decisions

"to take enforcement action in response to breaches of planning control is at the discretion of the local planning authority".

New Section 196E seeks to give power to the Secretary of State to provide relief from enforcement and planning conditions in a particular way, by providing that a local planning authority

"may not take … relevant enforcement measures"

or is subject to particular restrictions as to whether it should take that step.

The reason given in the Explanatory Notes is really a bit of history. In the difficult circumstances that arose as a result of the Covid-19 pandemic, with a later acute shortage of heavy goods vehicles,

"local planning authorities have been encouraged to be flexible in terms of enforcement action of non-compliance with conditions imposed on grants of planning permission which govern construction working hours and delivery hours".

Those are the kind of conditions put forward to protect the environment of local residents, and so on—and, obviously, when they are imposed, they are imposed for a very good reason. But the Covid-19 situation, with the acute shortage of heavy goods vehicles, made it desirable that these hours should be extended, instead of being restricted to hours that would not interfere with people's sleep, or whatever else it would be. There was a good reason for being more flexible and allowing the hours to be extended.

That is the background to the step being taken here, but the Constitution Committee's concern was about the width of the power being sought under new Section 196E. The section is carefully drafted, because it says that what the Secretary of State may do by regulations is to give direct attention to

"relevant enforcement measures in relation to any actual or apparent failure to comply with a relevant planning condition".

Those expressions, "relevant enforcement measures" and "relevant planning condition", are carefully defined in this new section and are wide in their scope. "Enforcement measures" includes all the powers that one might expect—the powers to apply for enforcement orders, injunctions and entry without a warrant, and so on, to see what is going on, and to deal with issues about planning contravention notices, temporary stop notices, enforcement notices, warning notices and so on.

[Lord Hope of Craighead]

The new section is very carefully drafted. What it does not do is contain any kind of limit on the extent to which the power might be used, which is why the Constitution Committee, in its report, said that it was concerned by the breadth of the power and recommended that the clause should be amended to ensure that the power was limited to

"emergency situations or other forms of serious disruption",

following the example set out in the Explanatory Notes. My amendment provides simply that the power may be exercised only

"in the event of an emergency or other form of serious disruption which makes it necessary for the local planning authority to be provided with this relief".

As I said, the background is that, in any case at the moment, the local authority has a discretion as to how far it should go in dealing with breaches of planning conditions, but the power is actually giving directions. Therefore it is necessary, in the interests of legal certainty, that the scope of the power should be limited along the lines that my amendment suggests.

Baroness Thornhill (LD): My Lords, this is a really interesting group of amendments and clearly very technical and detailed. The Minister may be relieved that I shall keep my comments quite simple, to address certain principles.

Clause 107 represents a radical change. There is quite a difference between four years and 10 years, which will apply to all forms of unauthorised development. As has already been said by the noble Earl, Lord Lytton, the Explanatory Notes do not actually give any rationale for the actual number of years. Is it a proposal following consultation of some sort, or just a figure between four and 10—in which case, may I suggest six? I would be interested to know how it was arrived at.

I am also interested in the Minister's response to the noble Earl's Amendments 278 and 279 on transition and consultation, which both seem reasonable and sensible, given that this is a significant time change, with consequences following from the scale of the change.

I agree that there is definitely some sense in bringing about a single limitation period, beyond which all such development is lawful, to put an end to the fraught arguments and confusion of what applies to which and when and why. Such confusions, in my experience, come from all parties—council officers, definitely residents and even on occasion legal representatives. It is not straightforward. When is a garage not a garage? What is a garage? I remember that one vividly.

Amendment 276 in the name of the noble Earls seeks to retain the four-year rule where a breach—I am choosing my words very carefully—involves a place where people live. From my urban experience, I have seen too many "beds in sheds" where, at worst, people are living in conditions not fit for animals and at best, they are massively overcrowded with inadequate facilities. Nobody should get away with exploiting vulnerable people, who are living in those conditions because they are desperate, just because the breach was reported only after four years and one day.

On Amendments 275 and 277 in the name of the noble Baroness, Lady Hayman of Ullock, I seek clarification from the Minister and I accept that I may have got this wrong. Given that I agree with many of the noble Baroness's amendments and her way of thinking about the Bill, I am, in a sense, sense checking. As I read it, the Government's intention in this clause is to give local planning authorities a considerably longer timeframe—some might say too long—to intervene in a breach of unlawful planning that has been brought to their attention. I would say that was a good thing from the point of view of the local authority, affected residents and communities. Therefore, would her two amendments, if passed, mean that despite the breach having

"a significant impact on the local environment",

the noble Baroness is seeking to reduce the time that residents have to notice it and their council to respond? It is the time to enforce and not the time to comply with enforcement: that is my understanding. Perhaps the Minister can clarify that and put me right.

Amendments 281 and 281A in the names of the noble Baronesses, Lady Taylor and Lady Hayman, deal with council finances. The situation was described well, so I do not need to repeat that, but what I will say is that enforcement is a very important service. We all want and need more effective enforcement. Poor enforcement across a whole council can undermine all our efforts to improve the place we live in. Enforcement is a big signal to residents that their council cares about what goes on in their areas and will do something about it. Over the years, I found it was a trust issue with residents, about "Whose side are you on?" Helpless cries of, "Well, it's outside the four-year period" cut no ice.

The harsh reality, particularly in district councils, is that, increasingly, councils are responding only to breaches that are brought to their attention, rather than proactively going out looking for them, which I think is something we all think they should do and which should cut across a wide range of council functions. The reality is that, due to the reduction of available funding and a decline in the number of skilled staff over many years, that is not happening. Capacity and capability is an issue here too. The real skill in enforcement work is to bring about compliance without the need to serve notices and go to court, with all the additional cost and time that that incurs, in order to perhaps get a paltry fine. In my experience, most council officers will seek not to do the sorts of things that the noble Earl, Lord Lytton, mentioned; they actually work very hard to take proportionate and flexible actions with minor infringements.

On Amendment 281B in the name of the noble Baroness, Lady Taylor, about social housing, we all know that of all the current Section 106 obligations that developers try to wheedle out of, social housing is their number one target. Reducing the wriggle room and strengthening this obligation is surely a good thing. We have several ex-council leaders in the Chamber who will all have experienced occasions when a developer has found it more cost effective to breach the rules and pay the fine. Chopping down trees covered by tree preservation orders is a regular example that springs to mind. We are all battle scarred, hence our cynicism regarding some developers and the desire to recover full costs, as in our earlier debate.

7.15 pm

I agree wholeheartedly with Amendment 281C in the name of the noble and learned Lord, Lord Hope of Craighead. The Bill is riddled with two very worrying threads of intention. Yet again, even more powers will be given to the Secretary of State to intervene and, yet again, exactly how, when and why are to be given in subordinate legislation: the often-mentioned revised NPPF, the contents of which we still do not know. The power given to a Secretary of State to overturn the legal and democratic process is necessary but rarely used—and then only in extreme circumstances—for very good reasons. However, that has been undermined in recent years and most recently by announcements by the current Secretary of State. I therefore understand and share the noble and learned Lord's concerns.

Earl Howe (Con): My Lords, all the amendments in this group relate to the enforcement clauses in the Bill and it may be helpful if I begin by explaining briefly the rationale for the package of enforcement measures that the Bill contains. The Government recognise that effective enforcement is vital to maintain public confidence and trust in the planning system. The noble Baroness, Lady Thornhill, made that point very powerfully. Local planning authorities already have a wide range of enforcement powers, with strong penalties for non-compliance, to tackle breaches of planning control. The Bill's measures are intended to strengthen those powers so that local planning authorities are better able to take the robust action their communities want to see.

Amendments 275 to 279 inclusive all deal with Clause 107 on enforcement time limits. Amendments 275 and 277, tabled by the noble Baroness, Lady Hayman of Ullock, seek to retain the current four-year time limit for commencing enforcement action against breaches of planning control where the breach has a significant impact on the local environment. Amendments 276 in the name of the noble Earl, Lord Lytton, seeks to retain the four-year time period after which enforcement action cannot be brought where there has been a breach of planning control consisting of the change of use of any building to use as a single dwelling house. Amendment 278 in the name of the noble Earl would require consultation to take place and a report to be published before Clause 107 can come into force. The noble Earl's further amendment, Amendment 279, seeks to add to the Bill confirmation that breaches of planning control which are currently immune from enforcement action will remain immune following the passing of the Act.

Let me give the Committee some background on the need for Clause 107. Currently, Section 171B(1) of the Town and Country Planning Act 1990 imposes a four-year time limit on local planning authorities beginning enforcement action against a breach of planning control consisting of building, engineering, mining or other operations. Section 171B(2) imposes the same four-year time limit for a breach of planning control consisting of a change of use of any building to use as a single dwelling house. All other breaches of planning control are subject to a 10-year time limit. However, we have heard from key stakeholders the very point made by the noble Baroness, Lady Thornhill, that there are some cases where the current four-year time limit is not long enough and the opportunity to commence enforcement action is inadvertently missed.

For example, a person may not initially raise concerns with a local planning authority, assuming a neighbouring development has the correct permissions or will not cause disturbance. Should the development prove disruptive, they may then try to come to an agreement with the person responsible for it. However, by the time they raise their concerns with the local planning authority, the opportunity to commence enforcement action may have passed.

We have also heard that having two timescales for enforcement can unnecessarily complicate cases. For example, where a new building has been constructed on land, enforcement action could be taken against the construction of the building itself, subject to the four-year rule, or against the material change of use of the land brought about by the construction of the building and its subsequent use, subject to the 10-year rule. This uncertainty can lead to lengthy and resource-intensive appeals and court cases debating the starting point for immunity.

Clause 107 seeks to address all these issues by making the time limit 10 years for all breaches of planning control in England. This will create greater certainty and consistency for all parties involved in the planning enforcement process and ensure that the opportunity to commence enforcement action is not inadvertently missed. To be very clear, Clause 107 is not about delaying the enforcement process unnecessarily. The expectation will remain that local planning authorities should act promptly to investigate and remedy breaches of planning control as quickly as possible.

Amendment 278 is about consultation. As I have already explained, we have engaged with key stakeholders during the preparation of the Bill. This package of enforcement measures is what the profession identified would most help it carry out its job more effectively. On the noble Earl's Amendment 279, we will make transitional provisions in regulations to ensure that breaches of planning control that are currently immune from enforcement action will remain immune following the passage of the Bill. I hope that, with these reassurances, he will agree that these amendments are not required.

Amendment 280, tabled by the noble Baroness, Lady Taylor of Stevenage, seeks to probe how technology can be used to support the new planning process. The Government share this ambition. We are keen to modernise the planning process and make better use of technology; amendments in Chapter 1 of Part 3 of the Bill, on planning data, are designed to do just that.

The new enforcement warning notices that we are introducing through the Bill may be served in a number of ways, including by electronic means, but I do not think it would be appropriate to make this the only means of serving such a notice. Enforcement warning notices are a planning enforcement tool. It is therefore vital that, if a local planning authority is beginning enforcement action, those against whom action is being taken receive the notices. Some do not use or have access to digital communication tools, and we must ensure that they are not disadvantaged. There is also the issue that an enforcement warning notice may

[Earl Howe]
be served on someone who has not engaged with the local planning authority and so the authority would not have an email address for them. I hope that, with this explanation, the noble Baroness will agree that this amendment is unnecessary.

Amendment 281, tabled by the noble Baroness, Lady Taylor, is about local authority resources. The measures in the Bill are designed to make the existing framework easier to use for enforcement officers. Where we are introducing new powers such as enforcement warning notices, their use is discretionary. As such, I do not think these measures will create significant additional burdens or resource pressures for local planning authorities.

However, we recognise that many local planning authorities already face capacity and capability challenges and we are taking steps to address this issue. We are currently consulting on proposals to increase planning application fees. In the enforcement context, this includes a proposal to double the fee for retrospective applications, in recognition that they often create additional work for officers over and above what is required for a regular application. To ensure that local planning authorities are well equipped and supported to deliver their existing requirements as well as the changes set out in the Bill, we have already started to work alongside the sector to design targeted interventions to support the development of critical skills and to build capacity across local planning authorities. With these reassurances, I hope the noble Baroness will agree that Amendment 281 is unnecessary.

I turn to Amendment 281A, tabled by the noble Baroness, Lady Hayman, and spoken to by the noble Baroness, Lady Taylor. The level of fine for failure to comply with a breach of condition notice is currently level 4 on the standard scale—a maximum of £2,500. The purpose of Clause 112 is to make fines for this offence unlimited, bringing them into line with the levels of fine for other planning enforcement offences. Amendment 281A would introduce a new sentencing requirement for this offence which would not apply to sentencing for other planning enforcement offences. It would not be reasonable to create a more punitive sentencing regime for the offence of non-compliance with a breach of condition notice than for other planning enforcement offences.

This amendment would also cut across the national approach to sentencing set out in the Sentencing Code which courts refer to when sentencing offenders. It is for the courts to determine the appropriate level of fine for an offence, taking into account its seriousness and the financial circumstances of the offender, including for this offence. Therefore, while I appreciate the sentiment behind this amendment, I feel that it is not appropriate for those reasons.

Amendment 281B, tabled by the noble Baroness, Lady Taylor, would ensure that relief from enforcement action under Clause 113 cannot be granted for any planning conditions relating to the type or volume of affordable housing. While I appreciate her concern about the power being used to restrict conditions about affordable housing, I reassure her that this is not the intention. Clause 113 has been brought forward to provide a statutory route to provide relief in future from planning conditions that unnecessarily impede economic activities during periods of disruption and uncertainty. This is in response to the experience during the height of the Covid pandemic to enable key business sectors to respond and recover from its impacts where we discouraged enforcement through policy.

Here, we focused exclusively on conditions related to the operative use of land or premises, such as construction working hours or delivery times. We would expect these types of conditions to provide relief from enforcement action in future. Conditions related to affordable housing were not in scope. More importantly, affordable housing provision is primarily secured through Section 106 planning obligations, rather than by condition. The concern that affordable housing provision could be affected by the use of this power is therefore misplaced. It does not affect Section 106 agreements.

Amendment 281C, tabled by the noble and learned Lord, Lord Hope of Craighead, seeks to limit the use of the power under Clause 113 to periods of emergency or serious disruption. I recognise that the Delegated Powers and Regulatory Reform Committee has recommended that this power should be limited to periods of emergency or serious disruption. We are carefully considering its recommendations and will respond to the committee before Report. However, I reassure the noble and learned Lord that I believe the committee has made some valid points on the scope of the power. It is intended to be used in emergencies and periods of disruption, and it will not be used lightly. We recognise that planning conditions are an important way of making development acceptable to communities and we want them to continue to be used.

7.30 pm

Finally, Amendment 282, tabled by the noble Baroness, Lady Taylor of Stevenage, concerns the speeding up of the planning system. There are around 400,000 planning applications every year. The Government have heard many representations that the planning application process is too slow and inaccessible for some users—notably those without expertise, such as ordinary laypeople. Therefore, it requires improvement and modernisation. The powers being brought forward in Clause 116 enable to Government to apply a more consistent, streamlined and digitally enabled approach to the way applications are made, making it easier for everyday people to submit a planning application. This will also make planning data more accessible.

My department is already working with local authorities to tackle the very issue this amendment raises. We are working collaboratively with local authorities through the Open Digital Planning project, which aims to increase efficiencies in the development management process through creating modern development management software. The local authorities that are using the modern development management software we are trialling have seen an estimated 35% time saving in the pre-validation process, when an application is first submitted, and, post validation, in the process the reach a decision. Before enacting these powers, we will fully engage with local planning authorities and the sector as a whole. Given that one of the core aims of this power is to streamline the process, we will, of

course, consider the impact on speed of decision-making. So, while I support the intention of this amendment, I hope the noble Baroness will be content not to move it when it is reached.

Baroness Taylor of Stevenage (Lab): My Lords, I am grateful to all noble Lords who have participated in this debate. I am also grateful to the noble Earl, Lord Howe, for his response. I am afraid that enforcement is an element of planning that is little understood by the public; they often think that our powers and resources are much greater than they are to deal with some of the issues that arise. I pay tribute to planning officers who field all of this on a daily basis. Even in our short discussion here, it has been clear that it is not always very straightforward. We are all striving to improve confidence in the process as we go through the amendments to the Bill.

Some confusion has arisen around the proposed amendments to the time periods, but, having had the explanation from the noble Earl, that is a bit clearer. It was about whether the four-year time limit was there to begin enforcement action and that was now being moved to 10 years, which gives a longer wind. I accept all the comments that have been made—particularly by the noble Earl, Lord Lytton—asking whether, if nobody has noticed it in four years, they will notice it in 10 years, and whether it really matters if they do. However, these issues can be very serious, as we have heard in previous debates in this Committee. I think a longer time period for enforcement to be able to be taken does not make sense, particularly where, as explained, there are two timescales at play in the Town and Country Planning Act.

