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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Tuesday 2 May 2023

2.30 pm

Prayers—read by the Lord Bishop of St Edmundsbury and Ipswich.

Royal Assent

2.37 pm

The following Acts were given Royal Assent:

Mobile Homes (Pitch Fees) Act,

Ballot Secrecy Act,

Employment (Allocation of Tips) Act,

Pensions Dashboards (Prohibition of Indemnification) Act,

Public Order Act.

Leasehold Enfranchisement

Question

2.37 pm

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

To ask His Majesty's Government what plans they have to make leasehold enfranchisement a simpler, more viable option for residential leaseholders.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. I declare my interests as set out in the register and the fact that I am a leaseholder.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, we are committed to making enfranchisement simpler and cheaper for leaseholders. We will abolish marriage value, cap the treatment of ground rents in the enfranchisement calculation and prescribe rates to be used, saving some leaseholders thousands of pounds. An online calculator will also be introduced to make it simpler for leaseholders to find out how much it will cost them to enfranchise. We are due to bring forward further leaseholder reforms later in this Parliament.

Lord Kennedy of Southwark (Lab Co-op): My Lords, there is a specific problem with any lease extension granted in blocks of flats after 14 February 2022, as they are not protected by the Building Safety Act 2022. When will that be put right? Secondly, the Minister will have seen the interview her predecessor—the noble Lord, Lord Greenhalgh—gave to the Leasehold Knowledge Partnership on 14 April, which raised grave doubts about the promised leasehold reform Bill being in the King's Speech. Does she understand the concern and worry that has caused leaseholders, and will she bring those worries and concerns to the attention of the Secretary of State?

Baroness Scott of Bybrook (Con): My noble friend—or, rather, the noble Lord opposite; the number of times he brings this Question means I think of him as a friend—is quite right that, if you are a qualifying leaseholder and extend or vary your lease, you may surrender your existing lease and be granted a new lease. As the new lease will not have been granted before 14 February 2022, the statutory leaseholder protections in the Building Safety Act will not apply. We are looking to legislate to resolve this issue as soon as parliamentary time allows. In the meantime, before seeking a new extended or varied lease, leaseholders should seek legal advice and seek to come to agreements with landlords to apply the same protections as contractual terms.

I am very sorry, but I did not answer the second question. He asked whether I would bring the letter to leaseholders from the noble Lord, Lord Greenhalgh, to the attention of the Secretary of State. I have already done so.

Lord Young of Cookham (Con): My Lords, further to the Answer which my noble friend has just given to the noble Lord, Lord Kennedy, will the protection to which my noble friend has just referred be retrospective so those leaseholders who extended their leases after February last year will get the protection she referred to?

Baroness Scott of Bybrook (Con): I thank my noble friend for that question. As I say, we are looking at how we can protect it. On whether it is retrospective or not, I will have to write to my noble friend.

Lord Naseby (Con): Is my noble friend aware that the general tenor of the Answer she has given this afternoon is enormously welcome and a demonstration of the statements made in the last 12 months that our Government believe in not only modernising leasehold but the whole structure of the housing market in the United Kingdom?

Baroness Scott of Bybrook (Con): I thank my noble friend for that question—or statement, I think. Yes, we have made it very clear all along, in answering every question that I have been asked at this Dispatch Box, that we are going to bring forward further leasehold reform and it will be in this Parliament.

Baroness Thornhill (LD): My Lords, my recent experience of helping leaseholders in a retirement block near me leads me to ask: does the Minister accept that going to the final arbiter of leasehold disputes, which is the First-tier Tribunal, is a long, off-putting, expensive, complex process? Can she reassure us that, when the renters reform Bill finally arrives, it will address this unsatisfactory service which, I can bear testimony to, really is a serious detriment to leaseholders seeking fair treatment?

Baroness Scott of Bybrook (Con): Certainly, we will be looking at the First-tier Tribunal issue, as we will be looking at all issues, when we get to the leaseholders Bill and the private renters reform Bill.

Lord Berkeley (Lab): My Lords, when this new legislation gets published, can the Minister ensure that the exemptions on certain pretty ordinary houses on

[Lord Berkeley]
the Isles of Scilly, which the Duchy of Cornwall has opposed for so many years, will be included and they will be able to buy their leases like everybody else? I would have mentioned it to His Majesty this morning, but my train was late.

Baroness Scott of Bybrook (Con): I thank the noble Lord for that question. I am afraid I cannot tell him whether the few cottages on the Isles of Scilly that he refers to will be covered, but I am sure he will ask further questions during the passage of that Bill.

The Earl of Devon (CB): My Lords, over 20 years ago we introduced the law of commonhold, and I think I contributed to a textbook on the subject as a junior barrister. In the years since, I think only about 20 commonholds have been established. I know the Law Commission looked at this a couple of years ago, and commonhold is designed to be a better alternative to leasehold without the complications. Can the Minister explain what is happening to update commonhold and to encourage the adoption of it?

Baroness Scott of Bybrook (Con): The noble Earl brings up a very interesting point. Commonhold, as he knows, allows home owners to own the freehold of a unit, such as a flat, within buildings and it is commonplace in places such as Australia, New Zealand, the US and Canada. Unlike leasehold, commonhold does not run out, there is no third-party landlord and owners are in control of the costs and decisions affecting the management of their buildings. Commonhold was introduced in this country in 2002, but for some reason it has not taken off and, as the noble Earl says, there are currently fewer than 20 commonhold developments. In 2020, the Law Commission recommended reforms to reinvigorate commonhold as an alternative to leasehold ownership, and the Government are looking at this and will respond in due course.

Baroness Altmann (Con): Would my noble friend agree that, with the shortage of leasehold properties and the extensive number of good landlords that there are across the country, it is important, when we have the new legislation, to ensure that not only are tenants protected—because of course, rightly, they must have protection in their own homes—but we are careful about the balance around putting too much burden on landlords to the extent that we may drive good ones out of the market? I declare my interests as set in the register.

Baroness Scott of Bybrook (Con): My noble friend is absolutely right: this is a balance. There are a lot of exceptionally good landlords in this country, but there are a few that are not good—in fact, you could probably call them rogue. It is important that whatever legislation we put through gets that balance right, protecting tenants and good landlords but ensuring that we get rid of those rogue landlords.

Baroness Warwick of Undercliffe (Lab): Does the Minister recognise the distress and anxiety caused to leaseholders and, indeed, the degree of uncertainty that still exists? Could she explain to us why the opportunity was not taken in the levelling-up Bill to include leaseholders? They are signally not included in it, and so many other things are.

Baroness Scott of Bybrook (Con): It is very simple: the leasehold Bill was already in production when LURB came in. It is a very complex Bill and the issues in it need their own legislation; it will be here before the end of the Parliament.

Lord Greenhalgh (Con): It has been very helpful to hear the assurance that we will see leasehold reform before the end of this Parliament, but could my noble friend push to have the Bill published? It is going to be very complex, with issues around enfranchisement, the right to manage and encouraging and reinvigorating commonhold. Can we publish the Bill so that we can begin the pre-legislative scrutiny as soon as possible?

Baroness Scott of Bybrook (Con): We have had this question before, but I can tell my noble friend that we are trying to get the Bill here. We have a short period of time, it is a complex Bill and—I am going to be totally honest with noble Lords—it will not get here for pre-legislative scrutiny, but we will get it in shortly.

Lord Kennedy of Southwark (Lab Co-op): My Lords, can I just be absolutely clear? Are we definitely going to get this Bill in the next Session of Parliament, without a doubt?

Baroness Scott of Bybrook (Con): Does the noble Lord want me to repeat it? I shall not waste time—but, yes.

Voter Authority Certificates

Question

2.47 pm

Asked by ***Lord Rennard***

To ask His Majesty's Government what assessment they have made of (1) the number of registered electors who have acquired Voter Authority Certificates, and (2) the effectiveness of the scheme in practice.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, over 89,500 applications have been received for voter authority certificates. The Government have never had a target for applications and are pleased with the initial rollout. A three-stage evaluation will begin after May's elections, seeking to understand how the policy measures are implemented and their impact on electors and election staff. Publication of the first review is expected in November 2023, with further reviews after each of the next UK general elections.

Lord Rennard (LD): My Lords, the Government estimated that around 2 million people who are on the electoral register do not have one of the forms of photo ID required this year. Around 1.6 million of those

people have elections on Thursday—but the figures show that more than 1.5 million do not have the local authority certificate and will be unable to vote on Thursday, unless by any chance they have acquired another form of photo ID in the meantime. So perhaps 1.5 million people could be denied their vote. Is the spending of £180 million of taxpayers' money over 10 years a successful investment for the Conservatives if it blocks this many people from voting?

Baroness Scott of Bybrook (Con): My Lords, there are multiple reasons why voters have chosen not to apply for a voter authority certificate at this time. Not everyone will have elections in their area, for a start, and not everyone will choose to vote in a polling station. Those who vote by post or by proxy will not need voter identification and therefore have no need to apply for a VAC. While we would not seek to predict turnout on 4 May, in previous local elections over the past decade a significant proportion of votes have been cast by post. For example, in the May 2022 local elections, postal votes comprised 38% of overall turnout and proxy votes a further 1%. We also have to accept that, while we hope that every elector takes part in the democratic process, this is simply never going to be the case and many will choose not to vote. The cost of this is £2.42 per elector over a 10-year period.

Lord Cormack (Con): My Lords, does my noble friend not agree that the best form of voter authority certificate would be an identity card? Will she also reflect on her own remarks about postal voting? Where there has been manifest corruption in recent years, it has been not at the ballot box in the station but among postal voters.

Baroness Scott of Bybrook (Con): The discussion about ID cards is a whole new question that I do not intend to go into. As for postal votes, the Elections Act 2022 contains further measures on postal votes to secure that vote.

Lord Grocott (Lab): My Lords, if I heard the Minister correctly, she said there would be a review this autumn on these local election results and another review after the next general election and so on. What is the point of a review if things will continue to go on as if nothing has happened, no matter how bad the election was in terms of voter turnout? Surely, what is required if the review shows a drop in voter turnout is not another review but an abandonment of the whole policy.

Baroness Scott of Bybrook (Con): I do not think it is an abandonment of the whole policy. We expect the Electoral Commission, as an independent regulator, to provide some analysis and some early, interim reports on the May elections some time this summer. We will learn from that and, if any changes need to be made, we will consider those changes.

Lord Pannick (CB): Will the Government ensure that adequate, accurate records are kept of the number of potential voters who are turned away because of inadequate documents?

Baroness Scott of Bybrook (Con): Yes, my Lords; it is in legislation that local authorities will count the numbers, anonymously, of electors who are turned away and we will look at those and at all the other evidence from the electoral returning officers when we look at how this has worked.

Lord Forsyth of Drumlean (Con): Does my noble friend have any idea why the opposition parties should be against ensuring that the ballot is properly conducted and secure?

Baroness Scott of Bybrook (Con): No, I do not, because it was the Labour Party, supported by the Liberal Democrat Party, that agreed in 2003 to Northern Ireland having a similar system. They voted for it and I cannot understand why they are not voting for it this time.

Baroness Hayman of Ullock (Lab): My Lords, we have heard about the review, but the review has to be meaningful, otherwise it is pointless. So, given that the Minister has previously stated that this will consider evidence from polling stations, what exactly will that evidence include, what steps have been taken to prepare for it and what guidance has been given to electoral staff?

Baroness Scott of Bybrook (Con): Both the Electoral Commission and the Government have been working with electoral staff continuously since the Act came in. What will be collected at polling stations will include the numbers and the reasons why electors have been turned away, if they have, whether they returned and whether they voted later, as well as other aspects of the policy. This will just be adding to what they would normally collect in a polling station.

Baroness Taylor of Bolton (Lab): My Lords, will the Minister take this opportunity to apologise for those Conservative leaflets that have been distributed in Norwich and other places, specifically telling people that they do not need ID to vote?

Baroness Scott of Bybrook (Con): As a Norfolk resident, I have taken that issue forward.

Baroness Hussein-Ece (LD): My Lords, is the Minister aware that there seem to be different restrictions in different local authorities before they issue ID cards? I had a message from someone who had been on the electoral roll since 1999. They were initially denied a certificate and had to go back with four different proofs of ID before the authority agreed to issue one. Is this normal practice, and will she look into it?

Baroness Scott of Bybrook (Con): It does not sound like normal practice. If the noble Baroness would like to give me some further details, I will look into it. I cannot discuss an individual case.

Lord Hayward (Con): My Lords, I take this opportunity to thank noble Lords on all sides who supported the passage of the Ballot Secrecy Act, which was given

[LORD HAYWARD]
Royal Assent a few moments ago. Further to this particular Question, can I ask my noble friend to re-emphasise the fact that those people who return, having previously been refused the ballot, will be recorded as well, so that there will be a clear record not only of those who are turned away but who return?

Baroness Scott of Bybrook (Con): Yes, I am happy to repeat that: those who return with voter ID will be recorded.

Lord Reid of Cardowan (Lab): My Lords—

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

Noble Lords: Greens!