Our concern is that this might give reasons for delay to the enforcement action itself, particularly for issues around environmental action. We need to make absolutely sure that we are not going to give any opportunity for delay in responding to enforcement action. If there is going to be a delay in the reporting of it, that is one thing. If there is going to be a delay in responding to it, that is a whole other issue. In terms of the points made by the noble Earl on engagement with key stakeholders, I was reassured to hear him say that the delay to the time period had come directly from the key stakeholders involved.

We have had plenty of discussions in previous Committee sessions on the Bill about digitisation. I think that local government has gone quite a lot further than some of the people in DLUHC might think. I will leave that there, but of course we can always do better on digitisation.

The issue of local authority resources is very important to all of us, as we are constantly debating. There are quite a lot of acutely aware people in the public who might see the introduction of enforcement notices, potentially creating an expectation that we are going to have further action on them. We always have to be careful that we look at the resources that are going to be required to deal with new measures, and the same applies to this part of the Bill. I was extremely pleased to hear about the increase in fines for retrospective applications, which have been a long-standing bugbear of mine, as I said earlier.

The noble Earl mentioned that it is not the intention to give relief from affordable housing provisions. I understand what he said: that that provision is directed at emergency provision for construction sites. Those of us who were in local government at the time had plenty of contact from both the construction sector and from members of the public about changes to that—there was a need for emergency procedures then. We will take a closer look at that, as we believe there could be unintended consequences—particularly on the provisions for affordable housing—from that issue.

I will now turn to some of the comments made by other noble Lords. I have already mentioned the comment by the noble Earl, Lord Lytton, who asked whether, if something had not been spotted in four years, it was really an issue at all. It is often surveyors who pick up these issues at the exchange of property: a surveyor might go in and realise that something is not quite right with the property. I was quite surprised to hear the noble Earl say that there should be a line drawn under this after four years. Owners may not be aware of the Article 4 directions; I do think there is a very widespread lack of understanding around Article 4 directions and what they can mean. The rules are certainly a bit opaque, but I do not think it is repressive and intrusive local councils that are causing the problem here.

We do have the issue around HMOs and permitted development—which the noble Baroness, Lady Thornhill, referred to very powerfully—where you end up with these beds in sheds developments. The permitted development and HMO regimes exacerbate that and may need just as much attention as the enforcement mechanisms. I would agree that a better outcome would be trying to get compliance, rather than going into litigation. I really chimed with her point about people chopping down trees with TPOs—they would do that and then worry about the TPO afterwards.

I am grateful for all the responses to the points that have been made. I do remain concerned that the Bill is not terribly clear about whether it is enforcement or reporting of enforcement breaches that are extended to 10 years. That could do with some clarification. We will take a further look at that. With that, I withdraw my amendment for the time being.

Amendment 275 withdrawn.

Amendments 276 to 279 not moved.

Clause 107 agreed.

Clause 108 agreed.

Clause 109: Enforcement warning notices

Amendment 280 not moved.

Clause 109 agreed.

Amendment 281 not moved.

Clauses 110 and 111 agreed.

Clause 112: Penalties for non-compliance

Amendment 281A not moved.

Clause 112 agreed.

Clause 113: Power to provide relief from enforcement of planning conditions

Amendments 281B and 281C not moved.

Clause 113 agreed.

Clause 114 agreed.

House resumed. Committee to begin again not before 8.30 pm.

Fishing Industry: Visas for Foreign Workers

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 20 April.

"I am grateful to the right honourable Gentleman for this Question. I know this is a topic of significant interest to many in the House. Ordinarily, the Immigration Minister would respond, but he is on an operational visit this morning.

It has been the long-standing position of this and previous Governments that foreign nationals coming to work in the UK, be that on land or on our waters, should comply with the immigration system when doing so. I do not believe that that is controversial, and the fishing industry is no exception to that. Section 43 of the Nationality and Borders Act 2022 clarifies the Government's policy position to date: that foreign nationals working in our waters need permission to do so. It does not introduce a new policy. Acknowledging that many in the industry have been incorrectly relying on transit visas rather than work visas to crew their boats, the Government delayed the implementation of Section 43 for six months from October 2022 to allow time for the industry to regularise the position of its workers. However, we have decided not to delay implementation any further.

We are aware of the problems that the industry is having in relation to access to labour, and we are fully cognisant of the important contribution that it makes to the economy, particularly in smaller, rural and coastal areas. There are routes in the immigration system that are available for the fishing industry to use. In recognition of the fact that the industry has not been a wide user of the immigration system to date, we will make a generous offer, going over and above what is usually available to employers, to assist it. We are currently finalising the details of our offer of support as a matter of urgency. Once it is ready, my Home Office colleagues will ensure that it is communicated to the industry and to interested Members of the House."

7.41 pm

Lord Coaker (Lab): My Lords, the UK's fishing industry is in turmoil given the Government's decision to implement a new visa scheme immediately, potentially leaving it short of workers. Why are they doing it? Fishing businesses are waiting weeks for the Home Office to process skilled worker visas. Is it not more sensitive to business viability to wait before implementing the scheme while the Home Office sorts the scheme and itself out? Could the English language requirement for the visa, for example, be made more sensible and reasonable? The UK's valuable and vital fishing industry is going to be put at risk by this high-handed action by the Government. Are they going to act to sort it out, or refuse to listen to the legitimate concerns of the fishing industry?

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): Since the original Question was answered in the other place by Miss Dines, my right honourable friend the Secretary of State has written to stakeholders to inform them of the details of the generous support package which was communicated today to industry leaders and stakeholders. The package is designed to help producer organisations and individual businesses in the seafood sector understand the immigration system and to offer Home Office premium expedited services and products at no cost. It includes: hosting an initial familiarisation session for key leads; working with our commercial partners to ensure that there is sufficient English language testing capacity at locations where workers could be recruited; working with our commercial partners to ensure that workers can access visa application centres to give biometrics; and, once a sponsor licence is received, expediting the decision-making process for no extra charge. Once visa applications are received from workers, expediting the visa decision-making process will also be at no additional charge. Our service standard is 15 working days, but we will endeavour to make decisions in eight to 10 days. We will also appoint a dedicated point of contact in UK Visas and Immigration in relation to these matters.

Lord Teverson (LD): My Lords, the record of this Government and the Tory party is that they talk about how they defend the fishing industry, yet over the last few years they have seemed determined to destroy it. Why does a vessel need a different crew when it fishes within territorial limits from the one it needs when it fishes beyond them? This seems to be red tape, as does the scheme the Minister just explained. This industry has been on its knees, and we need it to thrive—surely we need to change the way that this operates altogether.

Lord Murray of Blidworth (Con): I thank the noble Lord for that question. It has been the long-standing position of this Government and previous ones that foreign nationals coming to work in the UK—be that on land or in our waters—should comply with the immigration system when doing so. I do not believe that this is a controversial proposition, and the fishing industry is no exception. This House and the other place legislated to rectify and clarify the position in Section 43 of the Nationality and Borders Act. The

action that the noble Lord complains about is merely the implementation of those provisions, which have been approved by Parliament.

Lord Knight of Weymouth (Lab): My Lords, a week last Thursday, a good friend of mine in Orkney rang me in some distress. He runs a crab fishing business with two vessels, with several thousand crab creels at the bottom of the north Atlantic. The decision made by the Home Office, which was effective that day, meant he had no way of going and servicing those creels and no way of bringing them in. There is no space on the dock for him to land them if he could bring them in, but if he went to get them with his crew, he would be subject to a potential £20,000 fine per crew. He applied many weeks ago for the skilled worker visas and they are still being processed, so today's letter was not received with great cheer. Can the Government make a special dispensation for Orkney crab businesses to carry on fishing in their traditional waters, which are far off in the north Atlantic but count as inshore due to three tiny uninhabited islands? If they were discarded from the calculation around inshore waters, an important traditional industry for Orkney would be allowed to survive.

Lord Murray of Blidworth (Con): I know that the noble Lord is a doughty campaigner on these issues. Indeed, we have previously exchanged views on this. I am happy to look at the suggestion he raises, but it is right that the fishing industry should be able to utilise domestic labour where possible and use the skilled workers visa route to employ foreign nationals if necessary within 12 nautical miles. I am afraid that it is not within the department's ability to change the geography of the waters around Orkney, but I will certainly look at the matter he raises and write to him about it.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, on Thursday 13 April, the Home Office announced that the scheme to allow visas for workers in aquaculture and offshore renewable industries would now cease for the fishing industry with immediate effect. This caused both outrage and chaos among fishermen, who are now to be classed as skilled workers, unlike seasonal agricultural workers. The immediate cessation of the visa system for the fishing industry came as a total shock. Why was this announcement so sudden, and why was it made during the Easter Recess, producing a catastrophic impact?

Lord Murray of Blidworth (Con): I thank the noble Baroness for that question. It cannot have come as a total shock because we debated the provisions in the Nationality and Borders Act when it passed through Parliament, so the industry had a clear indication at that point of the Government's intention and direction of travel. Turning to the noble Baroness's substantive point, I point out that there are fundamental differences between fishing and the agricultural sectors. The agricultural scheme is seasonal and temporarily provides low-skilled labour for peak seasons in roles that are generally not eligible for skilled worker visas. The fishing industry, by contrast, operates all year round, and the occupations are eligible for skilled worker visas.

Israel and Occupied Palestinian Territories

Statement

The following Statement was made in the House of Commons on Thursday 20 April.

"With your permission, Mr Speaker, I shall make a Statement on the situation in Israel and the Occupied Palestinian Territories.

I know the whole House will join me in condemning the horrific murder of Lucy, Maia and Rina Dee by a terrorist just over a week ago, and in offering our deepest condolences to Rabbi Leo Dee and the rest of the family in their pain and grief. My colleague, the noble Lord, Lord Ahmad, recently joined Lucy Dee's family in London to sit shiva, the Jewish mourning period. I pay tribute to the extraordinary and noble decision of the Dee family to donate Lucy's organs, saving five lives so far and possibly more. That act of compassion and generosity in a moment of tragedy stands in vivid contrast to the senseless and abhorrent violence that robbed a family of its mother and two sisters.

The United Kingdom unequivocally condemns that act of terrorism. My right honourable friend the Foreign Secretary spoke to the Israeli Foreign Minister Eli Cohen on the Friday, shortly after Maia and Rina had been murdered, to offer our sympathy and co-ordinate our response. We also condemn the second act of terrorism against Israel on Good Friday, when a car rammed into civilians in Tel Aviv, killing an Italian citizen and injuring many others, including some British nationals.

Those callous acts are more examples of the attacks that have plagued the lives of ordinary Israelis and Palestinians for too long. As the British Government have made clear, the UK remains steadfast in its commitment to work with the Israeli authorities, the Palestinian authorities and all parties in the region and in the international community to bring an end to the terrorism that Israel faces and to the destructive violence that we continue to witness.

The people of Israel deserve to live free from the scourge of terrorism and anti-Semitic incitement, which gravely undermine the prospects for a two-state solution. The UK strongly condemns the numerous terrorist attacks on Israeli civilians this year, including the killing of seven Israelis on Holocaust Memorial Day. In recent months, Israel has also faced indiscriminate rocket, missile and drone attacks from groups such as Hamas and Palestinian Islamic Jihad in Gaza, and from hostile groups in Lebanon and Syria, unjustifiably and unlawfully threatening the lives of civilians. Israel must also contend with appalling rhetoric from Iran and others calling for an end to its very existence. That underlines the threats that Israel faces every day, and the UK will never waver from supporting Israel's legitimate right to self-defence.

However, our support for Israel is not confined to its defence and security. I can also inform the House that on 21 February the Foreign Secretary signed the 2030 road map for UK-Israel bilateral relations, alongside his Israeli counterpart Eli Cohen. The UK is proud of its deep and historic relationship with the State of Israel. Both countries are committed to a modern, innovative and forward-looking relationship, focusing on shared priorities for mutual benefit.

The road map is the product of detailed negotiations to deepen and expand our co-operation up to 2030, following the elevation of our relationship to a strategic partnership in 2021. It provides detailed commitments for deepening UK-Israel co-operation, including in trade, cyber, science and tech, research and development, security, health, climate and gender. The road map also demonstrates the seriousness with which we take the global problem of anti-Semitism. The UK is proud of being the first Government to adopt the International Holocaust Remembrance Alliance's working definition. There is no better tool to define how anti-Semitism manifests itself in the 21st century.

I turn now to the alarming violence we are seeing across Israel and the Occupied Palestinian Territories. The conflict is exacting an ever-greater human toll. The number of Palestinians killed by the Israeli security forces in the West Bank, including 15 year-old Muhammad Nidal, and Israelis killed in acts of terrorism, including Lucy, Maia and Rina Dee, is significantly higher than at this point in 2022. In that regard, we call on the Palestinian Authority to denounce incitement to violence and resume their security co-operation with the Israeli authorities. We say to the Israeli Government that although Israel has a legitimate right to defend its citizens from attack, the Israeli security forces must live up to their obligations under international humanitarian law.

In this situation, it is all too easy for actions by one side to escalate tensions. The raid by Israeli police on Al-Aqsa mosque during Ramadan and on the first day of Passover was one such incident. When Israeli security forces conduct operations, they must ensure that they are proportionate and in accordance with international law. The anger that arose across the region and beyond from the police's actions in Al-Aqsa underlines the necessity of respecting and protecting the sanctity of Jerusalem's holy sites, especially when Ramadan, Passover and Easter overlap, as they have done this year. It is vital that all parties respect the historic status quo arrangements in Jerusalem, which allow coexistence between faiths. I welcome Prime Minister Benjamin Netanyahu's recent announcement on de-escalating tensions. We value Jordan's important role as custodian of the holy sites in Jerusalem, and I pay tribute to the Jordanian authorities for protecting the safety and security of the holy sites and all who worship and visit them.

Let me restate clearly the position of the UK: we support a negotiated settlement leading to a safe and secure Israel living alongside a viable and sovereign Palestinian state based on the 1967 lines with agreed land swaps, with Jerusalem as the shared capital of both states, and a just, fair, agreed and realistic settlement for refugees. To be clear, the UK-Israel road map agreement that I have mentioned in no way alters our position on the Middle East peace process. A two-state solution offers the best prospects of achieving sustainable peace.

We do not underestimate the challenges but firmly believe that, if both parties show bold leadership, peace is possible. The Israelis and the Palestinians showed leadership recently when their representatives met in Aqaba and Sharm el-Sheikh to discuss ways to de-escalate. Those talks—the first of their kind for many years—were a positive and welcome step. The UK is working with both sides and our international partners to support this process and uphold the commitments that were made.

The UK continues to be a strong supporter of all efforts to promote peace in the Middle East and a lasting and sustainable agreement between Israel and the Palestinians, and we will work with all parties to progress that goal. I commend this Statement to the House."

7.49 pm

Lord Collins of Highbury (Lab): My Lords, I join the Government in condemning the appalling and cowardly murder of Lucy, Maia and Rina Dee, and send our deepest condolences to Rabbi Leo Dee and the rest of the family.

This year has been one of the deadliest for Israel and the Occupied Palestinian Territories: 98 Palestinians, including at least 17 children, have been killed by Israeli forces, and 17 Israelis have been killed so far in 2023. Each life lost is a tragedy, and every Palestinian and Israeli deserves a just solution to the conflict. As Andrew Mitchell said in the debate on the Statement:

"When the House speaks with one voice, particularly in its condemnation of human rights abuses, we have an impact, and our voices are heard".—[*Official Report*, Commons, 20/4/23; col. 394.]

We must therefore be united in strongly opposing all actions that make a two-state solution harder to achieve, including rocket attacks, the expansion of illegal settlements, settler violence and evictions and demolitions, and condemn all acts of terrorism.

Last month, the *2030 Roadmap for UK-Israel Bilateral Relations* was signed, and Andrew Mitchell assured the other place that it did not indicate any change in the UK's long-established position on a two-state solution. Can the Minister therefore explain why there was no mention of this objective in the road map?

Andrew Mitchell also referred to the meetings between the Israelis and Palestinians in Aqaba and Sharm el-Sheikh to discuss ways to de-escalate the rising tensions. What are the Government doing with our international partners to support that process, and what is the Government's assessment of both Israeli and Palestinian commitments made in those meetings being met?

Earlier today it was reported that a Jordanian MP has been arrested following allegations of attempts to smuggle weapons into Israel. Given concerns that the violence could spread, can the Minister tell us whether we are working with Jordan on de-escalation and engaging on this issue?

Andrew Mitchell said:

"The UK's position on settlements is absolutely clear: settlements are illegal".

Earlier this month, UN special rapporteurs called on the international community to raise this issue. Have the Government taken any specific steps on this call?

The Minister stated in the other place that

"the UK is clear that the demolition of Palestinian homes and forced evictions cause unnecessary suffering to ordinary Palestinians and call into question Israel's commitment to a viable two-state solution".

He also said that the UK Government

"are also focused on preventing demolitions from happening in the first place … through our legal aid programme".

Can the noble Lord tell us what resources have been devoted to this programme and what assessment has been made of the success rate in challenging demolitions within the Israeli legal system?

The damage that Israeli restrictions on movement, access and trade inflict on the living standards of ordinary Palestinians, especially in Gaza, is huge. Can the noble Lord tell us what progress has been made on the UK's call for access into and out of Gaza, in accordance with international humanitarian law, for humanitarian actors, reconstruction materials and those, including Palestinians, travelling for medical purposes? What support are we giving to UN agencies and key partners on the ground in this regard?

In conclusion, Andrew Mitchell stated that

"the UK will recognise a Palestinian state at a time when the Government believe this will best serve the objective of peace".—[*Official Report*, Commons, 20/4/23; cols. 471-72.]

Can the noble Lord specify the conditions the Government believe need to be met for this to happen?

Lord Purvis of Tweed (LD): My Lords, given that it will be a while until we have the repeat of Thursday's Statement on Sudan, I thank, through the Minister, the envoy for his responsiveness to me on that issue.

I share in the condolences expressed by the noble Lord, Lord Collins, to the family—I know that the noble Lord, Lord Ahmad, personally provided solace to them—and, in the wider context, to the families of the 17 Israelis killed so far in 2023 and the 17 Palestinian children among the 98 Palestinians. The murders of civilians are especially egregious and must be condemned. The responsibility of those in control is to reduce tension, and this is of course made harder when an Israeli family is devastated by loss, but also when the occupying power, Israel, does not even allow the registration of a Palestinian killed, as we read today. We join in the commemorations of the 75th anniversary of statehood of our ally and friend Israel, but recognise that this is one of the bloodiest years in many, far outstripping the violence last year.

It is therefore regrettable that this year looks less and less like a year of opportunity for peacemaking but rather, one of increased violence, notwithstanding the recent meetings referred to in the Statement. Israel is suffering from terrorism outwith and within its borders, but it is moving to wider breaches of international law with impunity; and moves to put those in the new Government of Israel—the most extreme members of the most right-wing Government in its 75 years—in civilian control of military administration of the illegally occupied territories is, in effect, a proposal for annexation. There is a combination of continuing lack of robust security and control within the Palestinian Authority, but also an Israeli Government facing unprecedented opposition at home.

Of course, for peace there needs to be talk, as the Statement highlighted, and I agree with the Minister in that regard. However, for a significant breakthrough, who would talk? It is correct that Israeli Governments are faced with groups who deny the very existence of the state, but now others face Israeli Ministers who deny the very existence of the Palestinian people. US Israeli groups are refusing to meet Prime Minister Netanyahu because of concerns about the consequences of what he described to CBS's "Face the Nation" yesterday as legislation to

"make corrections in our judicial system".

If we all believe in the rule of law—I hope the Minister will agree with this—then the burden is placed on an occupying power as a sovereign entity. However, the only reference to the illegal occupation in the road map referred to is one line in the security section of the introduction:

"We will cooperate in improving Palestinian livelihoods and Palestinian economic development".

This suggests to any reader that we consider Palestine to be a federal province rather than an occupied territory. However, regardless of the view on that, we have actively and deliberately cut economic development support to Palestine, inhibiting the development of livelihoods, which acts against avowed UK policy. As I have raised previously, why has UK support for Palestine, which was £102 million in 2020, been reduced to £6 million in 2023-24? Department for Business and Trade funding for economic development in the area, which was stressed specifically in the road map Statement, has been cut from £25 million to zero. What impact does the Minister believe that will have, and what likelihood is there that there will be support for economic development within Palestine? If the UK plays a role, it must be to make a two-state solution viable in a practical way.

Finally, I welcome chapter 12 of the road map, on gender, but why is it silent on other areas of tolerance? Avi Maoz was a deputy Minister under Netanyahu—a religious nationalist, anti-Arab and anti-LGBTQ coalition partner representative. Mr Maoz has described LGBT people as a threat to the family and said that he wanted to cancel gay pride parades. He has also said that a woman's greatest's contribution is in marriage and raising a family. Are UK Ministers engaging with all parties in the coalition in order to develop the road map, or only with certain of them? Regarding those who are still in government who are homophobic, are the Government intending to work with them on chapter 12, and why have other areas of tolerance been excluded? I hope the Minister can respond to these points.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I thank the noble Lords from the two Front Benches for their support for the Government's Statement and add our unequivocal condemnation of acts of terrorism which, tragically, saw yet another family, that of Rabbi Dee, ripped apart, with the incredible loss that he and the Dee family have suffered, with the loss of both his wife and two beautiful daughters. I know I speak for the whole House in once again reiterating both our collective sense of abhorrence of the act of terror that took their lives and our strong sense of solidarity and support at this very trying time.

That said, there has been the generosity and strength of spirit shown by Rabbi Dee himself through his engagement. Noble Lords will have read the letter that

[Lord Ahmad of Wimbledon]
my right honourable friend the Foreign Secretary sent to Rabbi Dee. I had the opportunity to visit Lucy Dee's family and meet her parents, sisters and brother at their home and join the shiva. I can share with noble Lords the incredible sense of tolerance and recognition. There was no hate being directed to those who had carried out these abhorrent acts. There was, yes, a call for justice, but, equally, a recognition of our common humanity. There could not be no better example of that then in the donation we saw of Lucy Dee's organs, one of which went to a Palestinian Arab.

It reflects a common humanity when we see such acts of violence as we have seen and some acts of terror as we have witnessed recently. As the noble Lords, Lord Purvis and Lord Collins, both alluded to, the toll on human life is incredible. As the noble Lord, Lord Collins, said, every life lost is a tragedy in itself. That is why I assure both noble Lords that we remain absolutely committed to a two-state solution, where we see not just the independence of both states. In the world in which we stand, ultimately there will be an interdependence between a future Palestinian state and the State of Israel.

Israel has, of course, an absolute right to protect its citizens. That is why, when the events unfolded at the Al-Aqsa mosque, we were among the first directly to raise the reaction that we saw across the Arab and Islamic world. I engaged quite directly with the Israeli authorities, as I did with the Palestinian authorities and other key neighbours. We immediately needed a de-escalation. Of course, we saw further attacks, with the missiles that were launched into Israel from both Lebanon and Gaza, but, thankfully, with both the Palestinians and the Israeli Government, notwithstanding some of the responses, after that period ended—and long may it last—we saw a de-escalation and, thankfully, the violence that was being experienced receded.

Turning to some of the specific questions, I assure both noble Lords that the United Kingdom remains absolutely engaged on the issue of Israel and our relationship with the OPTs. Recently, I have been engaging directly. I had a conversation with the Israeli ambassador on Friday. Prior to that, I met Husam Zumlot, the Palestinian representative. There were a couple of points about the road map, raised by the noble Lords, Lord Collins and Lord Purvis, that I was able to deal with. This in no way undermines or changes the position of the United Kingdom Government on the two-state solution. Equally, however, it is important that we recognise Israel as a partner and move forward on a bilateral basis to strengthen our relationship. As both noble Lords alluded to, there were specific references made to the importance of our relationship and our different partnerships, but also Israel's current role in the OPTs. As the noble Lord, Lord Purvis, alluded to, the issue of security is paramount, but the welfare of Palestinians in the OPTs is also important.

On the point on settlements raised by both noble Lords, again, the United Kingdom Government are absolutely clear. We regard the settlements as illegal and against progress on the two-state solution. Many within Israel have also challenged the current Government in the calls they have made on certain of the outposts. On the converse, I would say, as I saw myself through my visit to Israel when the new Government came in, Israel is a robust democracy where the independence of the judiciary is respected. Many within Israel are having the very discussions which have seized many parts of the world. It is important that that vibrancy of that democracy demonstrates the discussions that are taking place.

On the issue of the two-state solution and recognition of Palestine at the appropriate time, the noble Lord, Lord Collins, referenced my right honourable friend Andrew Mitchell. It is very important—we have been stressing this through our direct engagement—that the next step must be a restart of direct negotiations between the Palestinian Authority and the Israeli Government. We are certainly working with key partners, and directly with both, to ensure that we play our part. That is why we were involved in the discussions that took place on de-escalation at both Aqaba and Sharm el-Sheikh. I visited Cairo in this respect. I also had a very constructive meeting with Foreign Minister Shoukry about the important role that Egypt and Jordan play, as two countries that have signed peace agreements with the State of Israel.

On the issue of routes into and providing support to the Palestinian Territories, the noble Lord, Lord Purvis, understandably raised, and I recognise, that there has been a reduction of support in many parts of the world through the reduction of ODA, but, last year, we again supported the UN on the ground, including UNRWA. When I went to Hebron recently, I also visited an UNRWA school. It is important that other countries in the region also support the livelihood and education of Palestinian children.

When I met Ministers in the Israeli Government, I also raised the importance and responsibility of raising the prosperity agenda, seeing opportunities that can exist for all citizens, including, in this instance, Arab citizens within the State of Israel. I visited Technion when I went to the city of Haifa, and saw how education is both empowering and enabling all communities within Israel, but we want that opportunity equally for people within the OPTs and, ultimately, progress towards a viable, sustainable Palestinian state. For that, we need not only strong co-operation between Israel and the Palestinian Authority but the support of those key partners who have signed deals with Israel. That is why, within the road map, we also stressed the importance of strengthening the Abraham Accords. I do not see them as separate routes; they are all part of the same equation to see how we can strengthen and see stability and security prevail within that part of the world.

On the issues raised about economic development, I agree with both noble Lords on the issue of two-state solutions; I do not think there is a difference between the views of any parties about the importance of the viability of a two-state solution. In that, I am on record, as are colleagues of mine, including the Foreign Secretary, on the position I have already stated on the illegal settlements, but also that, ultimately, the next important step is negotiation—but there needs to be valid partners for that. The security and stability of Israel are important, as is the welfare and progress of every Palestinian. There is loss of life—we see the Dee family and what has been suffered. We see demolitions:

I went to Masafer Yatta—the noble Lord, Lord Collins, raised this—to profile the importance of retaining institutions which have been built, such as schools and community centres, and to highlight the importance of the welfare of Palestinian communities, particularly those beyond Area A, according to the Oslo Accords.

Whether it is the toll of the tragic and abhorrent deaths through terrorism of Lucy Dee, Maia and Rina, or the death of 15 year-old Muhammad Nidal, these are all individuals, yes, but they are all families, and the impact is being felt by everyone across both Israel and the OPTs.

I assure noble Lords that, since taking on this brief, I have prioritised the importance of direct engagement by the United Kingdom Government, and I will continue to do so and update the House accordingly.

8.09 pm

Lord Pickles (Con): My Lords, I draw attention to my entries in the register of interests, particularly those relating to friendship with Israel.

My noble friend the Minister and I have been friends and have worked together for a long time. I have never been prouder of him than when I saw his visits to the Dee shiva. Sometimes Ministers have to deliver difficult messages and do difficult things, but I thought that he showed immense humanity in his visits. I think the whole House is proud of the way in which he expressed himself there.

All that makes it slightly more difficult for me to say the following. The Palestinian Authority has a "pay for slay" system, where money is handed over by way of a pension or stipend to Palestinians who murder Israeli citizens, particularly Jews. When we were in the EU, the EU administered the prisoners scheme and held a list; we did not have direct access. Now, we administer that scheme ourselves. Will the Minister make it clear to the Palestinian Authority that British taxpayers' money will not be paid out for the murderer of a mother and two girls on a visit to the seaside? Will he tell the authority about the requests made at Sharm el-Sheikh and, in particular, at Aqaba? Will he tell the authority that it has lost control of Jenin and Nablus and needs to re-establish itself because a consequence of its absence there is that armed gangs are murdering Palestinians within its area?

Lord Ahmad of Wimbledon (Con): My Lords, I thank my noble friend for his kind remarks. On his specific questions, I assure him that we have stressed to both the Palestinians and the Israelis—I did so directly to the Palestinians—the importance of ensuring that the security co-operation that has existed and continued between both sides, notwithstanding the challenges that have been faced on the ground, is restored at the earliest opportunity.

I further assure my noble friend that no UK aid—this has been looked at over a period of time—is used for payments to Palestinian prisoners, their families or the so-called martyrs fund. However, we stand by the importance of supporting essential needs in the West Bank and Gaza, which I am sure my noble friend recognises. Equally, we stress and ensure that checks and balances and mitigations are put in place to ensure that such support and funding reaches the most vulnerable.

On my noble friend's other point, as I reassured the Israeli ambassador on Friday, these issues are raised directly. The strength of our investment in our relationships with both the Israelis and, in this instance, the Palestinian Authority means that we will continue to raise these issues at the highest levels with the PA.

Baroness Blackstone (Lab): My Lords, following on from the question asked by my noble friend Lord Collins, can the Minister tell the House precisely what steps the Government are taking to work with the international community to prevent yet more Israeli illegal settlements in the West Bank? The latest plans involve nearly 3,000 new housing units in East Jerusalem; these developments are entrenching a one-state reality and denying Palestinians basic rights. What hope is there for both peace and the two-state solution in these circumstances? For how much longer are the Israeli Government going to get away with ignoring their obligations under international law with impunity with respect to illegal settlements?

Lord Ahmad of Wimbledon (Con): My Lords, I have already stated the Government's position but, to be absolutely clear, we regard the settlements as illegal under international law. They call into question the progress on and commitment to a two-state solution. We have urged Israel to halt its settlement expansion, which threatens the physical viability of a Palestinian state; we did so recently in direct bilateral discussions with the Israeli Government. We have also acted with our key partners: the United States, France, Germany and Italy. We jointly issued a statement on 14 February in which we strongly opposed unilateral steps, which are contrary to both the viability of a two-state solution and international law. We believe that they undermine the basis and strength of international law.

On demolitions, as I have already said, some of the strongest statements that we can make are through direct visits. We are committed to working with all parties in respect of these demolitions and evictions of Palestinian property; most notably, at the moment, a demolitions order remains over the Palestinian town of Masafer Yatta. As I have said, I had visited directly and, in doing so, have raised this issue directly with the Israeli ambassador and Israeli Ministers. I will continue to do so.

Ultimately, wherever one stands—for example, as a friend and a partner, as we are in the United Kingdom and across this House—on Israel and a future Palestinian state, the fact is that there can be no lasting, sustainable peace until we see that objective being realised; I am certainly clear on that in my mind. However, to do so requires compromise, negotiation and, ultimately, real recognition that sustainable peace will be possible only once we see that reality—but only that reality—and the interdependency that exists between people. There is so much shared there—the culture and the community. What needs to be recognised is that what has happened in the past should not be a sheer determinant of what happens in future. We need to play our part as the United Kingdom. I assure noble Lords that I am seeking to do just that.

Lord Bellingham (Con): My Lords, I certainly share the House's condemnation of the violence on both sides and agree with the Minister very strongly that the only way forward is a two-state solution. I join my noble friend Lord Pickles in praising the Minister for his personal role in this very sad saga over the last fortnight or so.

Does the Minister agree that the appalling rhetoric from Iran that the state of Israel has no right to exist was quite shocking and deeply unhelpful? What representations will we make to the state of Iran and to the UN on this matter?

Following on from a point made by the noble Lord, Lord Purvis, the 2030 road map stated very clearly that we were going to do all that we possibly could to boost trade between the UK and Israel, particularly around tech start-ups, support for SMEs, training and R&D. Further to the noble Lord's point, I think that the House accepts and understands that there will be a reduction in ODA going into those poorer parts of the Palestinian territories, but are we serious about boosting support for small businesses and enterprise in those Palestinian areas to relieve poverty? Surely trade and the creation of wealth will lead to the empowerment of the Palestinian people and make a two-state solution more likely.

Lord Ahmad of Wimbledon (Con): My Lords, I thank my noble friend. On his final point, it is my firm belief that, ultimately, economic empowerment and education provide real opportunities to progress, irrespective of where a person is in the world. That is why it is important that while we stand very strongly in our position, we also seek to strengthen our negotiations and relationship with Israel.

Equally, on the point alluded to by the noble Lord, Lord Collins, I reassure noble Lords that this in no way negates our previous position on the OPTs. I made this clear when I met the Palestinian representative, for whom it was also a concern.

Regarding recognition, it appals me when such statements are made by certain individuals in a given Government. We cannot support statements which do not recognise the existence of a particular community or people, and the same applies to Iran. It still shocks me to this day. Israel has been in existence for many decades. It is a reality on the map. You may not like it, but it is a reality, and those who do not like it need to live with it and recognise that Israel plays a very important role in the world.

We have made our position on Iran's statements very clear. This morning, we sanctioned more individuals within the IRGC. I was very supportive of the proscription that was given to Hamas and of our non-engagement with it, because Israel is a reality—Israel exists. It is equally important that, as we move forward, Palestinians exist. With our approach of being both friends to the Palestinian community and strong friends and partners to Israel, we believe that there is a role. Many in Israel recognise the importance of this, as does the Foreign Minister of Israel, Eli Cohen. That is why the road map also recognised the importance of the economic empowerment and economic progress of Palestinians. While we work towards the two-state solution, the humanity and economic progress of Palestinians should not be forgotten.

Lord Campbell of Pittenweem (LD): My Lords, I join with others in expressing condolences and in the condemnation of violence, however caused and by whom. However, my attention has been drawn to the concluding sentence of the section of the Statement on the mounting death toll, which says:

> "We say to the Israeli Government that although Israel has a legitimate right to defend its citizens from attack, the Israeli security forces must live up to their obligations under international humanitarian law."