Lord Reid of Cardowan (Lab): My Lords, the Minister is making a pretty bad fist of a very poor case. She mentioned 2003 in Northern Ireland, where there was manifest data on impersonation. If she does not know the difference between Northern Ireland and the British mainland over the past 40 years—before 2003—I cannot really help her. But 2003 was also the year when voluntary biometric ID cards were introduced, in an attempt to make sure that access to public services was not misused, to help in the control of immigration, to make sure that there could not be voter impersonation on the British mainland, and for a dozen other good reasons.

Noble Lords: Question!

Lord Reid of Cardowan (Lab): That scheme was unilaterally abolished by the Liberal Party when they were in the coalition. They are the very same people who are now crying out for some decent method of identification. It is the only way to make sure that there is no impersonation in voting.

Baroness Scott of Bybrook (Con): My Lords, I do understand what happened in Northern Ireland in 2003. Let us get it right. Personation in polling stations is very difficult to identify and prove. By definition, it is a crime of deception. If you listen to the people of Northern Ireland, you will hear that they are more satisfied with their voting system than people in this country. We should allow our residents to be as satisfied with ours. If you look at what comes from polling, you will see that two out of three people in this country would feel more confident in the voting system if there were photo ID.

Schools: "Ghost Children"

Question

2.58 pm

Asked by ***Baroness Twycross***

To ask His Majesty's Government what steps they are taking to address the issue of so called 'ghost children', including the two million children who are persistently absent from school in England.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, the pandemic was a shock to education. Sickness absence increased, and persistent absence challenges were exacerbated: the persistent absence rate was 22.5%—approximately 1.6 million pupils—in the last academic year. This year, persistent absence has fallen from 25% in the autumn to 21.2% last term. This remains too high. Our priority is to reduce absence, and our strategy includes new, stronger expectations on schools, trusts and local authorities, and targeted support for them.

Baroness Twycross (Lab): My Lords, in evidence to the Commons Select Committee inquiry on persistent absence, the Children's Commissioner gave three reasons for it: special educational needs not being met in school; anxiety or mental health issues arising post Covid; and those who have simply not gone back to school. Given the long-term impact on children's life chances and potential safeguarding concerns, can the Minister assure the House that the Government are treating this issue seriously?

Baroness Barran (Con): I absolutely can reassure the House of that. I express my thanks to the Children's Commissioner for her work in this area, particularly on children who are not on any school roll at all and are missing education entirely. The noble Baroness may be aware that we set up an attendance alliance, chaired by the Secretary of State, which meets monthly and is working with a number of experts in the field, sharing best practice with schools and other stakeholders to make sure that we get children back to school as quickly as possible.

The Lord Bishop of St Albans: My Lords, this has the potential to be a major safeguarding issue, which many professionals are concerned about. What are His Majesty's Government doing to help schools work with local social services teams to ensure that we have identified who these children are, that their risk is assessed and that they are given the proper support that they need?

Baroness Barran (Con): There is a safeguarding risk, but there is also a danger of conflating different groups of children. Of those who are persistently absent—those who miss 10% or more of sessions in school—the vast majority have authorised absence for sickness reasons. However, the right reverend Prelate is right that we need to focus on particularly vulnerable children; we have set out new guidance with expectations that local authorities should have termly targeted support meetings with schools to put together a plan for exactly the sort of pupil to which the right reverend Prelate refers.

Lord Laming (CB): My Lords, the Minister will agree that education is essential for every child, not just for academic study but for their emotional and social development. Does someone actually visit the homes of these children to ascertain why they are not in school and to remind their parents that there is a statutory duty entitling the child to a proper education?

Baroness Barran (Con): The noble Lord is right that education is essential, for the reasons that he gave. Whether and by whom a child's door might be knocked on will depend on whether they have a social worker,

but best practice in these cases is clear and we see many schools and trusts doing it: knocking on the doors of children who are not in school and trying to do so as early as possible, before it becomes a persistent issue.

Lord Storey (LD): My Lords, the Minister will be aware that a number of children's charities are highlighting that children and young people—often from disadvantaged backgrounds and less academically able—are saying that they do not want to go to school, and their parents are saying, "We'll home educate you". These children then claim to be home-educated but home education is not taking place, and because home educators do not have to register, we have no knowledge of whether a proper education is taking place, the quality of any education being provided or whether those children are being safeguarded. Is it not time that the Government brought in a quick Bill on home education?

Baroness Barran (Con): As the noble Lord may agree, I am not sure that a home education Bill would be quick. More importantly, we support the rights of parents to educate their children at home and know that many parents are very committed and do a fantastic job. Equally, we cannot overlook the rising numbers of children being home educated. We remain committed to introducing statutory local authority registers of children not in school, but in the meantime we are working closely with local authorities on a voluntary basis to collect that data. I recently met the chair of the ADCS to discuss this exact point.

Lord Farmer (Con): My Lords, guidance on school absence refers to multiagency and whole-family approaches but not to family hubs, which specialise in this for children aged nought to 19, not just the early years. They exist in more than half of English local authorities, but the Family Hubs Network—which I co-founded, as recorded in my entry in the register—finds many schools not engaging with them. Will the Minister commit to updating the guidance to refer specifically to family hubs so that they become the starting point for addressing anxiety and other underlying issues affecting our children?

Baroness Barran (Con): I thank my noble friend for his work in this area and I agree with him that very often persistent absence will not be the only issue that is going on in a family; therefore, the nature of family hubs is ideal to address this. The department has commissioned a team of 10 expert attendance advisers who are working with every local authority and with multi-academy trusts to help address issues of persistent absence. As part of that support, those advisers strongly recommend and encourage engagement with family hubs.

Baroness Whitaker (Lab): My Lords, following the question from and answer to the Liberal Democrat Benches, the Secretary of State very helpfully replied to a letter signed by Peers all around the House saying that she would like to find the time to create a local authority register. When is that time going to be? Quite apart from home-educated children, where, as the Minister says, standards of education vary from good to non-existent, there are a large number of excluded children who make very good targets for recruitment into gangs and other criminal activities.

Baroness Barran (Con): As I said, we would need primary legislation to bring in statutory registers; until a legislative opportunity is available, we will work very hard to make the voluntary registers work. There are very high rates of return from local authorities—over 90% of them are returning their data on a voluntary basis.

Lord Kirkhope of Harrogate (Con): My Lords, I want to pursue the question asked by the noble Lord, Lord Storey. Home education has been growing dramatically in this country and following on from the Ofsted processes in schools there is a growing concern that many children are not obtaining the level of education that they should have. Children who are home educated are under very few regulations, and it is necessary for something to be done, rather than leaving this in a nebulous state with local authorities.