A little later, in relation to the al-Aqsa raid and the status quo, it states:

> "The raid by Israeli police on Al-Aqsa mosque during Ramadan and on the first day of Passover was one such incident. When Israeli security forces conduct operations, they must ensure that they are proportionate and in accordance with international law."

International law is mentioned twice. I am aware of the full explanation which the Minister gave of the Government's policy, but given that international law is referred to twice, it is surprising that the breach of international law which is constituted by the illegal settlements was not referred to at all. Nor was there any reference to settler violence, an issue which I have raised with the Minister on other occasions.

Lord Ahmad of Wimbledon (Con): My Lords, I fully recognise that the situation and the violence that occurred at the al-Aqsa mosque during Ramadan and Israel's response was called out quite directly by the UK Government. I put out a statement at that time. The noble Lord, Lord Purvis, referred to obligations of a particular power deemed to be an occupying power, and that is the situation which prevails in the OPTs—that is why we call them the Occupied Palestinian Territories. That comes with obligations in terms of the protection and rights of those within those territories, and it applies to all people within the OPTs. Al-Aqsa is in east Jerusalem, which we regard as part of the OPTs.

On settler violence, by definition, any violence should be condemned, and we totally condemn settler violence that takes place. Provisions are in place and that is why the obligations on the Israeli security forces, as well as the Palestinian security forces, are key. I come back to my earlier point that an urgent first step to prevent further violence must be co-operation between the Palestinian security forces and the Israeli defence forces, which we have seen in even quite testing circumstances. Certainly, we support efforts being made in that regard.

Lord Polak (Con): My Lords, I refer to my registered interest as the president of Conservative Friends of Israel.

I was in Israel for Passover with my family. The attack was horrific. In fact, the other attack—the ramming—happened outside our hotel on the Friday night, when sadly an Italian lawyer passed away from being hit by the car. It was actually frightening. I was with my grandkids; it was all a bit too close.

If I may say, the initial response from the FCDO was, frankly, weak and embarrassing. That first statement over the weekend after the horrific killing of Lucy and her two daughters was embarrassing. But I pay tribute to the Prime Minister, who after his weekend break came out with a very strong statement about terror, followed by the Foreign Secretary's letter.

In paying tribute to them, I want to pay tribute, as has been done by others, to my noble friend the Minister. We went together to see the family—the parents of Lucy and therefore the grandparents of the two girls—at the shiva in St John's Wood, and sat together. Unfortunately, in life, I have been to many shivas. This was harrowing in so many ways. Yet, as the Minister suggested, the positivity from the family was not hatred; it was about trying to move forward. They had just lost their daughter and yet were talking like that. So, in that way, I have to say that there is hope. I do not think that the Minister should underestimate the profound effect that his visit, and of him taking time out and sitting with the family, had on the family and the wider community.

Tonight is Yom HaZikaron; in the Israeli calendar, it is the night where the whole of Israel will stop to remember the soldiers who have given their lives for the state. That carries on until tomorrow evening, which becomes Yom Ha'atzmaut, Israel's Independence Day—75 years, as has been mentioned.

It is all the more concerning to me that, just before coming into the Chamber this evening, there was another car ramming in Jerusalem. People's lives are being devastated.

So, I have two questions for my noble friend. The first is picking up the point of the noble Lord, Lord Purvis. He talked about LGBT rights. I ask my noble friend: where else in the Middle East, including in the Palestinian Authority in Gaza, does the LGBT community have rights comparable with what it has in Israel? Is there anywhere else in that area that has the rights that the LGBT community has?

Secondly, it has been a couple of weeks since the Prime Minister met with the Prime Minister of Israel. I would be grateful if he could give us a little bit of understanding of that meeting.

Lord Ahmad of Wimbledon (Con): My Lords, first I also recognise and thank the noble Lord for going to the shiva. Having him present there was also helpful, I think, when you are trying to bridge certain cultures, be it by faith or community, particularly in such trying and testing circumstances for the family concerned. As I want to again say, it was incredible in terms of the conversations we had, and also the strength of spirit—I certainly felt quite inspired after seeing not just the sense of forgiveness but recognition of a common humanity.

I think my noble friend has already both asked and answered his first question. I think that is a reflection of the vibrant democracy which I alluded to in the state of Israel. Notwithstanding the different and quite passionate discourses that take place in Israel, there are different communities, including the LGBT community. There is a flourishing Israeli-Arab community as well. I think these are realities on the ground which we all very much recognise.

In terms of the discussions in the visit that took place by Prime Minister Netanyahu, it was also building upon the importance of the road map which was signed between Foreign Minister Cohen and Foreign Secretary Cleverly, to see how we could progress that in terms of practical delivery. I am sure that my noble friend recognises, as does the whole House, that my right honourable friend the Prime Minister also used that as an opportunity to stress the importance of the two-state solution, and also the importance of the United Kingdom as a constructive partner to both Israel and the Palestinians.

Levelling-up and Regeneration Bill

Committee (11th Day) (Continued)

8.30 pm

Clause 115: Duty to grant sufficient planning permission for self-build and custom housebuilding

Amendment 281CA

Moved by ***Earl Howe***

281CA: Clause 115, page 148, line 30, at end insert—

"(iii) for "arising in" substitute "in respect of";"

Member's explanatory statement

This amendment is consequential on the amendment inserting a new paragraph (ab) at the end of line 30 of Clause 115 in the minister's name.

Earl Howe (Con): My Lords, I will speak also to Amendments 281CB to 281CE. These amendments are aimed at creating greater opportunities for those people who want to build their own home by ensuring that local authorities make sufficient provision for self- and custom-build sites in their areas.

The Government believe that self- and custom-build housing can play a crucial role as part of a wider package of measures to boost home ownership and diversify the housing market, as well as helping to deliver the homes that people want. Self and custom build improve the design and quality of homes as they are built by the people who will live in them.

We are aware that, under the current legislation, some development permissions that are not necessarily for self- and custom-build housing are being counted towards a local planning authority's statutory duty. This has meant there is an incomplete and inaccurate picture of self and custom build at a local and national level, which can distort the market and have wider impacts on small- and medium-sized enterprises and developers.

In the other place, the Government introduced Clause 115 to ensure that a development permission will count in meeting the duty only if it is actually for self-or custom-build housing. The Government have brought these additional amendments forward to further tighten up the Self-build and Custom Housebuilding Act 2015 to ensure that the intended policy aim of the original legislation is being met in practice.

Amendment 281CB ensures that only land made available explicitly for self-build and custom housebuilding qualifies towards the statutory duty to grant planning permission et cetera and meets demand for self and custom build. We have tabled the amendments to give the power to the Secretary of State to define in regulations the descriptions of types of development permissions that will count towards meeting this duty. This will ensure that only development permissions that are intended to be built out as self or custom build will

[Earl Howe]
be counted. The regulations are likely to require any permissions granted for self and custom build to be characterised by a condition or planning obligation making that requirement explicit. Amendment 281CE specifies that any regulations made under this new power will be subject to the negative resolution procedure.

Amendment 281CC ensures that any demand that a relevant authority has accrued for self and custom build through its self and custom build register that has not been discharged within the three-year compliance period will not dissipate after this time, but will roll over and remain part of the demand for the authority to meet under Section 2A of the 2015 Act. Amendments 281CA and 281CD are consequential, minor and technical amendments that amend the 2015 Act to ensure that Amendment 281CC works in practice. Overall, the amendments proposed ensure that the 2015 Act works as intended, without ambiguity.

These amendments, accompanied by our other interventions, including the launch of the Help to Build equity loan scheme and the Government's response to Richard Bacon MP's independent review into scaling up of self-build and custom housebuilding, will help to mainstream the self- and custom-build sector. This will allow more people to build their own home, help support SMEs and boost housebuilding. I therefore hope that noble Lords will support these amendments. I beg to move.

Lord Best (CB): My Lords, I rise to support this group of government amendments aimed at increasing the number of homes built or commissioned by their future occupiers. I had the pleasure of piloting the Self-build and Custom Housebuilding Act 2015 through your Lordships' House. It started as a Private Member's Bill from Richard Bacon MP, who has tirelessly—I would say relentlessly—pursued his campaign to get the sector to scale up. Most recently, he has produced an independent review to boost the building of self-commissioned new homes across all tenures, and these amendments flow from the Bacon review to which the Minister referred.

In countries as diverse as Germany and New Zealand, much of the new housebuilding is done in partnership with its future occupiers who, if not actually building the homes, are specifying the form they take and working with an SME builder to meet individual requirements. The result in other countries is that homes are more varied, personalised, affordable and energy efficient. These amendments attempt to give this still fledgling sector further impetus by helping self-builders and custom housebuilders to get their hands on the land on which to build, rather than leaving the volume housebuilders to gobble it all up. The sector would be an important beneficiary of my earlier amendment on diversification on larger sites, but a shift to that Letwin-inspired development model is not going to happen immediately. Bolstering the existing means to get local authorities allocating land for self-build and custom housebuilding is eminently sensible. I congratulate Richard Bacon on his continuing tenacity, the Right to Build Task Force on getting the Government to take forward these amendments and the Government on accepting them.

Baroness Pinnock (LD): My Lords, these amendments support moves that will enable self and custom build, as the noble Lord, Lord Best, said. It is an important sector that is not especially helped by previous legislation, but these amendments may help. I have a question. I have an example where planning consent was given, with some concessions made, by the planning department to a small number of people who wanted to build out the site as a self-build project and then failed to do so. As the site had previous planning consent on it, a new developer was able to come in and gain consent for a non self-build project. I just wonder if there is a bit of a loophole there that the Minister may have come across and that perhaps needs to be closed.

Baroness Hayman of Ullock (Lab): I thank the Minister for introducing these government amendments. We have no problem at all with them. They seem fairly straightforward in what they want to achieve, but I would like to make the point that this is going to help provide only a small number of homes. I wonder what estimate the Government have made of the number of homes this will provide and what the demand is for this sort of housing. It would be quite interesting.

We are concerned about the number of houses being built, full stop, particularly since the Government abandoned their mandatory housing target. We feel that this Bill should be used to help the Government to concentrate on providing sufficient quality housing that includes both affordable-to-buy and social housing. Perhaps the Government could then bring forward an amendment on properly defining "affordable housing"; that would be a very useful amendment to see going forward.

As I said, I have absolutely no problem with this; I am quite happy to support the government amendments. However, we feel that the Government need to balance their interest in progressing this with their progress in meeting their stated target of 300,000 new homes.

Earl Howe (Con): My Lords, I am grateful to the noble Lord, Lord Best, and both noble Baronesses, for their comments and questions. The noble Lord, Lord Best, is perhaps this House's foremost expert on housing matters, saving my noble friend Lord Young of Cookham who is now looking at me.

To answer for now the question put by the noble Baroness, Lady Hayman, on the number of self-build and custom-build houses that we expect to flow from this, it is very difficult to estimate. We do think that those categories of housing have a definite place in the system. If I can enlighten myself, and her, further, I will be happy to do so. I hope she will have gained a sense that these amendments are designed to remove the barriers that have been identified in this area; certainly, we fully expect that to happen having engaged with the sector.

As regards a definition of affordable housing, I think that will have to be a long debate for another day—although we have touched on that subject before during these Committee proceedings.

As regards the question posed by the noble Baroness, Lady Pinnock, I think the instance that she cited will be addressed, in part at least, by Amendment 281CC.

What we want to achieve in that amendment is that, where you have a register of self-build and custom-build applications that have not been discharged within the three-year compliance period, that demand will not dissipate after this time but will roll over. I will, however, write to her about enforcement on these particular applications and clarify that.

Amendment 281CA agreed.

Amendments 281CB to 281CE

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

281CB: Clause 115, page 148, line 30, at end insert—

"(aa) after subsection (5) insert—

"(5A) Regulations may make provision specifying descriptions of planning permissions or permissions in principle that are, or are not, to be treated as development permission for the carrying out of self-build and custom housebuilding for the purposes of this section.";"

Member's explanatory statement

This amendment allows the Secretary of State to specify descriptions of planning permissions or permissions in principle that will count as development permissions for the purpose of a local planning authority complying with its duty to meet the demand for self-build and custom housebuilding in its area.

281CC: Clause 115, page 148, line 30, at end insert—

"(ab) in subsection (6), for paragraph (a) substitute—

"(a) the demand for self-build and custom housebuilding in an authority's area in respect of a base period is the aggregate of—

(i) the demand for self-build and custom housebuilding arising in the authority's area in the base period; and

(ii) any demand for self-build and custom housebuilding that arose in the authority's area in an earlier base period and in relation to which—

(A) the time allowed for complying with the duty in subsection (2) expired during the base period in question, and

(B) the duty in subsection (2) has not been met;

(aa) the demand for self-build and custom housebuilding arising in an authority's area in a base period is evidenced by the number of entries added during that period to the register under section 1 kept by the authority;";"

Member's explanatory statement

This amendment provides that the demand for self-build and custom housebuilding in an authority's area in a particular 12 month base period should be treated as including any demand from an earlier 12 month base period which has not been met within the time period allowed for complying with the duty to meet that demand.

281CD: Clause 115, page 148, line 31, at end insert—

"(c) in subsection (9)(b), for "arising in" substitute "in respect of"."

Member's explanatory statement

This amendment is consequential on the amendment inserting a new paragraph (ab) at the end of line 30 of Clause 115 in the minister's name.

281CE: Clause 115, page 148, line 31, at end insert—

"(2) In section 4 of the Self-build and Custom Housebuilding Act 2015 (regulations), in subsection (2), before paragraph (za) insert—

"(zza) section 2A(5A),"."

Member's explanatory statement

This amendment provides that regulations made under section 2A(5A) (see the amendment inserting a new paragraph (aa) at the end of line 30 in Clause 115 in the minister's name) are subject to the negative resolution procedure.

Amendments 281CB to 281CE agreed.

Clause 115, as amended, agreed.

Amendment 281D not moved.

Clause 116: Powers as to form and content of planning applications

Amendment 282 not moved.

Clause 116 agreed.

Clauses 117 and 118 agreed.

Amendment 283 not moved.

Clauses 119 and 120 agreed.

8.45 pm

Amendment 284

Moved by ***Lord Moylan***

284: After Clause 120, insert the following new Clause—

"Directions under section 35: review

(1) The Planning Act 2008 is amended as follows.

(2) After section 35ZA (directions under section 35: procedural matters) insert—

"35ZB Directions under section 35: review

Within three years of making a direction under section 35(1) and annually thereafter, the Secretary of State must consider progress with implementation of the development contemplated in it and, if the Secretary of State considers that it is unlikely to proceed, the Secretary of State may withdraw the direction.""

Lord Moylan (Con): My Lords, I declare my interest as a member of the board of the Ebbsfleet Development Corporation.

Designation as an NSIP, a nationally significant infrastructure project, has a blighting effect. It differs from a normal planning permission in that the Government become something akin to a co-partner in a project that is designated an NSIP, supporting it because of its national significance. But what responsibilities fall on the Government as a result of this co-partnership, sponsorship or promotion of a particular project? In particular, what obligations fall on them to avoid or mitigate any persistent blight that might ensue?

An egregious example is the expansion of Heathrow Airport. Noble Lords may not know that I have been a long-standing opponent of the expansion of Heathrow Airport for over 10 years. More importantly, not only do I oppose it but I think it is unworkable and undeliverable: it involves either moving the M25 or building a runway over it, its cost would exceed £18 billion when the whole market value of the airport is significantly less than that, and so on. But there it is: the designated status remains present for Heathrow Airport's expansion,

[Lord Moylan]
and the blighting of the area—the effect that it has on the surrounding villages, on housing and on other land uses—remains.

An example from Ebbsfleet relates to the Swanscombe peninsula, a large triangle of land that, so to speak, protrudes into the Thames. It is within the red line of the Ebbsfleet Development Corporation as a planning authority, but the corporation does not own it. Proposals for a privately funded resort, of the character of a Disneyland or whatever, were given nationally significant infrastructure project status as long ago as 2014. Very slowly, the company promoting it advanced to a position in 2021 of being able to submit a DCO. In the meantime, it suffered the bolt from the blue of Natural England turning up out of nowhere—or, specifically, out of Ebbsfleet International railway station—and designating it a site of special scientific interest. This ability of Natural England to appear out of nowhere and designate sites as SSSIs at the same time as they are nationally significant infrastructure projects is worth exploring in a different debate. Then the DCO was rejected by the planning inspectors for, among other things, not having a transport plan attached to it—a point that had been made repeatedly to the company by the corporation in its role as planning authority. Now I read in the newspapers that the company recently went into administration.

However, the blight on the land and—while there are not many of them—on the existing industrial occupants of the land continues. I do not mean by this any criticism of the developer and I do not regard its failure to deliver the project, at least to date, as a criticism of it. Private sector projects inherently involve the taking of risk. It is right that we have an economy where risk is taken, but one of the corollaries of taking risk is that not all businesses or projects succeed, so the fact it has have not succeeded is not a criticism of it.