Baroness Barran (Con): I am sorry that my noble friend feels that it is in a nebulous state; I do not think the local authorities who are working on this would necessarily agree with him. I point him to my earlier answers in relation to the legislative timetable, and we are also keen to make sure that home-educating parents who are struggling receive support so that they can give their children a good education if that is the right thing for them.

Baroness Eaton (Con): My Lords, a whole-family approach to absenteeism needs co-ordination at the local and national government level, with family hubs becoming the go-to place where families can access wide-ranging support. Further to the question asked by my noble friend Lord Farmer, what can His Majesty's Government do to shift the focus away from the education provider in the community, and towards these hubs as a place where parents of children of all ages can get the co-ordinated help they need for often complex issues such as persistent absenteeism?

Baroness Barran (Con): I respectfully say to my noble friend that we do not want to steer families away from the education provider. The relationship between school and family is an extremely important one, which we need to reinforce and build up as much as possible. But it is clear that the family hub model provides the opportunity to join up different forms of attendance support to families, in partnership with the school.

BBC: Appointment and Resignation of Chair

Question

3.09 pm

Asked by ***Baroness Merron***

To ask His Majesty's Government what assessment they have made of the damage caused to the reputation of the BBC following the appointment and subsequent resignation of the Chair, Richard Sharp.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the BBC is a world-class broadcaster and cultural institution which produces some of the very best television and radio in the world. We understand and respect Richard Sharp's decision to stand down. His Majesty's Government and the BBC board both want to see stability for the corporation. We want to ensure an orderly transition and will launch a process to identify and appoint a new permanent chairman.

Baroness Merron (Lab): My Lords, last week's report found Richard Sharp to be wrong in not declaring his close links with Boris Johnson when applying for the job of BBC chair. The facts have been clear for some time, so while we welcome the report, this matter could and should have been resolved much earlier. Does the Minister accept that this sorry episode has caused damage both to the BBC's reputation and to confidence in the public appointments process? With Prime Minister Rishi Sunak promising integrity at every level of his Government, why was it left to Mr Sharp to resign rather than him being dismissed weeks ago?

Lord Parkinson of Whitley Bay (Con): It is right that an independent process was commissioned and allowed the time to run. Mr Sharp himself has said that he regrets the impact this has had on the corporation he has faithfully served. Mr Heppinstall's report says:

"Overall, DCMS officials conducted a good and thorough process".

There are some helpful lessons for all in his investigation, which we will look at and take forward as appropriate.

Lord Birt (CB): My Lords, I declare an interest as a former director-general of the BBC. This episode will not damage the BBC—there, I agree with the Minister. It has been around for 100 years, and it is a wonderful institution. It will quickly ride through this sorry affair. The damage that has been done is to the Government's own process for making public appointments. The Heppinstall report is a truly shocking read. Will the Government now overhaul the process for making public appointments?

Lord Parkinson of Whitley Bay (Con): I agree with the first part of what the noble Lord says. The news today about the BBC's work launching the emergency radio service in Sudan is another testament to the fantastic work it does not just in this country but around the world. As I have said, Mr Heppinstall's report concluded that:

"Overall, DCMS officials conducted a good and thorough process".

There are some lessons in his report. We will carefully consider its findings and respond in due course.

Baroness Kingsmill (Lab): My Lords, would it preferable if Ministers and holders of public office were, in fact, suspended when being investigated for various situations, such as bullying or arranging loans and things like that for the Prime Minister? Should they not be suspended rather than being allowed to continue with their employment while an investigation takes place?

Lord Parkinson of Whitley Bay (Con): It is important that there is a thorough and swift investigation in cases such as this, and that is what has happened here; Adam Heppinstall has produced a thorough report. He has looked into this carefully and brought forward his conclusions. Richard Sharp has resigned, and we understand and respect his reasons for doing so.

Lord Vaizey of Didcot (Con): My Lords, it is very nice to have a Tory voice in this debate. I declare my interest as a presenter on Times Radio. Richard Sharp was an excellent chair of the BBC, and he has been extremely harshly treated—not least by that terrible cartoon in the *Guardian* over the weekend. However, I echo the noble Lord, Lord Birt: one of things that is clear from this report, and something we all knew at the time, is who the Government's favoured candidate for the position was. This does a disservice to the Government because it prevents excellent candidates putting themselves forward and giving them a genuine choice. I know the Minister will simply play a completely straight bat as he answers this Question, but he must know that the Government should have a much more open process for the appointment of the next chair of the BBC.

Lord Parkinson of Whitley Bay (Con): I completely agree with what my noble friend says about the brilliant work done by Richard Sharp during his time as chairman of the BBC and with the comments he made about the deplorable cartoon in the *Guardian*, which I am glad was pulled. The Adam Heppinstall report rightly points to the impact that the publication of candidates' names in the media can have on the public appointments process, and we echo the concerns he raised there. The process to appoint a new permanent chairman will be run in a robust, fair and open manner, in accordance with the governance code.

Baroness Armstrong of Hill Top (Lab): My Lords, when I was a councillor and somebody knocked on my door to say that they were applying for a school caretaker's job or a dinner assistant's job, I would say, "Congratulations; I hope you do well. I will now take no part in the selection because I now have an interest: I know who you are". The noble Lord opposite is right: the Government must make sure that the appointments process is open and that lobbying will actually be a disadvantage rather than the way you get on, which is the way the Government have been behaving.

Lord Parkinson of Whitley Bay (Con): Ministerial responsibility is a core principle of the public appointments system. It is important that the process is run and is seen to be run in accordance with that code, and that people declare the things they are required to declare, so that people know. However, there are other independent panel members who are appointed to appointment panels to make sure that there is independence in the system. These are decisions on which Ministers are entitled to take a view, in line with the Government's code.

Lord McNally (LD): My Lords, nothing the Minister has said so far can give us any confidence that the process is not going to still be influenced by No. 10 Downing Street. Therefore, is it not absolutely imperative

that a system of selection be produced that makes it clear that whoever the incumbent is in No. 10, they will not have undue or improper influence on this appointment? I say this as someone who was once head of the political office in No. 10, so I know how that, under successive Governments, there is a desire to interfere. The Government have an opportunity now to create a really transparent, open system, but they have to have the will to do it as well.

Lord Parkinson of Whitley Bay (Con): The process for appointing the chair of the BBC is set out in the BBC's royal charter. It requires an appointment to be made by Order in Council following a fair and open competition. By convention, the Secretary of State for Culture, Media and Sport recommends the appointment to the Lord President of the Council, and the Prime Minister recommends the appointment to His Majesty the King. It is important that the process be followed and that all public appointments be set out and conducted in accordance with the Government's code.