However, that is not my point; my point is to ask where the Minister is in all this. Where is the department that agreed to the designation, all of nine years ago? It is true that the Minister has written recently to the company, asking how it plans to progress. But since the company is in administration, I am not sure what answer he expects to get. Apart from that, it is hard to see how the Government have engaged with furthering this project, which they regard as nationally significant.

My amendment is intended to be very gentle. It places very little obligation on the Government but it would require them, three years after designating an NSIP, to review progress—that is all—"and annually thereafter", with a view to seeing whether the project is actually going to be delivered. It then says that the Secretary of State may decide to cancel the designation. That power to cancel is already in existing legislation—the Planning Act 2008, as amended—so I am not conferring a new power. I am simply implying that he or she should consider it as a result of a review of progress. This would at least show that the Government share a responsibility for the progress of projects which they have designated as nationally significant. It would help to mitigate the blight that they cause, in effect, by showing that degree of engagement, review and possible cancellation.

I regard this as a very modest amendment, and one that it would be easy for my noble friend on the Front Bench simply to accept as drafted. I look forward to her response and hope that that is indeed what she agrees to do.

Lord Stunell (LD): My Lords, I give three-quarters support—I was going to say half-hearted support—to what the noble Lord, Lord Moylan, has moved by way of his amendment. The nationally significant infrastructure projects programme was quite a radical change when it was introduced. It was seen as a way of what one might call railroading—except that would perhaps be unfortunate given some of the projects—or delivering national projects which would be perpetually trapped in the local planning system should they go by the conventional route.

It is something of a planning bulldozer, and I absolutely share the concern of the noble Lord, Lord Moylan, about the expansion of Heathrow; we are on the same page as far as that goes. It is equally clear that, if a project such as Heathrow was ever to go forward, it would not survive the local planning processes, so the existence of a nationally significant infrastructure project mechanism for delivery is certainly well justified in the legislation. The question is: what happens when a project begins to fade from the priority list of the Government or, for that matter, that of investors in a private project? The noble Lord has produced two examples, known very well to him from his personal work experience and career, which illustrate the point.

I say to the Minister that surely there should be some process of project review in central government. The Built Environment Select Committee—I was a member until January—considered that in some detail, in looking at some evidence that we received in relation to reports. The committee took evidence from various parties. Who is actually in charge of the oversight of whether projects will proceed, are proceeding or are making progress? The committee was not convinced at that time that the Government had a viable and clear process for deciding that a project was or was not a priority, what that priority might be or what its consequences might be. The idea that there is a national pipeline, with projects neatly lined up going in at one end and coming out completed at the other, is fanciful. However, that is the way that the thinking, and often the public expression, about having a national infrastructure plan is expressed.

I am with the noble Lord, Lord Moylan, and this amendment, but I see it much more as being about hearing from the Government that they have a review process, that the review process is capable of taking a hard decisions, and that, when it takes a hard decision, it makes it operational on the ground so that we do not have huge areas, such as those around Heathrow, that are blighted. Indeed, on the peninsula on the Thames estuary, to which the noble Lord, Lord Moylan referred, progress is going in no direction. In the presence of a Section 35 designation, nobody else can go there either. It is essentially a dead development area, which I would have thought the Government would be anxious to avoid.

I am keen to hear what the Minister believes the mechanism is and whether, in the judgment of the Government, it is effective. If it is effective, it should

be quite easy to answer the question put by the noble Lord, Lord Moylan, on how long it will be before the Ebbsfleet peninsula is de-designated. I suspect that it would be difficult for the Minister to de-designate Heathrow at the Dispatch Box today for a variety of reasons, but I hope that it is clear the direction from which I am coming, and that the Minister in replying can give us some satisfaction on this before we proceed further.

Lord Kennedy of Southwark (Lab Co-op): I will come in very briefly. I certainly see the point of the amendment tabled by the noble Lord, Lord Moylan, and of the three-year review. I am not convinced that yearly after that is necessarily the right way to go; it could be a longer period between the reviews. However, I see the point he is making, and the problems it causes if things do not happen in an area.

I will leave it there, other than to say that I have always been a backer of Heathrow expansion. I want to put that on record because we have had a couple of people opposed to it. I think it would be good for the economy and that we should get on with it.

Baroness Hayman of Ullock (Lab): My Lords, I thank the noble Lord, Lord Moylan, for his amendment and for enabling a short debate on NSIPs, because I think it is pretty important.

I ought to say that, before I was elected to the other place, my job was to work on various national infrastructure projects, or NSIPs—when I started working on them, they were not called that, of course, but that all changed—mainly around energy and water. I remember vividly when the new regime came in, back in 2008, under the Planning Act. At the time, it was a big change but very welcome because, as people have said, projects just got stuck all the time. As well as establishing statutory timescales and a streamlined DCO process, it brought more attention to the importance of public consultation. This helps local communities to understand why a project is happening near them and can unpick some of the problems and help move projects on.

It is worth pointing out that, since the NSIP system came into force in 2010, 113 transport, energy and wastewater projects have been considered, which shows a huge difference from the system we had before. It has sped up the planning process between submitting an application and the DCO being granted. We know that in the national infrastructure strategy in 2020 the Government committed to the NSIP reform programme, which aimed to speed up timescales by up to 50% for projects entering the system from the end of this year. It is really good to see this included in the levelling-up Bill, because projects can still get horribly stuck.

One that springs to mind from personal perspective is Hinkley Point C. I think that I started working with National Grid on the connections into Hinkley Point C in 2007, and one of my jobs was to do the timeline for the project. Every six months I would add another year or two on—and so it continues. It is getting there, but it is many years behind, and the trouble is that you then have an enormous amount of extra cost. Anything that can be done to support that fast-track consenting that the Bill suggests—faster post-consent changes—is really to be supported.

9 pm

I am also interested in the fact that there is the section on charging developers for expert input, so that government agencies providing the technical expert advice on DCO applications can charge developers for their NSIP services. Developers should be able to afford to do that, if it speeds up the process and helps to get that expert advice. Delays are what cost developers the most money, so we need to keep those things moving.

One thing that I am particularly interested in is the innovation and capacity building for local authorities affected by NSIPs. We know that the levelling-up White Paper recognised the need for the inclusion of local leaders to have the power and accountabilities to design and deliver effective policies for driving infrastructure projects. In the NSIP policy statement, local authorities representing the needs and views of local people are identified as being right at the forefront of delivering local impact reports, working with developers and ensuring that all the plans are properly integrated with local infrastructure. Having worked on NSIPs and knowing people who continue to work on them, I know that the capacity issues in key agencies and within local authorities can still seriously hold up granting a DCO for major projects. While the section on NSIPs in the Bill is good and will help, until we improve capacity issues we will still get stuck.

I absolutely agree with the noble Lord, Lord Moylan, that it makes sense to review progress and for that to be part of keeping things moving forward. However, if it is down to capacity issues, the Government really need to look at how that affects delivery of DCO consent—that is what we are talking about—and how the numbers of qualified staff and staff training can help to increase capacity so that local authorities and statutory agencies have the right people, and enough right people, to move this forward.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, I thank my noble friend Lord Moylan for tabling Amendment 284. I shall not be commenting on any individual planning case at all. Obviously it would not be correct for me to do so.

Amendment 284 seeks to ensure that the progress of applications, in circumstances where a Section 35 direction has been made, is monitored and kept under review by the Secretary of State. I agree that developments, especially nationally significant infrastructure projects, should enter our planning system efficiently, and doing so is crucial for ensuring that local communities and businesses can express their views on the real impacts that these projects can have on them.

The NSIP consenting process has served the UK well for more than a decade for major infrastructure projects in the fields of energy, transport, water, waste and wastewater, and has allowed these projects to be consented within an average of around four years. Some of these projects enter the NSIP planning system under a Section 35 direction. This is the beginning of the planning process for some projects and offers prospective applicants certainty that they can take their projects through the NSIP consenting process. This consenting

[Baroness Scott of Bybrook]
mechanism has been used successfully by 18 developers and allowed them to capitalise on the benefits that the NSIP regime offers.

Very occasionally, applications for development consent can be delayed or even withdrawn. This applies to applications that either automatically qualify as an NSIP under Part 3 of the Planning Act or are directed in through Section 35. This often occurs to allow developers time to ensure that applications entering the system are of the standard needed to efficiently and robustly undergo the scrutiny required. I acknowledge that this can translate into uncertainty for some communities, businesses and investors that have the potential to be affected by such projects.

Under Section 233(2) of the Planning Act, the Secretary of State already has the power to revoke a direction to treat a project as an NSIP, and thus no longer allow the project in question to enter the NSIP planning system through these means. The Secretary of State may consider using this power, for example, if it becomes clear that the rationale or basis on which the Section 35 direction was made has changed, so this is no longer the correct and appropriate consenting option for the project in question. I appreciate why my noble friend has raised this amendment, and I hope he will withdraw it following the reassurances I have provided.

The noble Lord, Lord Stunell, and others brought up the interesting issue of oversight. We are currently working to set this up. Minister Rowley is setting up an IMG which will look at the cross-cutting issues on projects, but he cannot get involved in the specifics on projects, in order not to prejudice, obviously, future decision-making, particularly as a Planning Minister. I will also take on board the issue that the noble Baroness, Lady Hayman of Ullock, brings up about the capacity within local planning authorities to deal with these very big projects. I think it is something we can feed back in and I will do so.

Lord Stunell (LD): I thank the noble Baroness for a very helpful answer. Will she say something about the actual timeline for this group formally starting work? She suggested that it was going to start work in the fairly immediate future: perhaps some sort of timescale could be provided.

Baroness Scott of Bybrook (Con): I do not have a timescale tonight, but I will talk to Minister Rowley and try to get one for the noble Lord and let him know. As I say, I hope my noble friend will withdraw the amendment following the reassurances I have provided.

Lord Moylan (Con): My Lords, I am grateful to noble Lords who have taken part in this short debate. I shall start briefly with the noble Lord, Lord Kennedy of Southwark, being keen to fly. He said at the end about Heathrow expansion, "We should get on with it". I am not necessarily a believer that textual exegesis is the right way to approach a winding-up speech, even in your Lordships' House, but this question of what "we" is in that sentence is at the heart of this. If it were purely a private planning application, it would mean the developer, but I do not think that is what he meant when he talked about Heathrow. He meant either "we" as a Government or "we" as a nation: we, somehow bigger than just the private sector developer, should be getting on with it, and it is that blend that is involved in nationally significant infrastructure projects, where, as I say, the Government make themselves a co-partner with private sector developers in the case both of Heathrow and the other example I gave. It is that confusion about who is responsible that I am trying to get to.

We know the Government are responsible, to some extent, with a project such as Heathrow expansion, but what are their responsibilities in relation to the consequences of it and are they actively monitoring? That is really my question. The noble Baroness, Lady Hayman of Ullock, I am sure understood that I was not in anything I said criticising the process as such or saying that there was not the need for a process that would speed large applications through the system, although it is undoubtedly the case that the speed with which the DCO process is handling applications is getting slower and slower, and everybody involved in it knows that. It may well be that the time for a refresh is coming. I do not think it is simply skills; it is also demand for additional up-front information and so forth: this is something the Built Environment Committee, which I chair, may well look at again.

I do not know why the noble Lord, Lord Stunell, said that he was only three-quarters in support of my amendment, as I thought he gave a 100% endorsement. I do not know what reluctance prevented him from coming out wholeheartedly, because he also put my purpose very well. Although I invited my noble friend to accept the amendment, the noble Lord recognised—as I am sure my noble friend does—that it is essentially a probing amendment to try to find out what the Government do and how they take their responsibilities for these projects forward.

I welcome my noble friend's response, but it was slightly on the disappointing side. Of course, it is wonderful that an inter-ministerial group is being set up to look at these issues—I did not know that—but she slightly took away from the benefit of that in saying that it should not look at individual projects, which are precisely what I would like Ministers to look at. I appreciate that a Planning Minister, who may have to take planning decisions—

Baroness Scott of Bybrook (Con): It will look at cross-cutting issues on projects but cannot get involved with the specifics of a project, in order not to prejudice decision-making. I did not say that it could not look at individual projects, just their specifics.

Lord Moylan (Con): I am grateful for that but, thanks to a judgment—I cannot remember the name—in the courts a year or two ago on the Holocaust memorial, local planning authorities have been required in the past year or two to put in place rigorous separations, called Chinese walls, between those officers who work on developing councils' own applications and those assessing them, in a way that always existed to some extent but is now very much more rigorous. If Ministers, including the Planning Minister, are understandably inhibited from getting into the details of why a project

is not happening, perhaps a similar arrangement could be achieved within government; maybe someone in the Cabinet Office or wherever could take on the responsibility for getting into the weeds of projects that are not happening and either helping them to do so or cancelling them.

I am grateful to my noble friend for acknowledging that Ministers have the power to remove an NSIP designation. I would like to think that they could remove it on grounds more expansive than the one she mentioned—that it was no longer an appropriate designation—such as it simply not happening and therefore being, in practice, an irrelevant designation. She did not say that but perhaps it was implicitly encompassed in what she did say. I would like to think that any ministerial involvement now getting going, which I wholly welcome, could be structured in such a way that Ministers could get involved in the weeds.

I am very grateful for this debate. It has flushed out some issues that we would not otherwise have debated and I am grateful to my noble friend. With the leave of the Committee, I beg leave to withdraw my amendment.

Amendment 284 withdrawn.

Clause 121 agreed.

Clause 122: Regulations and orders under the Planning Acts

Amendment 285 not moved.

Clause 122 agreed.

Amendment 285A

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

285A: After Clause 122, insert the following new Clause—

"Power for appointees to vary determinations as to procedure

In paragraph 2 of Schedule 6 to TCPA 1990 (powers and duties of appointed persons), in sub-paragraph (10)—

(a) for "does not apply" substitute "applies";

(b) at the end insert "only for the purposes of subsection (4) of that section"."

Member's explanatory statement

This amendment inserts a new Clause into Chapter 6 of Part 3 of the Bill to amend the Town and Country Planning Act 1990 to enable a planning inspector (as an appointed person) to vary the procedure of certain proceedings under section 319A of that Act.

Baroness Scott of Bybrook (Con): My Lords, planning appeals are currently decided by three potential routes: written representations, hearings or public inquiries, or a combination of all three. Government Amendment 285A will enable an appointed planning inspector, rather than a case officer, as is currently the case, to change the mode of procedure for a planning appeal. The Government believe that an appointed inspector is best placed to decide the most appropriate mode of procedure for an appeal case as they will be familiar with the facts of the case and the views of all parties. The new clause will facilitate a more streamlined procedure and have a positive impact on the operational delivery, leading to more efficient and timely appeal decisions. I therefore request that the amendment is supported.

9.15 pm

I turn to government Amendment 285B. During the pandemic the Planning Inspectorate pioneered the use of virtual events with great success. It enabled appeals and other Planning Inspectorate procedures to progress more quickly and efficiently. The enhanced accessibility of virtual events has also allowed members of the public to join events which they previously may not have been able to do. This has helped to make the process more representative and reflective of the communities that the inspectorate represents. Amendment 285B is designed to put the Planning Inspectorate's ability to use virtual events beyond doubt. It does not represent a change in policy or to the inspectorate's current approach of operating in-person or virtual events as appropriate. It is necessary, though, in order to clarify this existing practice following recent legal challenges. This amendment clarifies existing practice and will enable the Planning Inspectorate to continue to facilitate fair and accessible events for its users. It will also help to support greater efficiency and streamlining of its procedures.

Finally, government Amendment 509B provides that these new clauses will come into force two months after Royal Assent. I hope I have demonstrated to noble Lords that the measures proposed through the three amendments in this group will enable appeals and other Planning Inspectorate procedures to progress more quickly and efficiently. I therefore request that these amendments are accepted. I beg to move.

Baroness Pinnock (LD): My Lords, I thank the Minister for introducing these three amendments, which enable planning appeals to be heard virtually, where the choice is being made by an appointed inspector. I wholly support the opportunity for virtual hearings. Currently, as the Minister explained, there are two options for appeal hearings: one is by written procedure and the other is by a full public hearing. It is usually the choice of the appellant which procedure they use. So someone appealing against, say, a planning refusal can ask for it to be heard in a public setting. I would like reassurance that that will still be the case.

Some members of the public find it easier to join virtually, and that is a really positive move. I accept the argument the Minister has made that it opens it up for more people to take part. Equally, though, there are always some who find that difficult, especially if they live in more remote areas where access to good-quality broadband is not possible. I am thinking of colleagues I have who live in North Yorkshire; when I have Zoom calls with them, it is hit and miss. I would just like reassurance that those people would be able to engage if they wanted to.

Now I have a question about the future. Some planning appeals are so important that, in my view, they are better heard in a public session. If there is a wide interest in the locality, a public hearing in person gives more reassurance to a local community than one that is held virtually or by the written procedure. The reason I argue this is that if you are in a room full of people, you feel the mood and sense what is going on much better than you do in a similar virtual hearing.

[Baroness Pinnock]

I support what has been said, with those provisos. Lastly, local plans have, obviously, planning inspector involvement. Is it anticipated that these too could be heard virtually, or will that still be largely in person?

Baroness Taylor of Stevenage (Lab): My Lords, I know it is not the practice in your Lordships' House to have long discussions on government amendments. I do not intend to do that, but I want to make some comments on these amendments, because I think they are interesting.

On Amendment 285A, I make the point that varying proceedings should always be the subject of very effective communication, not only because we have professionals engaged in these processes but because the public are involved and need to understand exactly what is happening. Where there are changes, even more effort should be made to communicate why they have been made. I raise again the issue of resourcing of PINS. A lot of clauses in the Bill are putting another heavy burden on the Planning Inspectorate, and those issues need to be taken into account.

Secondly, as we have heard, Amendment 285B indicates that the Government wish the planning process to allow people to participate remotely in planning proceedings at the grant of the Planning Inspectorate. If the Government can see the value of this—I am very pleased that they can—I ask the Minister why what is good for planning proceedings is so inappropriate for the rest of local government? We have had debates on this previously in the Bill.

The Minister made the point that participating virtually increases diversity of participation, which I completely agree with. It also saves unnecessary travel; we have had those discussions on previous clauses. We are all trying to get down to net zero, and people do not have to travel if they can participate virtually. In addition, it helps those who live in bigger geographical areas. My borough is very small geographically, so it is not really a great hardship for anyone to have to come to the town hall for a discussion on a planning application or anything else. However, if you live in some of the parts of the country where that is not such an easy journey, particularly at certain times of the year, it can be much more difficult. So, I am confused about why we seem to think that this is a really helpful process for one part of local government activity but not for the rest of it. I also probe why the amendment says, "require or permit". I am concerned about "require" and whether the planning inspector is going to be able to insist that this happens virtually, and how that is going to work.

The noble Baroness, Lady Pinnock, referred to feeling the mood in planning meetings. That is a variable experience, from my experience in local government. Sometimes it can be useful to do that, and sometimes you would not want to be anywhere near feeling the mood in a planning meeting—but that is another matter. I echo the question from the noble Baroness, Lady Pinnock, about whether the intention is that this should apply to local planning inquiries. That is a whole other issue that needs further consideration.

By the way, I know that the noble Earl, Lord Howe, responded quite extensively on the ability to have local government proceedings virtually, and that is on the record. I would just appreciate a response from the Minister on why this is right for planning but so wrong for everything else in local government.

Baroness Scott of Bybrook (Con): Let me respond to a couple of those points. On the difference between a case officer and a planning inspector and how you bring in the appellant, at the moment the case officer handles the administration of a planning appeal case, which includes the appointment of a planning inspector, but they also determine the mode of the procedure after seeking input from the parties and the inspector. Therefore, at the moment it is the case officer who talks to the parties and the inspector, and who then makes a decision taking all of that into account. We are suggesting that the planning inspector, who is the decision-maker or recommendation maker for called-in and recovered cases, will assess the details of the case and representations received from all parties in just the same way, so they would be seeking input from all parties before they made that decision.

On local plans, the major party in that will be the local planning authority or the local authority, and I cannot see those discussions being taken online. I suppose a local authority could ask for that, but those are usually quite long and arduous meetings that sometimes go on for weeks, so I am pretty sure they would be public.

Baroness Pinnock (LD): My understanding, then, is that in the instance of a local plan hearing, the local planning authority would decide whether it should—the Minister is shaking her head, so I have misunderstood. Therefore, the appointed planning inspector makes the decision whether it will be in public or online.

Baroness Scott of Bybrook (Con): Yes.

Baroness Pinnock (LD): I therefore seek assurance that those members of the public—and in some cases members of the council, presumably—would be able to ask for it to be held in person if that was more relevant and appropriate.

Baroness Scott of Bybrook (Con): That is exactly what I was saying. Although the decision would be made by the inspector, it would be taken only after speaking to the person asking for the inspection, which would be the local planning authority. So it is important that it has a large input into that, just as any appellant in a normal planning appeal would have input into the discussion on how it was going to be dealt with. However, I cannot see a local plan inspection being held online. As I said, as with the current procedure, the appellant will be asked and the council will have a chance to comment on the appellant's choice of procedure. That is because we need to make sure there is fairness to all parties, but the inspector will have the final decision.

On how Planning Inspectorate meetings, hearings or inquiries differ from local authority meetings—I think that is the question the noble Baroness, Lady Taylor, asked—the measure clarifies the Planning Inspectorate's existing practice of operating in-person and virtual proceedings as appropriate. This is necessary just to reduce the risk of challenge. We are not changing

anything in the legislation; it can do this anyway without us changing anything. That is unlike some local authority meetings; Planning Inspectorate events through hearings or inquiries do not represent decision-making forums but allow interested parties to make representations. Hearings and inquiries enable planning inspectors to gather evidence, which they use to inform their approach to a case with a view to issuing either a decision or a recommendation to the Secretary of State, whereas planning meetings are decision-making meetings.

Amendment 285A agreed.

Clause 123: Pre-consolidation amendment of planning, development and compulsory purchase legislation

Amendment 285AA

Moved by ***Lord Stunell***

285AA: Clause 123, page 156, line 37, leave out lines 37 to 39 and insert—

"(d) a Combined Mayoral Authority with devolved planning powers."

Member's explanatory statement

This amendment removes the power in the bill to make incidental provisions in relation to devolved competencies, and inserts combined Mayoral Authorities with devolved planning powers into the exemptions that regulations may not make provision in relation to.

9.30 pm

Lord Stunell: I speak to Amendment 285AA, which refers to Clause 123. It is by way of a probing amendment, and I would have explained to the noble Lord, Lord Moylan, had he been here, that the missing quarter last time was about how probing or speculative it was. I make no secret of the fact that mine is a probing amendment. The first few lines of Clause 123 were the red flag that made me put down this amendment. It reads:

"The Secretary of State may by regulations make such amendments and modifications of the relevant enactments as in the Secretary of State's opinion facilitate, or are otherwise desirable".

There follows a long list of things to which the Secretary of State may, if in their opinion it is useful, make changes. It is another clause with very wide-ranging powers given to the Secretary of State, and the purpose of giving them to the Secretary of State is not at all transparent.

What is perhaps relevant, and is certainly the reason for tabling the amendment, is that subsection (7) contains some exceptions. It reads:

"Regulation under this section must not make any provision which is within"—

Scotland, Wales or Northern Ireland,

"unless that provision is a restatement of provision or is merely incidental"

and so on. It is a clause with wide-ranging powers which do not apply in Scotland, Wales or Northern Ireland, unless, again, the Secretary of State has the opinion that they are a restatement or merely incidental.

My amendment removes the exceptions to that, so there is proper devolution to the three national legislative bodies in those three nations, and adds a fourth exception to the application of the clause, which is for combined mayoral authorities. I could have added a whole lot more as well, but the amendment is in the spirit of devolution and making sure that we do not allocate to the Secretary of State powers which are not needed and which, in the hands of a different Secretary of State, might be abused or misused and might have unforeseen bad consequences.

I want to hear in clear terms from the Minister: why we need the clause at all; why it has to be in such wide-ranging terms; and, with regard to the exceptions for the three national Administrations, why even within that, there is an exception built in which allows him or her to impose powers. Why does he not take the opportunity to make devolution in England mean something more substantial by saying that, in combined mayoral authorities, such powers as may be needed in Clause 123 may be exercised within that authority and not simply cascaded down from Whitehall?

I see that the noble Lord, Lord Carrington, has given notice of his intention that the clause do not stand part of the Bill, and I would say that that is very much of a piece with my amendment. We have here a clause which is neither necessary nor useful and absolutely not contributing to levelling up in any way. I beg to move.

Lord Carrington (CB): My Lords, I declare my interests in farming and land ownership as set out in the register. I agree with every word that the noble Lord, Lord Stunell, has said; I would perhaps go a little further in some areas.

My understanding of Clause 123—and, therefore, my reason to seek its removal—is that, through its inclusion in the Bill, it seeks to give authority to any Government to amend primary legislation that underpins planning and compulsory purchase legislation through the means of secondary legislation. Such changes might have a profound impact on the way planning is delivered. It is not appropriate that this legislation gives such a wide remit to the Government to change primary legislation for an objective that is yet to be determined without the full scrutiny of Parliament through debates in both Houses.

In other words, Clause 123, which gives the Government the ability to consolidate and amend compulsory purchase legislation, should be deleted from the Bill as it gives the Government too wide a remit to encroach on property rights without a clear objective. It could lead to changes in compulsory purchase legislation that tip the balance further towards the developer and away from protecting the home owner's and landowner's rights. The ability to amend more than 25 key pieces of primary legislation, described as "relevant enactments" in Clause 123(2), in any way that any Government see fit—potentially with limited consultation or scrutiny—must raise very serious concerns.

Additionally, it is premature to propose amending compulsory purchase legislation before, as I understand it, the Government have received the outcome of the Law Commission's review into compulsory purchase reform. There is also the matter of the lack of a

[Lord Carrington]
government response to the consultation on compulsory purchase compensation, which is still awaited despite the Government including some of these controversial measures in this Bill. The department is clearly in breach of the consultation principles, which state that it should:

"Publish responses within 12 weeks of the consultation or provide an explanation why this is not possible. Where consultation concerns a statutory instrument publish responses before or at the same time as the instrument is laid, except in very exceptional circumstances (and even then publish responses as soon as possible). Allow appropriate time between closing the consultation and implementing policy or legislation";

that last point is relevant in this particular case. Planning legislation is the foundation of so much, particularly in the rural economy. There is a real risk that growth of the rural economy and housing delivery could be held back by amendments that have gone through without proper scrutiny.

I look forward to hearing the Government's response and reasons.

Baroness Taylor of Stevenage (Lab): My Lords, regarding Clause 123, we believe that this provision was added to the Bill subsequent to consideration in the other place, so it has perhaps not had the same scrutiny as other parts of the Bill.

Amendment 285AA, moved by the noble Lord, Lord Stunell, seeks to have the status of combined mayoral authority with planning powers added to the list of exemptions. A distinction was drawn previously in your Lordships' House between the devolution powers conferred on mayors and the legislative powers devolved to Administrations, but what meetings and discussions have been held with devolved Administrations in this respect?

I express our concern, alongside that of the noble Lords, Lord Stunell and Lord Carrington, about the implications of this clause in any case. The noble Lord, Lord Carrington, argues that the clause should not be part of the Bill at all. I can understand this view as in this part of the Bill, as in others, there are very significant powers being taken by the Secretary of State to amend these long lists of 25 pieces of primary legislation, with limited scrutiny or consultation and without reversion to either House. That would give us great cause for concern. I hope that the Minister can respond to this, but we support the clause stand part notice.

Earl Howe (Con): My Lords, I have listened carefully to the concerns expressed by the noble Lords, Lord Stunell and Lord Carrington, and hope and believe that I can fully reassure them both. I will respond to the noble Lord, Lord Carrington, in a second, but will begin by addressing Amendment 285AA, tabled by the noble Lord, Lord Stunell.

This amendment would restrict the nature of amendments that can be made under the power contained in Clause 123 so that the Secretary of State could not use it in relation to matters within a devolved competence or where a mayor has planning powers. Noble Lords will be aware that under Clause 123(6) any changes made by regulations under this section do not come into effect except where Parliament enacts a relevant consolidation Act and that Act comes into effect. In practice, these regulations will smooth the transition of the law from its current unconsolidated state to its future consolidated state. To do this, they have legal effect for only a moment, immediately before the relevant consolidation Act comes into effect.

Noble Lords will know that consolidation is a highly technical exercise restricted to the clarification and restatement of the existing law. This power is likewise restricted. It cannot be used to change the terms of devolution, nor to interfere in policy matters which are devolved. The power to make incidental provision in relation to a devolved competence is included here to reflect that much of planning and compulsory purchase law pre-dates devolution. Without this power allowing the Secretary of State to disentangle the law in England, we would be unable to ensure that in substance the legal position within devolved competence would be unchanged when the law applying in England was disentangled. In relation to the second—

Baroness Taylor of Stevenage (Lab): I thank the noble Earl for giving way. The provision in Clause 123(4) says:

"For the purposes of this section, 'amend' includes repeal and revoke".

That sounds like a sledgehammer being used to crack a nut if it is a matter of consolidation.

Earl Howe (Con): Consolidation in this area of the law is immensely complex. Frankly, we do not know the full extent of the relevant planning provisions that must be considered in any common consolidation exercise because the exercise has not been commenced.

Baroness Hayman of Ullock (Lab): My apologies, but if it is that complex, is it not more likely that mistakes could be made, making it even more concerning that something could just be repealed or revoked without full comprehension or sufficient time? It is quite concerning.

Earl Howe (Con): The noble Baroness should not be concerned, if I may suggest, as I shall go on to try to explain, because I have a little bit more to set out for the Committee. The power does not allow the changing of the terms of devolution once given effect in law, nor does it allow any changes to what planning powers can be conferred on any area as part of such a deal.

Finally on the amendment, I reiterate that in relation to the planning powers of mayors, there is no intention to remove the powers of district councils through devolution deals. I therefore hope I have persuaded the noble Lord that, as expressed, the amendment is not necessary.

9.45 pm

I turn to the issues raised by the noble Lord, Lord Carrington, relating to this clause. Noble Lords will know that there are now more than 50 Acts which deal with planning or compulsory purchase. That figure does not include innumerable other Acts which cross-reference those 50 Acts. This makes it almost impossible to fully understand these systems. As with

any opaque system, trust is undermined and the potential for dispute increased. In practice, this causes barriers both to participation in and decisions regarding planning and compulsory purchase, all of which makes these systems harder for the public, authorities and all but the best-resourced developers to navigate.

As we have been discussing in relation to much of the rest of this part, the Government want to give more clarity to participants in the planning system. As I have said, these amendments start addressing the legislative barriers to this by providing powers to make technical changes to prepare for future consolidation. Any changes made under these powers can come into effect only where there is a subsequent consolidation Act, and the use of these powers would be subject to the affirmative procedure before your Lordships' House and the other place. I hope I can reassure noble Lords that this is not an attempt to circumvent the proper scrutiny of this highly complex exercise. I repeat: these powers are to support consolidation, which does not extend to changing the policy effect of legislation. Noble Lords can be reassured that the regulations cannot come into effect without a connected consolidation Bill being enacted.

Lord Stunell (LD): I thank the noble Earl for taking us through what for some of us is a kind of grade 1 learning experience, which he has dealt with very effectively. I have some considerable concerns which remain. I wonder whether he could go back to a point that he made in response to the noble Baroness a few minutes ago: that it was so complex and there were so many different pieces of legislation that it was not possible to give a list of all the complexities and so on which were involved. He also spoke about trust, and how the whole system might be undermined by opaqueness. If I connect those two remarks, he will perhaps see that to some extent the opacity means that the trust is not present on this side of the Chamber at the moment.

Earl Howe (Con): I am sorry to hear that. The point I was seeking to make is that the general public need to trust the law and know what the law is, as does anyone dealing with the planning system. That is why the Government's ambition is to put in train a consolidation exercise, which may take a considerable time. I have been quite frank with the Committee that there are not only 50 Acts that we know about which deal with planning and compulsory purchase, but—as my notes say—innumerable other Acts which cross-reference those 50 Acts. It will require a major legal exercise to bring all the threads together.

I cannot commit to a timescale for consolidation from the Dispatch Box today. There is a large amount of work to do before we can get to that stage and that will naturally have to be balanced against the wider legislative programme. It is for that reason that we are asking for this power to prepare the way—I think that is the best way of putting it—to make the ultimate consolidation a more achievable exercise.

Baroness Taylor of Stevenage (Lab): I am sorry to keep pursuing this point but it is really very important indeed. Any of us who has worked on this Bill knows the difficulty of how many crossovers there are with other Bills. On the previous group of amendments, from my perspective and I am sure from those of colleagues on these Benches, we ended up referencing back through various Bills to get to the point that the amendments referred to. That does not make life easy, and I am sure it makes it very opaque for professionals and the public trying to deal with the system. That simply underlines yet again, as we have done many times through this process, that a planning Bill might have been a better option to get to the rationalisation of the planning system, but we are where we are with that.

We remain concerned about just how this exercise will be done. Will a whole series of statutory instruments come through? Will it just be for the Secretary of State to make the decisions and then change the legislation—I am not entirely sure how that works in process terms—or will we have a whole other Bill that will be the "consolidation of planning Bill 2025" or something? I am interested as to what the process will be for this, because we have 25 Acts here at least—there are probably more than that, in truth—that need amending.

Earl Howe (Con): As I said, the exercise is an enormous one. It requires legal brains to get their heads around the statutes before we can even think about putting a consolidation Bill together. I am afraid I cannot be precise in answer to the noble Baroness but I will see whether I can clarify and distil what I have tried to say—obviously not very adequately—by writing to her. I will of course copy my letter to the noble Lords, Lord Stunell and Lord Carrington. In doing so, I hope I can provide complete reassurance about the intent behind these regulation-making powers.