Lord Berkeley of Knighton (CB): My Lords, I declare my interest as a freelance broadcaster for the BBC. Does the Minister agree that there is a parallel here with your Lordships' House? For example, we read endless headlines about prime ministerial appointments to the House but very little about the hours and hours of scrutiny that go into legislation. So it is with the BBC, but this has very little to do with the workforce, who produce programmes day in, day out. It has more to do, as we heard from the noble Lord, Lord Birt, with the selection and appointment process.

Lord Parkinson of Whitley Bay (Con): I agree with the noble Lord. Indeed, Mr. Sharp pointed in his own resignation statement and letters to his regret at the distraction this has caused to the corporation. We are very lucky indeed to have the BBC in this country, producing the world-class television and radio content I mentioned in my first response.

Lord Clarke of Nottingham (Con): My Lords, we know that he disclosed the possible conflict to the Cabinet Secretary. Why did the Cabinet Secretary not disclose or tell him to disclose that conflict to those responsible for making the recommendation? When the Government are reviewing the process for these public appointments, will they ensure that the rules on potential conflicts of interest say that all those people involved in making recommendations or making the eventual choice need to have the declaration of interest made known to them? It seems to be an obvious point, which was overlooked by some otherwise perfectly sensible people on this occasion.

Lord Parkinson of Whitley Bay (Con): Adam Heppinstall's report makes it clear that the governance code puts the obligation to make a disclosure on the candidate and not on others. He has looked into this matter and concluded that Mr Sharp accepted that he should have disclosed the matter to the panel and apologised for his error. Given that error, he tended his resignation, and the Government understand and respect his reason for doing so.

Flags (Northern Ireland) (Amendment) Regulations 2023

Motion to Approve

3.20 pm

Moved by ***Lord Caine***

That the draft Regulations laid before the House on 29 March be approved. *Considered in Grand Committee on 26 April*

Motion agreed.

Ukraine

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 27 April.

"I am grateful to the right honourable gentleman for the Question. On Friday, the Defence Secretary met his counterparts at Ramstein air base for the 11th meeting of the Ukraine defence contact group. The focus was on accelerating the delivery of military aid packages for Ukraine as they plan to expel Russian forces from illegally occupied Ukrainian territory. The message from Ramstein was clear: international support for Ukraine is growing. More countries than ever are attending; donations are increasing, and their delivery is accelerating.

We are one of the leading providers of military support for Ukraine and were the first country to donate modern main battle tanks. We have now completed delivery of this matériel and training package, which included a squadron of Challenger 2 tanks, along with their ammunition, spares, and armoured recovery vehicles; AS-90 self-propelled guns, sufficient to support two brigades with close support artillery; more than 150 armoured and protected vehicles; and hundreds more of the most urgently needed missiles, including for air defence.

The UK-led international fund for Ukraine encourages donations from around the world and stimulates industrial supply of cutting-edge technologies for Ukraine's most vital battlefield requirements. The first bidding round raised £520 million-worth of donations, receiving 1,500 expressions of interest from suppliers across 40 countries. The second bidding round opened on 11 April, and the UK is calling for further national donations and is calling on industry to provide its most innovative technologies, especially for air defence.

A total of 14,000 Ukrainian recruits have now returned from the UK to defend their homeland, trained and equipped for operations, including trench clearance, battlefield first aid, crucial law of armed conflict awareness, patrol tactics and rural environment training. In all its dimensions, the higher quality of training for Ukrainian soldiers provided by the UK armed forces and their counterparts from nine other nations has proven battle-winning against Russian forces. The UK will develop the training provided according to Ukraine's requirements, including the extension to pilots, sailors and marines. It is now expected to reach 20,000 trained recruits this year."

3.20 pm

Lord Coaker (Lab): My Lords, I thank the Government for their comments on Ukraine but can the noble Baroness ensure that Statements are more regularly made to Parliament? The Defence Secretary last made a Statement on Ukraine in January, and I think that all of us, in both Houses, would welcome the opportunity to hear more often of progress and be able to question the Government about it.

The Minister in the other place said that the focus at last week's meeting in Ramstein was on accelerating the delivery of military aid packages. Can the Minister say how the Government intend to accelerate the progress of the provision of these weapons, and in particular how we intend to accelerate the progress of the provision of air defence weapons?

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): I thank the noble Lord for his observations. I listened with interest to his view that we should devote more time to the consideration of matters in Ukraine, and I quite understand that he makes that point very seriously. I am certainly aware of fairly regularly appearing at this Dispatch Box to answer questions on Ukraine, which I am very happy to do. I am also aware that, in this House, we had an exceedingly good debate on 9 February, in which I think the noble Lord participated and in which I and my noble friend Lord Ahmad of Wimbledon participated on behalf of the Government. Certainly in this House we are trying to ensure that your Lordships are kept informed. However, I am sure that noble Lords will share with me if they have any reservations about seeking more information, and I will endeavour to facilitate the provision of that.

On the specific point which the noble Lord raises about the provision of equipment, I have observed before that the thrust of this, apart from the dominant roles played by the United Kingdom and the United States, really comes from acting in concert with other partners and allies. As the noble Lord will be aware, on 21 April, at Ramstein, the US hosted the Ukraine defence contact group, which discussed further co-ordinated military support to Ukraine. This is done in conjunction and co-ordination with our partners.

A very important part of this is the international donor co-ordination centre, which makes sense of getting all the things in and then providing them to Ukraine as efficiently and effectively as possible. The other important element of all this is the International Fund for Ukraine, which has reached urgent bidding round 2, launched on 11 April. Requirements are being released in phases, the first two of which are for air defence, which closed on 26 April, and long-range strike, which will close on 4 May. Further requirements under that urgent bidding round 2 will be raised via the Defence Sourcing Portal in a phased approach over the coming weeks. I think your Lordships will understand that there is a coherent pattern here. We cannot do this randomly or indiscriminately; we have to make sure that it is part of a sensible, conjoined approach.

Lord Lancaster of Kimbolton (Con): My Lords, Op Interflex, the training of Ukrainian recruits here in the United Kingdom by UK Armed Forces and our NATO allies, has been a tremendous success. However, it takes up quite a lot of the contingent capability of our Armed Forces. I simply ask this: will it continue?

Baroness Goldie (Con): I reassure my noble friend and the House that it will continue. We have an ambition to train up to 20,000 Ukraine armed forces personnel this year, and I am able to inform the House that, as of 2 May, we have already trained more than 5,000.

Baroness Smith of Newnham (LD): My Lords, His Majesty's Government's commitment to Ukraine is very welcome, but in the past few weeks we have had additional commitments in Sudan. Can the Minister reassure the House that the MoD has the resources to enable us to work in both countries? One common link is the Wagner Group. What assessment have the Government made of finally proscribing that group?

Baroness Goldie (Con): I thank the noble Baroness for raising an important point. We have resources and assets to cover those contingency demands on our personnel. I take this opportunity to pay tribute to what I thought was, once again, the impressive professionalism and commitment of our Armed Forces personnel in effecting a safe evacuation of British nationals, and indeed other personnel, from Sudan.

I think we all in this House agree that the Wagner Group is an odious organisation. We do not comment regularly on whether we are going to proscribe an organisation or designate it a transnational criminal organisation—these are matters we keep within our confidence—but I can say that we have taken action. The UK has now sanctioned more than 1,500 individuals and more than 120 entities in response to Putin's war in Ukraine. This includes the Wagner Group, Yevgeny Prigozhin and his family, and Dmitry Utkin. We are taking action against the group.

Lord Craig of Radley (CB): My Lords, media reports suggest that Russia has made increasing attacks by air on Ukraine. What assessment have His Majesty's Government made of Ukraine's ability to resist these attacks and not submit to a loss of air superiority against the Russians?

Baroness Goldie (Con): I say to the noble and gallant Lord that I think that the evidence to date has been that Ukraine has mounted an extraordinarily courageous and very effective response to Russian air aggression. Among the many types of equipment we have supplied to Ukraine, we have included anti-aircraft missile systems that can be launched from both land and ship.

Lord Browne of Ladyton (Lab): My Lords, for the obvious reason that we must at all costs avoid an escalation of this war, Ukraine's allies have equipped Ukraine for a defensive war, but now all the talk is about offensives. Attacking is certainly much more difficult than defending. If all the Leopard 2 tanks that have been promised arrive, will there be sufficient

to break through the Russian defences? Who is going to provide the air support that will be necessary for any offensive to be effective?

Baroness Goldie (Con): Obviously we remain engaged with Ukraine on its immediate needs and how best we, in conjunction with partners, can respond to them. I am not at liberty to disclose operational matters, for reasons widely understood. We constantly monitor the situation, and we will continue to do whatever we can to support Ukraine as it tries to repel this illegal invader.

Lord Howell of Guildford (Con): Will my noble friend use her influence to see whether, in future Ukraine Statements, we could learn a little more about the state of internal morale inside Russia in the face of the appalling slaughter, which is almost reminiscent of the First World War? The level of morale in Russia itself, and the pressures on the Government, may be the decisive factor in ensuring that this hideous horror comes to an end. Does she see any comparison with the Russian mood when Russian troops had to retreat from failure in Afghanistan, which of course helped to bring about the collapse of the whole Soviet Union in those days?

Baroness Goldie (Con): Many people will be in sympathy with the important point made by my noble friend. We do everything that we can through intelligence outlets to try to ascertain what is happening in Russia—what the mood is and what the sentiment is. It is difficult to elicit any specific information, apart from a general observation that there is now evidence that morale is being impacted by this illegal war in Ukraine. Increasingly within Russia, as a consequence of that war, the brutal effect upon families who have lost loved ones or seen loved ones seriously injured is beginning to tell its own story. My noble friend makes an important point. I wish that I had some more specific instrument available to me to ascertain in detail what he asks. We continue to monitor the situation as best we can.

Lord Houghton of Richmond (CB): My Lords, I have a question on the high-level strategic purpose of the UK's support and the international support for Ukraine. To an interested observer, it appears to be an attempt to allow Ukraine neither to lose badly nor to win decisively. The net result is a sustained, mutually hurting stalemate. Can the Minister comment on the morality of that? Would it be fair to say that pragmatism has trumped morality in UK policy?

Baroness Goldie (Con): The morality is that, when someone behaves in an inexcusably illegal and brutal fashion, it must be resisted, in the interests of international respect for upholding law and for a country's sovereignty. That is what Ukraine is doing, supported by many countries around the world. How Ukraine wishes to approach that conflict is not for me to interpret or advance an opinion upon, but, as the noble and gallant Lord is aware, everyone understands the propriety of what Ukraine is doing. The United Kingdom, with our allies and partners, will support Ukraine as very best we can.

Police Uplift Programme

Statement

3.31 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I shall now repeat a Statement made in another place:

"With permission, Mr Speaker, I will make a Statement about the Government's police uplift programme.

Today is a significant day for policing. We can officially announce that our unprecedented officer recruitment campaign has met its target. We said we would recruit an additional 20,000 officers, and we have. We have recruited 20,951 additional officers. This means that we now have a record 149,572 officers across England and Wales.

This is the culmination of a colossal amount of work from forces, the National Police Chiefs' Council, the College of Policing, the Home Office and beyond. They have my heartfelt gratitude and admiration. I feel honoured and privileged to be holding the baton as we pass the finishing line. I am especially grateful to my right honourable friends the Members for Uxbridge and South Ruislip, Witham and North West Hampshire. Their vision and leadership were instrumental in helping us reach this point, and I know they will share my delight today. I pay tribute too to my right honourable friend the Home Secretary, who has energetically steered the campaign to its successful conclusion, and to my right honourable friend the Prime Minister for his continued support and encouragement.

This was not a simple task. There have been challenges along the way and people doubted our prospects of success, but by sticking to the course and believing unequivocally in the cause, we have done it. To every single new recruit who has joined up and helped us reach our goal, I say thank you. There is no greater or more noble example of public service, and they have chosen a career like no other. Not everyone will be as happy as we are today. Criminals must be cursing their luck, and so they should, because we are coming after them.

Not only are there more officers than ever before but the officer workforce is more diverse than it has ever been. There are now 53,083 female police officers in post, compared with 39,135 in 2010. There are 12,087 officers identifying as ethnic minorities, compared with 6,704 in 2010. There are more officers working in public protection, in local policing and in crime investigations. There are now 725 more officers working in regional organised crime units tackling serious and organised crime, as we promised.

While it is right that today we pause and reflect on the success of the uplift programme, this is not the end. This is not just about hitting a number. It is about making a real and tangible difference to the lives of people we serve and the communities they live in. It is the latest step in our mission to crush crime and make our country safer. The public want to see bobbies on the beat; we have delivered. The public want courageous and upstanding public servants in whom they can have pride and, most importantly, whom they can trust. Now the public quite rightly expect forces to maximise the increased strength and resources available to them.

[Lord Sharpe of Epsom]
They want to see criminals caught and locked up, and to feel safe and secure, whether in their homes, online or out and about. They want the police to focus on the issues that matter most to them.