The Earl of Caithness (Con): My Lords, I have listened with great care to my noble friend. I understand about consolidation and legislation; it is immensely complicated. He used a phrase that I half wrote down—I missed the last bit because I was listening to the next sentence. He said that there is no intention to change. Does that mean that, when my noble friend and my noble friend Lady Scott leave their jobs, the next Ministers could have an intention to change, or does it mean that there will be no change, only consolidation?

Earl Howe (Con): Consolidation by definition does not extend to changing the policy effect of legislation.

Lord Stunell (LD): My Lords, I think the noble Earl will have detected a degree of unease right around the Chamber about how this clause will take effect, not just in the course of this Administration but in the hands of a different one at a future date. I have heard the discussion and learned a lot. I will need to read *Hansard* and the noble Earl's letter when it comes and take a view on whether this is something to take further forward. In the meantime, I beg leave to withdraw the amendment.

Amendment 285AA withdrawn.

Clause 123 agreed.

Amendments 285B and 285C

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

285B: After Clause 123, insert the following new Clause—

"Participation in certain proceedings conducted by, or on behalf of, the Secretary of State

(1) The Secretary of State may, to the extent not otherwise able to do so, require or permit a person who takes part in relevant proceedings conducted by the Secretary of State to do so (wholly or partly) remotely.

(2) The references in subsection (1) to the Secretary of State include references to a person appointed by the Secretary of State.

(3) "Relevant proceedings" means any inquiry, hearing, examination, meeting or other proceedings under an Act (whenever passed or made) which relate to planning, development or the compulsory purchase of land.

(4) Relevant proceedings include, in particular—

(a) any proceedings to which section 319A of TCPA 1990 applies (see subsections (7) to (10) of that section);

(b) any proceedings under section 20 of, or paragraph 6 of Schedule 3 to, the Planning (Listed Buildings and Conservation Areas) Act 1990;

(c) any proceedings under section 21 of, or paragraph 6 of the Schedule to, the Planning (Hazardous Substances) Act 1990;

(d) any proceedings under section 13A of, or paragraph 4A of Schedule 1 to, the Acquisition of Land Act 1981;

(e) any proceedings under Part 10A or Part 11 of the Planning Act 2008;

(f) an examination under Part 2 of PCPA 2004;

(g) an examination under Chapter 2 or 3 of Part 6 of the Planning Act 2008 (including any meetings under Chapter 4 of that Part) in relation to an application for an order granting development consent;

(h) an examination under Schedule 4B to the TCPA 1990 in relation to a draft neighbourhood development order.

(5) For the purposes of this section a person takes part in relevant proceedings remotely if they take part through—

(a) a live telephone link,

(b) a live television link, or

(c) any other arrangement which does not involve the person attending the proceedings in person."

Member's explanatory statement

This amendment inserts a new Clause into Chapter 6 of Part 3 of the Bill. The Clause confers a power on the Secretary of State to require or permit a person who takes part in certain proceedings relating to planning, development or the compulsory purchase of land to do so wholly or partly remotely. The power can be exercised by a person appointed by the Secretary of State and it is intended that the Planning Inspectorate will be appointed for this purpose.

285C: After Clause 123, insert the following new Clause—

"Power of certain bodies to charge fees for advice in relation to applications under the planning Acts

After section 303ZA of the TCPA 1990 (fees for appeals) insert—

"303ZB Power of certain bodies to charge fees for advice in relation to applications under the planning Acts

(1) A prescribed body may charge fees for the provision of advice, information or assistance (including the provision of a response to a consultation) in connection with an application within subsection (2) that relates to land in England.

(2) An application is within this subsection if it is an application, proposed application or proposal for a permission, approval or consent under, or for the purposes of, the planning Acts.

(3) A prescribed body may not charge fees under subsection (1) in respect of—

(a) a response to a consultation that a qualifying neighbourhood body is required to carry out under an enactment;

(b) the provision of advice, information or assistance to an excluded person, unless the advice, information or assistance is provided in connection with an application within subsection (2) by that person;

(c) the provision of prescribed advice, information or assistance or advice, information or assistance of a prescribed description.

(4) In subsection (3)(a), a "qualifying neighbourhood body" means—

(a) a qualifying body within the meaning given by section 61E(6) (and includes a community organisation which is to be regarded as such a qualifying body by virtue of paragraph 4(2) of Schedule 4C), or

(b) a qualifying body within the meaning given by section 38A(12) of the Planning and Compulsory Purchase Act 2004.

(5) In subsection (3)(b), an "excluded person" means—

(a) the Secretary of State;

(b) the Mayor of London;

(c) a local planning authority;

(d) a mayoral combined authority (within the meaning given in section 107A of the Local Democracy, Economic Development and Construction Act 2009).

(6) A prescribed body may charge fees under subsection (1) only in accordance with a statement published on its website which—

(a) describes the advice, information or assistance in respect of which fees are charged,

(b) sets out the fees (or, if applicable, the method by which the fees are to be calculated), and

(c) refers to any provision in an enactment pursuant to which the advice, information or assistance is provided.

(7) Subsections (8) and (9) apply where a prescribed body decides to charge fees under subsection (1) for advice, information or assistance which the body provides pursuant to a provision in an enactment.

(8) If a person fails to pay the fee charged under subsection (1), the prescribed body may, notwithstanding any requirement to provide the advice, information or assistance, withhold the advice, information or assistance until the fee is paid.

(9) The prescribed body must secure that, taking one financial year with another, the income from the fees charged under subsection (1) does not exceed the cost of providing the advice, information or assistance.

(10) A financial year is the period of 12 months beginning with 1 April.

(11) Before making regulations under this section, the Secretary of State must consult—

(a) any body likely to be affected by the regulations, and

(b) such other persons as the Secretary of State considers appropriate.

(12) In this section, "fees" include charges (however described).""

Member's explanatory statement

This amendment inserts a new section 303ZB into the Town and Country Planning Act 1990 which provides a power for certain bodies to charge fees for the provision of advice, information or assistance in connection with applications for a permission, approval or consent under the planning Acts in relation to land in England.

Amendments 285B and 285C agreed.

Amendments 286 and 287 not moved.

Amendment 288

Moved by ***Baroness Pinnock***

288: After Clause 123, insert the following new Clause—

"Public consultation on planning and women's safety

(1) The Secretary of State must, within 90 days of the day on which this Act is passed, open a public consultation to establish the impact of proposed changes to the planning system on women's safety.

(2) Section 70 of the Town and Country Planning Act 1990 (Determination of applications: general considerations) is amended in accordance with subsection (3).

(3) After subsection (2A), insert—

"(2B) In dealing with an application for planning permission for public development, a local planning authority must establish a review of how the proposed development would impact women's safety. The review must, in particular, consider the impact of proposed development on—

(a) open spaces,

(b) layout of buildings,

(c) unlit or hidden spaces,

(d) visibility of entranceways, and

(e) blind spots.

(2C) The local planning authority must prepare and publish a report setting out the results of the review.""

Member's explanatory statement

This amendment would require the Secretary of State to open a public consultation to establish the impact of proposed changes to the planning system on women's safety and would require local planning authorities to review the impact of new developments on women's safety.

Baroness Pinnock (LD): My Lords, we have discussed for many hours now the importance of a plan-led process and the outcomes of planning. Planning has the power to create great, safe, appealing places. Equally, poor planning has the ability to create places that do not feel safe and do not appeal to many of our fellow citizens. Amendment 288 asks the Government to have a consultation once the Bill is enacted in order to consider in the planning process the particular angle of women's safety. In saying that the focus is on women's safety, I do so in the knowledge that anyone who is particularly vulnerable, be they old, less able, or children or young people, would benefit from a focused look at safety in public places in the planning process.

I equally acknowledge that, during a planning application, the safety unit of the local police force will often be asked for advice and commentary on what is being proposed. Frequently in my experience, that considers fencing, alleyways and so on, but this amendment is trying to extend that. The consultations that I am seeking would have a broader look at whether the places that we create will be safe for women, particularly on their own, to use. There have been a number of recent tragic examples where clearly walking across a park at night is not safe.

I was particularly alerted to this issue when I read a research report published by Turley, a planning consultancy. Its argument, which I summarise, is that women are disproportionately impacted by poor design in public spaces, which makes women feel more vulnerable. I guess that, if I asked the women in this Chamber whether they cross the road at night when the other side is better lit, the answer would be yes. Do they avoid overgrown hedges where it is particularly dark? Yes. Do they avoid going down the shortcut of the alleyways, or the ginnels, as we call them? Yes. Our planning process has resulted in places where women feel less secure, and if they feel less secure, they are less likely to use public places. If public places are public places, they ought to be safe for everyone.

What I am seeking is that, by giving greater thought to women's safety, we plan out, before places are built, areas which are less safe for women. In a survey, 55% of women stated they would not use public transport after dark and 34% stated that feelings of insecurity have stopped them travelling at times. A report by UN Women UK found that 70% of women have felt harassed in public spaces due to the issues that I have just raised of dark places, poor lighting, overgrown hedges, high fences and that sort of situation.

It has consequently been argued that women cannot fully enjoy towns and cities, especially, if they do not feel that they can travel through them safely. The sad fact is that there have been several recent terrible examples where women, even though they were not alone, were viciously attacked. If it were within our grasp to avoid creating places where this happens, surely we would want to grasp that and deal with it very quickly.

10 pm

Further research published by Turley shows that planning and design can improve safety and reduce crime. It states:

"Urban planning can reduce the vulnerability of people to crime by removing opportunities that are provided inadvertently by the built environment".

This is more or less what I have just described from my own experience.

UN Women published a report, *Safe Cities and Safe Public Spaces*, which—the wording is perhaps a little strange—identified

"a gender approach to urban planning"

as one of the four key ways to improve women's safety. It is basically saying, "Have a woman's-eye view on safety in public places". It is not rocket science; it is about having a tick list about lighting, blind corners, underpasses—I will not use an underpass on my own at night—snickets and ginnels, or alleyways as they are called in the south. They should not be used unless they are well lit, you can see from one end to the other and you can see that there is an escape route if need be. All these things can be dealt with in the planning process. At the moment the police take a bit of a tick-box approach when they look at a planning application and advise on areas where crime can take place. I would hope that we could be a bit more positive than that.

[Baroness Pinnock]

I end by saying that, while it seems like a bit of a marginal issue to raise, if we are going to create what the Secretary of State called "beautiful places", safety is really important. If the safety of women and, therefore, of other vulnerable groups, can be planned into new design, that will be a positive approach to the future of new areas that are being created. With that, I beg to move.

Baroness Hayman of Ullock (Lab): My Lords, I thank the noble Baroness, Lady Pinnock, for introducing her amendment and indeed for tabling it in the first place. This important issue is not talked about enough. I am aware that in the other place a PMB was brought forward on this subject at some stage, but it is something that is not considered sufficiently.

We heard some figures and stats from the noble Baroness. The consultation on the safety of women and girls found that 71% of all women in the UK had suffered some form of sexual harassment in public spaces. I wonder whether the figure is higher, because I wonder whether every woman admits to it—so it is at least that number. If I think back to my own life experience, I remember that when my daughters became teenagers I could not help myself: I started to worry about them, because I did not want to happen to them the things that had happened to me. To be in that position when there are other things that could be done is frustrating.

To me, this is an opportunity where simple things could be done if they were better understood by designers and planners, so I am completely behind the noble Baroness's amendment. If we are improving the safety of women and girls, it is about putting positive societal values right at the heart of our planning and design—particularly urban planning, as the noble Baroness mentioned—and we know that new approaches to this could ensure that outcomes improve for women, particularly those who are working and living in urban areas.

Something that I find frustrating about this issue is that women are often made to feel entirely responsible for themselves to be safe. They are told, "Carry alarms. Don't do this or that. Don't go there". It should be not just women's responsibility but society's responsibility to look after women and the vulnerable in that society. We need to think not just about the planning of new developments but about their delivery. As the noble Baroness, Lady Pinnock, said, women need to feel safe. She talked about streetlights, pavements, secure walkways and the things in her amendment that would make a huge difference.

Perceptions of safety are just as important here. That is one of the reasons why the part of her amendment that says the local planning authority must prepare and publish a report, setting out the results of the review that she suggests, is important. It is only when you do that review and prepare and publish a report that you can see accurately what needs to be done.

We know that 36% of women state that they feel unsafe walking in their local area at night. The consultation that was done on safety asked women to pinpoint specific areas where they do or do not feel safe. That has highlighted common characteristics between places where people either feel safe or do not feel safe. Those statistics and other findings are highly significant, because they are then available to inform research and enable the future design and development of buildings to explicitly and specifically consider safety issues and therefore to adopt the kinds of measures that we need to allay safety fears—and much of this is in the noble Baroness's amendment.

So what should city planners and developers consider when looking at how they can improve this situation in their areas? Clearly, there is never going to be a one-size-fits-all approach, which again is why it is important to have these reviews and reports done. Planners locally need to be able to determine what is needed in their locality and have that as their starting point.

There are some interesting findings. For example, warm light is better than harsh lighting. Light can evoke a range of feelings and has a different impact on people at different times of night and day. There are interesting ways in which things could be improved that we might not even think of straight off. We know that people put CCTV up and think it will help safety, but actually it often has the opposite effect; if there are CCTV cameras everywhere, they can make you feel unsafe. Even if that perception is not reality, it adds to the feeling of not being safe. Basically, it sends out the wrong message and so can discourage people from going into that area, even though in theory it might actually be the safest place to be.

Development can also create temporary spaces which are in a constant state of flux, and create anxiety in people. If we think about the interface between a public space and adjacent land, how does that all join together? How do you get from one to the other? The noble Baroness, Lady Pinnock, talked about subways, for example—underpasses. What might look fun during the day can look very different at night-time.

Again, we need to think about how buildings are designed. If you have worked in a large building, you can often feel very isolated in it. I have worked in a building where I knew that there was somebody who worked in another part of it who had, shall we say, not been too pleasant to me in the past. If I was in that building on my own, that made me feel extremely vulnerable but I did not want to leave my job. We also need to think about how car parks are lit outside workplaces, for example. This is probably going to sound a bit daft to the men, but one thing that I have always got really frustrated about—and worried about if I had to suddenly leg it, to be blunt—is when you are in area full of cobbles and you have heels on. It sounds silly but very small things can make a difference to your perception of safety when you are out at night.

Architects, developers and urban planners really need to ensure that women and girls' experiences are involved in building safer environments. It should not just be about women; men need to contribute to the process and demonstrate that they are committed to working with women to improve building design and planning. Back in March 2021 Priti Patel, when she was the Home Secretary, said:

> "Every woman should feel safe to walk on our streets without fear of harassment or violence".

Accepting the noble Baroness's amendment would be an excellent place to start.

Baroness Scott of Bybrook (Con): My Lords, I thank noble Lords for that debate. Short it may have been, but it was full of some interesting facts.

Amendment 288 tabled by the noble Baroness, Lady Pinnock, would impose a duty on the Secretary of State to publicly consult on changes to the planning system to establish the impact on women's safety. The amendment would also require local planning authorities, when determining a planning application for public development, to establish a view on how that proposed development would impact women's safety.

The Government recognise public safety for all as a priority, and that it is critical that the planning system plays an important part in addressing that effectively in new development. The National Planning Policy Framework is already clear that a council's planning policies and decisions should aim to create safe and inclusive places for all. It explicitly states that both planning policies and decisions should promote public safety. This is in line with the Government's strategy on tackling violence against women and girls.

The Government have recently consulted on the proposed approach to updating the National Planning Policy Framework. The consultation acknowledges that this important issue is already addressed within national planning policy. However, it sought views on whether to place more emphasis on making sure that women, girls and other vulnerable groups feel safe in our public places including, for example, policies on lighting and street lighting. As we have heard, the consultation closed on 2 March this year. We expect to consider this subject area in the context of a wider review of the National Planning Policy Framework, to follow Royal Assent to the Bill. The Government will consult on the details of these wider changes later this year, reflecting responses to the prospective consultation.

The supporting planning practice guidance on healthy and safe communities spells out that planning provides an important opportunity to consider the security of the built environment and those who live and work in it. This specifically references Section 17 of the Crime and Disorder Act 1998, which requires all local, joint and combined authorities to exercise their functions to do all that they

"reasonably can to prevent … crime and disorder".

10.15 pm

The guidance further underlines the role of good design in crime prevention. The *National Design Guide* reinforces this approach, demonstrating through 10 characteristics for well-designed places how new development including street works and public spaces can build in safety and security for all. The *National Model Design Code* is clear that local authorities should pay particular attention to protected characteristics, including gender, when developing places.

Ultimately, safety should be embedded in the design process to have the most impact. If this important matter is considered at the planning application stage alone, this may lead only to minor changes to final designs. Therefore, while I appreciate the spirit of this amendment, the Government must oppose it as national planning policy guidance and the law already require local planning authorities to take the issue of women's safety into serious consideration when plan-making and decision-making are taking place.

Baroness Pinnock (LD): My Lords, I thank particularly the noble Baroness, Lady Hayman, for her full-hearted support for this amendment and the approach that it is taking. I thank the Minister for her full reply. Yes, planning applications are currently considered in relation to safety, but the difficulty is: through whose eyes is safety being considered? What I am trying to suggest to your Lordships' Committee in this amendment is that women have a particular perception of safety which probably is not shared by many men.