We have made good progress already. Crime is going in the right direction, falling in England and Wales by 50% since 2010, excluding fraud and computer misuse, with burglary falling 56%, robbery by 57% and criminal damage by 65% over the same period. Figures also show reductions in homicide, serious violence and neighbourhood crime since December 2019. On homicide, reductions are being made, with the numbers 6% lower than in December 2019 as of September 2022. Now we need policing to work with partners to ensure that these reductions are maintained.

Crime is a broad and ever-evolving menace, which is why we are addressing it from all angles. We are acting to turn the tide on drugs misuse through our 10-year strategy, and our crackdown on county lines has yielded excellent results. We have stepped up efforts to tackle domestic abuse, violence against women and girls, and child sexual abuse. Our twin-track approach to tackling serious violence is bedding in and having a real impact. We are supporting law enforcement in the ongoing fight against serious and organised crime, terrorism, cybercrime and fraud. We have shown that when our constituents raise concerns about an issue, we listen and we act. That was demonstrated recently with the publication of our comprehensive plan to drive anti-social behaviour out of our communities and neighbourhoods.

We will keep up the momentum. We will challenge and support the police in equal measure. We expect police forces to maintain officer numbers at the levels delivered by the uplift and are pushing them to drive up standards and drive down crime. It is vital that forces seize this opportunity. As the Home Secretary has made clear, common-sense policing is the way forward. This is our mantra, and it should be a guiding principle for forces too.

For the Government's part, we are holding up our side of the bargain. That includes measures I announced earlier this month to cut red tape that gets in the way of real police work. It includes the steps we are taking on ethics, integrity and conduct, as policing strives to secure and retain public trust, which has been shaken by recent reports and cases. Before I finish, I want to highlight that I will be holding a drop-in surgery here in the large ministerial room from 3 pm today for any colleagues who wish to discuss the uplift programme.

We said we would recruit 20,000 additional police officers; we have delivered. We said we would bear down relentlessly on crime; we have delivered. I am proud of what we have achieved, but there is more to come. To the decent, law-abiding majority, I say this: we have got your back. Your safety is our number one priority. My message to the criminals is this: we are coming for you, you will be caught and you will face justice.

More police, less crime, safer streets and common-sense policing: those are the pillars upon which our approach is built. Today, as we mark another hugely significant step forward in that mission, we reaffirm our commitment to do everything in our power to protect the public. I commend this Statement to the House."

3.38 pm

Lord Coaker (Lab): Well, there you go. I thank the Government for their Statement, and the information they have provided regarding this police uplift programme. This is not, however, year nought of a new Government. It is the 13th year of this Government. Where are the Government pretending to have been for the last 13 years? They cut police numbers by 20,000 and now, having reversed those cuts, want us all to clap them for it and to praise them for this brilliant achievement. Why would we do that?

We all want more police, and we all congratulate them on the work that they do on our behalf. But is it not the case that the last decade and more of police cuts has had appalling consequences, as the Government were warned? Let us look at some of the consequences. Is it not the case that the numbers of arrests and of crimes solved have halved? Is it not the case that since 2015 the charge rate has dropped by two-thirds?

In case the Minister feels that this is just Labour Party propaganda—that we would say that—I quote from three articles in the *Daily Telegraph* from the last 18 months; there are too many but I chose just these three: "Record low of just 5.8pc of crimes solved", "Police fail to solve a single theft in more than eight out of 10 neighbourhoods", and "Police criticised for failing to solve one million thefts and burglaries". I could go on.

Police cuts have had consequences, particularly as we saw with the complete and utter decimation of neighbourhood policing. How will we see a restoration of this? How will we see a restoration of that visible police presence—crimes investigated, victims supported and criminals prosecuted? How will the police uplift programme deliver that? Instead of fancy phrases about criminals being frightened and so on, the public would have wanted to hear from the Government how the police uplift programme will deal with some of the consequences that they face in their everyday lives in their neighbourhoods.

Following the recent awful findings of inquiries into the police such as that on the murder of Sarah Everard and, most recently, the Casey review, how will the police uplift programme restore trust and confidence in our officers? Does the programme deal with the fact, not mentioned by the Minister, that 8,000 police community support officers were cut—alongside 6,000 police staff, including some of the most specialised officers in forensics, digital and many other such examples?

Of course, anyone would welcome more police officers, but this is not a reform programme. It does not deal with many of the crucial issues facing our police. Boasting about restoring the police numbers that you have cut simply will not do it. What is needed, alongside increased numbers, is a proper programme to restore neighbourhood policing, proper training and accreditation, ensuring that all crimes—including so-called low-level crimes such as anti-social behaviour, bike theft and many others—are properly investigated, with trust and confidence restored. How does the police uplift programme do any of that? We have heard not a word.

The Home Secretary said on TV last week that what has happened over the last 10 years is irrelevant. Does the Minister agree with that, or does he agree

with me that it is not irrelevant if you were a victim of theft, rape or violence against women, or if it was your bike, your car or your shed targeted for theft or attack?

I finish with this crucial challenge to the Government: does the police uplift programme deal with the lack of police on the street, on the front line? Does it deal with the fact that 90% of crimes are unsolved? Does it deal with the lack of policing experience, such as in the case of detectives? Does it deal with low levels of public confidence? More police are welcome, of course, but proper reform is needed alongside that, not the populist rhetoric that we have just heard.

Lord German (LD): My Lords, this is obviously a Statement that the Government are pleased to make but, unfortunately, the rhetoric does not lead to change, which is what the public will be looking for. A huge number of questions fall out of the programme and tell you something about the way in which policing takes place in this country.

What we are seeing, of course, is that record numbers of police are leaving the police force while new people come in. Does this record number of police leaving mean that we are basically trading inexperience for experience? In 2021-22, the last year for which figures are available, 8,117 police officers left the profession; that is a 20-year high. Can the Minister tell us whether that figure is reflected in the figures up to the end of March this year and whether, again, we are seeing that change? Clearly, what we need is an experienced profession.

The second thing that the uplift programme shows is the number of people in various age groups within the new police forces around the country. If you look carefully the figures for those aged 55 and over, you see that they represent only some 1.8% of the police force. Has that figure been shared, not in this financial year but in previous years? Is that an accelerating figure, with the number of older police officers declining? At present 38% of the force are aged 45 or over. Was that figure higher or lower in the past?

The other question that needs raising is how police officers are recruited. We have had a series of questions back and forth with the Minister about the way in which police officers are recruited and we know that some 50% of all recruited police officers do not have a face-to-face interview with another police officer. I know that the Minister has replied to my questions and said that this is being altered. I have read what the Government intend to do with the police college and to make that change work, but we certainly need to be reassured that the right people are getting into the police force and we are not seeing the sort of problems that we have seen in the very recent past.