Earlier I asked a general question: how many women here would cross the road to somewhere that is better lit? There were nods all around. That is not because planners previously had deliberately designed something that was going to be unsafe. They designed something they thought would be safe, but they did not see it through the eyes and perceptions of women. That is particularly what I am pointing to. It is a shame that the Minister, who I am sure would have agreed with much that I said, did not feel able to support this amendment.

Finally, we have the wonderful reference to the NPPF—as yet unpublished. The NPPF, says the Minister, will make reference to women's safety and has particularly considered the safety of women and girls. But, unfortunately, we will not see the content of the NPPF until the Bill has been enacted. If you ask me, that is not acceptable. This amendment and others have asked particularly for issues of general importance to be thought about. The answer is that it may well be in the NPPF, but the Government are not publishing this until they have made all the decisions on this Bill. I urge the Minister yet again to get this NPPF before the House by Report because that will enormously aid our discussions. With that, I beg leave to withdraw my amendment.

Amendment 288 withdrawn.

Amendment 289

Moved by ***Baroness Jones of Whitchurch***

289: After Clause 123, insert the following new Clause—

"Wildbelt

(1) Local planning authorities must maintain a register of wildbelt land in their local areas (see section 106(3)(c) of the Environment Act 2021).

(2) Wildbelt land must be recognised in local plans based on areas identified in the local nature recovery strategy.

(3) Local planning authorities must act in accordance with local nature recovery strategy wildbelt designations in the exercise of relevant functions, including land use planning and planning decisions.

(4) Wildbelt land may not be subject to land use change that hinders the recovery of nature in these areas."

Member's explanatory statement

This new Clause would secure a land designation in England that provides protection for sites being managed for nature's recovery, identified through the Local Nature Recovery Strategies created by the Environment Act. Sites designated as wildbelt in Local Plans would be subject to only moderate controls, precluding development but allowing farming and other land uses which do not hinder the recovery of nature.

Baroness Jones of Whitchurch (Lab): My Lords, in the absence of the noble Lord, Lord Randall, who is unable to be here, sadly, as he is unwell, I will be moving Amendment 289, to which I have added my name. I also support Amendment 386 in the name of my noble friend Lady Hayman.

Amendment 289 would deliver a new planning designation to protect wild spaces for nature, climate and people. We have some effective nature designations in the UK, but there is currently a gap in the protection they offer; for example, there are sites where nature is not yet in full health but is getting there or where nature is, in effect, recovering but is not protected.

These sites can vary from land on the edge of built-up areas, where nature has been allowed back in, such as community orchards, to habitats undergoing restoration to boost carbon storage, such as rewetted peatland. Wherever they are located, these recovering sites provide vital spaces for wildlife—for wild animals to feed, shelter and thrive. They are often the green spaces closest to our homes. However, the lack of planning protection for those spaces means that they are vulnerable to development pressures and other damaging land-use changes, threatening the biodiversity benefits that they provide. With nature in decline, and the crucial Environment Act target to halt the decline by 2030 needing to be met, we cannot afford for more wild spaces to be lost. The wild-belt designation proposed by Amendment 289 would protect sites with growing biodiversity value and ensure that investment of time and money over recent years to restore nature on these sites is not wasted.

The amendment allows for wild-belt sites to be identified by the Environment Act's local nature recovery strategies and recognised in local plans. They would then be protected through the planning system by a presumption against land-use change that would hinder the recovery of nature. This would enable these sites to continue to support wild species. Existing sustainable land uses, such as nature-friendly farming or habitat restoration for carbon offsetting, would be allowed to continue. That would allow these precious sites to continue to contribute to nature's recovery and be used to connect up other sites important for the natural world, creating lifelines for nature across the country. It would also provide more access to green and blue spaces for people, greening green belts and restoring neglected blue spaces.

In the words of the Wildlife Trust, which first came up with the wild-belt concept,

"it would help create communities where people can enjoy healthier, happier lives through on-your-doorstep access to nature and ensure we hand over our natural environment in a better state to the next generation".

We can level up planning protection through the wild-belt designation, securing places for more abundant wildlife and more nature-filled lives for all of us. I hope that noble Lords and the Minister will feel able to support the amendment.

Baroness Hayman of Ullock (Lab): My Lords, I thank my noble friend for introducing the amendment tabled by the noble Lord, Lord Randall of Uxbridge. I have a similar amendment in this group; it requires that the Secretary of State must publish draft legislation to allow local authorities to propose wild-belt designations for the purpose of improving the results of environmental outcome reports.

Amendment 289 would create a new planning designation to support land for nature's recovery, known as wild belt. As we have heard, the Wildlife Trust first proposed this designation to enable land that is being restored or has the potential for restoration to be protected to see the nature recovery that we so desperately need to see. We want to see from this legislation that the new wild-belt designation gets taken up by the Government so that it is included in planning reforms. If you are going to protect land to allow it to be restored for nature, it has to be tied into our planning system; otherwise, it will just get unpicked in various places.

The Wildlife Trust has warned that the proposed changes to the planning system, which the Government say are to tackle the shortage of homes and support sustainable growth will, unfortunately, increase the threats to nature. It has raised concerns about the fact that we have inadequate data, which then means that the Government, local authorities and planners are not properly informed about the impact on wildlife. That leads to a bias towards development that weakens environmental protections—and I am sure that none of us wants to see that.

As my noble friend said, the trusts want to see recovery of wildlife and easy access to nature for people put right at the heart of the planning system. This wild-belt designation would secure an area against future changes to land use, so that efforts to recreate or restore natural habitat actually become more meaningful and long lasting. We also know that the RSPB has released analysis showing how the UK has missed almost all its targets in this area of conservation, including failing to protect or manage enough land for nature. We know that proposed government planning reforms include zoning land for growth where major developments could take place, renewal areas where small-scale building could occur and protected areas where there would be more stringent controls. But one thing we really need to think about is how our sites for nature join up, because nature travels.

There has been a lot of discussion for a number of years about wildlife corridors. If we are going to have these local recovery strategies for local nature through our authorities, they need to join up. The wild belt would be a good way to do this, alongside the green belt and other proposals the Government have put forward, such as the new ELM scheme. It is about bringing all this together in order to make it absolutely as meaningful as possible. Designation of land as wild belt could be a requirement for receiving public money, for example, through ELMS; it could be part of the new schemes that are coming in.

The Wildlife Trusts have proposed five principles to ensure that the planning system helps nature. They want to see a bold new designation to protect the new land that is put into recovery, which is what they are calling wild belt. So, I hope the Minister has understood why wild belt is so very important and will look to support these amendments. If they were accepted, wild-belt sites would be identified by local nature

recovery strategies and actually recognised in local development plans. That would make all the difference, because then they would be protected through the planning system. If we can secure more sites and protect them, we will start to make the difference we need to make in recovering our wildlife and biodiversity.

The Earl of Caithness (Con): My Lords, I am sure my noble friend Lord Harlech agrees with me that the idea behind these amendments is absolutely right and that we all want to see an increase in nature and biodiversity, but I urge him to take a slightly jaundiced view of them. The way they are drafted and the bureaucracy involved is of concern to me. The noble Baroness, Lady Hayman, made a powerful case for designation, saying that wild belts—whatever wild belts are, because there is no definition, as I will come on to in a moment—will be protected. So were national parks; so are AONBs; so are SSSIs, since the Wildlife and Countryside Act 1981, which I took part in; but that has not stopped nature declining. The problem is that we are focusing too much on designation rather than on management. It is management of land that will increase biodiversity and wildlife.

It should be second nature to farmers to farm in a way that will benefit wildlife. Good commercial farming can work hand in hand with nature. Anyone saw the recent David Attenborough programme "Wild Isles" will have seen that, in the last episode, he gave examples of farmers on hill land and on rich grade 1 land farming for wildlife as well as commercial farming. The farmer on the commercial land has to rotate his crops on a regular basis and will therefore rotate some of the wildlife's habitat. If a field that he has put down to wildflowers is designated, there will be bureaucracy to change that from one field to another; whether it is a slightly bigger or smaller area will involve a whole lot of bureaucracy and make the farmer's job a whole lot harder.

10.30 pm

For example, a beetle bank might be considered a wild belt. A beetle bank is two to three metres wide. In theory, it is a very good place for wildlife, but in practice it is also a very good place for predators. It is not the beetle bank that is important per se; it is the at least 15-metre minimum strip on the side of it laid down to wildflowers or bird-food producing plants that saves the wildlife. The birds and creatures that live on the beetle bank get into the strip and away from the foxes, badgers, stoats and other predators that come along. That is management with a holistic approach, which has proved very successful. It was invented some 40 years ago by the Game & Wildlife Conservation Trust, together with Southampton University, and has proved a really good way to improve biodiversity on a farm.

How will we define a wild belt? Unless there is a strict definition of what it actually means, and that the land will not be subject to use change, as under proposed new subsection (4), this will not work in practice. The idea is lovely; it is a good theory but in practice it will not work for the practical, nature-friendly farmer who wants to get on, improve biodiversity and farm commercially. This will be another step in the opposite direction.

Baroness Pinnock (LD): My Lords, my noble friend Lady Bakewell of Hardington Mandeville was unable to remain in your Lordships' House to this late hour and has passed me some notes to which I will speak, if that is okay. She wished to speak in particular to Amendment 289, to which she added her name, and wishes the noble Lord, Lord Randall, a speedy recovery.

As others have said, the wild belt definition was proposed by the Wildlife Trusts. Any Government committed to nature recovery, biodiversity and our environment ought seriously to consider what they have to say. As we all know, biodiversity is at an all-time low. Our previous desire to see neat and well-kept hedgerows, farmland and gardens has had a devastating effect on our wildlife, of all types and sizes. To help biodiversity recover, it is necessary to ensure that areas of the countryside, both rural and urban, are maintained in a "wild" state. These will be included in the local nature recovery strategies for each area and easily identified in these plans.

A wild-belt area must be protected as such, from planning use and planning decisions. It is too easy to refer to a piece of scrubland as unsightly and of no particular use and to concoct a plan to turn it into something else. This misses the point altogether. That which is wild—and therefore unsightly, in the eyes of some—is likely to attract wildflowers and insects and become the home of small mammals and birds, all of which will increase the biodiversity of an area and protect and enhance nature's recovery.

The Environment Act makes provision for the creation of local nature recovery strategies. By ensuring that wild-belt areas are included within these strategies, we can protect them from predatory development. They can, however, be used for farming and other land uses which will protect and not hinder nature recovery, such as nature-friendly farming and habitat restoration for carbon offsetting.

Amendment 386 in the name of the noble Baroness, Lady Hayman of Ullock, also proposes wild-belt designations by local authorities, which would enhance the local environmental outcomes reports. Everything possible must be done to ensure that biodiversity is increased across the country. I support Amendment 386 from the noble Baroness, Lady Hayman.

Lord Harlech (Con): My Lords, as this is the first time I have spoken in Committee on the Bill, it is probably appropriate that I declare my farming and land management interests, as set out in the register.

I turn to Amendment 289 in the name of my noble friend Lord Randall of Uxbridge, and so eloquently introduced by the noble Baroness, Lady Jones of Whitchurch, and Amendment 386 in the name of the noble Baroness, Lady Hayman of Ullock. I thank all noble Lords for laying these amendments and provide assurances that I share the same view as my noble friend Lord Caithness on the importance of helping nature to recover.

While these two amendments both refer to wild belts, they take somewhat different approaches. I will begin by addressing Amendment 289, which seeks to secure a land designation of a wild belt. This would provide protection for sites being managed for nature's

[LORD HARLECH]
recovery, identified through local nature recovery strategies. I thank noble Lords for the recent constructive debate on local nature recovery strategies, which covered quite similar ground. As my noble friend Lord Benyon reassured the Committee, the Government share the desire for local nature recovery strategies to be reflected appropriately in local plans so that the planning system can play a more proactive role in nature recovery. This is something we committed to explicitly in the recent environmental improvement plan.

Where we differ is on the necessity of making amendments to this Bill to achieve this. Instead, we will rely on existing duties created under the Environment Act and the guidance which the Government have committed to produce. The language of this proposed amendment—to "act in accordance" with a new designation based on the local nature recovery strategy—would be more binding than previous amendments. While the Government are determined that the planning system should play an important role in nature recovery, the system still needs to balance this priority with other priorities. Requiring, in legislation, that planning must "act in accordance" with plans for nature recovery would hamper the ability of planning authorities to strike this balance.

Last month we published the regulations and statutory guidance needed for responsible authorities to begin preparation of local nature recovery strategies. We are now working to put in place the guidance on how local authorities should consider LNRS in their local plans. This will be published this summer and will deliver on the commitments we have made. Therefore, while I appreciate the intention of Amendment 289, the Government are not able to support it. I hope that the noble Baroness, on behalf of my noble friend, will be able to withdraw it.

Amendment 386, in the name of the noble Baroness, Lady Hayman of Ullock, would require the Secretary of State to publish draft legislation to allow local authorities to propose wild-belt designations for the purpose of improving the results of environmental outcome reports. EORs sit alongside the Government's commitments to support nature's recovery and are intended to ensure that decision-makers have the facts they need when deciding whether to move forward with a specific plan or to permit a specific development. EORs will consider a range of environmental factors, including the influence of protected or designated spaces on the effects of the development, and the model of outcomes and indicators will allow the Government to reflect environmental priorities, including matters such as the preservation of wilderness.

The noble Baroness, Lady Hayman of Ullock, talked about the need for a joined-up approach. The local nature recovery strategy statutory guidance explains how areas for nature recovery should be identified, including how conditions should be spatially connected for nature recovery and existing areas of importance for nature. I know from my own experience on the Select Committee for land use—my noble friend Lord Caithness also raised this—about management. We need to see much better management, particularly of green-belt spaces which are neither very green nor have much biodiversity in them. This is a real opportunity for those areas to do a lot of what these amendments are proposing.

Noble Lords also referred to the commitments the Government have made on this issue. The recent levelling up White Paper reinforced that local nature recovery strategies will be reflected in plan-making. It has been mentioned several times, but the National Planning Policy Framework expects plans to identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and the stepping stones that connect them, and the areas identified by national and local partnerships for habitat management, enhancement, restoration and creation.

While the concept of a wild belt is intriguing, introducing a designation that is required for the purpose of improving the results of an EOR risks distorting the purpose of environmental assessment, which is to provide relevant environmental information in a digestible way to support effective decision-making. Therefore, I am not able to recommend that the Government support these amendments, but I hope I have provided noble Lords with the assurances they seek in order to withdraw them.

While Amendments 386 and 289 take different approaches from each other, and from the Government's stated position, I hope I have reassured noble Lords that we are working towards the same aim—nature's recovery—and that the approach we are taking through the powers under the Environment Act and subsequent guidance will achieve that aim.

Baroness Jones of Whitchurch (Lab): My Lords, I thank all noble Lords who have added their support, and the noble Earl, Lord Caithness, who agrees, normally, with so much of what we are debating. I am sorry we have a slight difference at this late point in the debate, but I am sure we can iron it out.

My noble friend Lady Hayman was quite right to emphasise the essential link between nature recovery and the planning system. This comes up in other amendments we will deal with during the course of the Bill, but this amendment deals with one specific part of that relationship. My noble friend also rightly emphasised the need for wildlife corridors. We are learning so much more about the fact that you cannot have little isolated pockets of nature recovery and expect it to work. We need that broader viewpoint and a way for nature to travel around the country to provide a wider benefit.

The noble Baroness, Lady Pinnock, was quite right to stress that, in order for that to happen, the less special and the less beautiful places need to play their part as well. An awful lot of nature recovery activity can go on in places which we do not necessarily see as being particularly beautiful, although they nevertheless have a role to play in nature recovery.

All that leads to the concept of the wild belt. I disagree with the noble Earl, Lord Caithness; it is not a bureaucratic proposal because we already have the structure here—we are just giving an extra tool to the local nature recovery strategies and the people working

on that to take a wider look at what is going to make nature work in their area. As I say, it is about finding new pockets or areas which are not necessarily the ones that people might think of, which will help with this nature recovery plan.

Therefore all the powers are already there—they already exist in the Environment Act. All we are doing is providing greater scope for those people to really deliver what we are asking of them. I disagree about whether it is bureaucratic; I think it is actually quite a simple ask. It is quite a popular ask; a lot of the NGOs and campaigners out there recognise the benefit that this can bring, so I hope noble Lords will not disregard it as it is a proposal worth pursuing. In fact, I have had a number of noble Lords from the Government Benches talking positively about this, so it is a concept that has legs, and I think we will return to it.

Having said all that, I hope that the noble Lord, Lord Randall, has a speedy recovery and that he will be able to be here for us to plan our next steps on what we will do with this amendment. However, in the meantime I beg leave to withdraw it.

Amendment 289 withdrawn.

House resumed.

Public Order Bill

Returned from the Commons

The Bill was returned from the Commons with a reason. It was ordered that the Commons reason be printed.

House adjourned at 10.47 pm.