If you want true community policing, what sense does it make to lose all the community support officers that we have had? Since 2015, 4,000 police support officer posts have been lost and since 2019, given that that is the bedrock date that the Minister wants to work from, 1,284 community police officer posts have been lost. The great advantage for those of us who remember the way in which those support officers worked around our communities is that they were seen on the streets; they were what you might call "bobbies on the beat". They were an essential part of that. As the Minister knows, you do not put one policeman on the beat; you used to put a policeman with a PCSO. So it is two police officers now, because the number of PCSOs has dropped.

The real test of this measure is: will the quality and nature of the service that people get change? Some 275 car thefts per day in the past year went unsolved, and just 3.4% of car thefts resulted in a charge. Also, 574 burglaries went unsolved and only 6% resulted in a charge. The sort of result that people want to see is people being charged and found guilty of the crimes that are being committed against them. Clearly that has not happened. The test for the Government is how community policing is going to work in the future. A recent Savanta poll found that four in 10 UK adults have installed in the past year CCTV, stronger locks, alarm systems or camera doorbells, all of which demonstrates that people are worried about crime and about these crimes being detected, which they have not been as yet.

One thing absent from the Statement is any mention of cybersecurity. Those of us who have been privileged to hear what is happening in this Parliament will know of the battle against those who are trying to burst into the security of our nation. Can the Minister tell us what resource is going to go into the battle of the future against those who are causing cybercrime?

Finally, there is the issue of head count versus full-time equivalents. The Government in the published Statement say that there is little difference—some 1% or 2%. However, 1% or 2% of experienced people who are doing the work that we want to see done is a considerable number. What we are seeing here is a shell without the interior. The interior has to be made to work for the communities of this country and I am not certain that that is the progress which the Government have made.

Lord Sharpe of Epsom (Con): My Lords, I thank both noble Lords for their comments. Since I arrived in your Lordships' House, every debate and Question has been a demand for more from the Government—money, resources and so on. We have finally delivered more, on time and on budget, and, if I am honest, I am a bit disappointed with the response. However, I will do my best to answer the questions that have been put to me.

To forestall any questions about fraud and the cybersecurity aspects that will be asked, I will alert noble Lords to the fact that the fraud strategy is going to be published this week. There will be more to be said on that, and as a consequence I am not able to go into detail about it.

Before I go into detailed answers to the questions, the data that I read out in the Statement was in fact a little out of date, because on Thursday last week the Crime Survey for England and Wales published its latest data, which takes us up to December 2022. That shows that all crime, excluding fraud and computer misuse, has fallen by 52% since March 2010, from 9.5 million incidents in the year ending March 2010 to 4.65 million in the year ending December 2022—a reduction of 4.978 million.

The latest data from the crime survey shows a 12% decrease in all CSEW crime since the year ending March 2020 and a 14% decrease in all crime since the

[Lord Sharpe of Epsom]
year ending December 2019. There were 1.5 million incidents of neighbourhood crime estimated by the crime survey for the year ending December 2022, a fall of 26%, compared with the year ending March 2020. I could go on, but I think the data supports the fact that the police have been doing a good job and, hopefully, with this uplift in numbers, will continue to do so. I remind the House that there are now over 149,500—more than ever before. The Government are determined to cut crime and make our streets safer. Over the course of the police uplift programme, 46,505 new recruits have joined police forces. I will come back to that in a moment.

The noble Lord, Lord Coaker, asked about charge rates. I agree that the current data on charge rates is concerning. We expect police forces to get the basics right, to focus on common-sense policing and to work with partners across the criminal justice system to see more criminals charged and prosecuted. But that is a shared responsibility and the system needs to work better to catch criminals and help victims of crime.

With regard to online crime, as I said, the fraud strategy will be published this week. However, to put some numbers on that, we have already committed £400 million over the next three years to bolster law enforcement's response to economic crime. The strategy will set out a co-ordinated response from government, law enforcement and the private sector to better protect the public and increase the disruption and prosecution of fraudsters.

The subject of vetting has quite rightly come up. The Government have been clear that all police forces must meet the high standards that the public expect, and that forces must root out those who are unfit for service at the very first opportunity. It is of the utmost importance that robust processes are in place to stop the wrong people joining the police in the first place, which is why we have invested in improving recruitment processes and supporting vetting as part of the £3 billion of funding provided to forces to recruit and maintain officers. New recruits will have been vetted in line with the College of Policing's *Vetting Code of Practice* and relevant vetting APP, which were first established in 2017. The APP is due for an upgrade very shortly, as noble Lords will be aware.

On neighbourhood policing, there are now more officers working in public protection, local policing and crime investigations. Thousands of additional officers are already out on the streets, and the latest data available shows that overall 91% of police officers were in front-line roles. The uplift programme provides the opportunity to ensure that we have the officers that policing needs, both to respond to the increase in demand and to take a more proactive response to managing that demand, including crime prevention.

The noble Lord, Lord German, asked about the attrition rates. We have made it very clear to police forces that the large investment we have put into policing means that we expect officer numbers across England and Wales to be maintained throughout 2023-24. The police uplift programme was designed to provide a genuine uplift of 20,000 officers that accounts for attrition rates. Voluntary resignation rates in policing are at less than 3%, which is low compared to other sectors. Policing is obviously a career like no other, and the results of our latest survey of new recruits showed a positive onboarding experience overall: 82% of respondents are satisfied with the job, and 77% intend to continue as police officers for the rest of their working lives. Those numbers are very encouraging.

The noble Lord also asked me, perfectly reasonably, about face-to-face contact. In February, the College of Policing wrote to all chief constables with updated and reissued guidance on post-assessment in-force interviews. The college reiterated the importance of those interviews and that all forces should deliver them using college assessment standards to ensure the same quality nationally. The college expected forces to have implemented the updated guidance by the end of last month. Following the issuing of new guidance by the college on post-online assessment centre interviews, the latest data provided by the college shows that 38 forces are currently using a post-assessment interview and that four plan to do so with their next cohorts.

The noble Lord, Lord German, also mentioned CCTV—as if it somehow indicates against the quality of the data I have already shared with your Lordships' House, and that there is more, shall I say, concern about crime in local areas. Of course, people are right to be concerned. However, perhaps it also demonstrates that this equipment and technology is cheaper and more readily available than ever before and, more to the point, that it can be installed on a Sunday afternoon by oneself.

The noble Lord, Lord Coaker, is quite right: the numbers have consequences for everyday lives, which is why I believe that your Lordships' House should support them. I certainly do not believe that any of this is irrelevant.

3.56 pm

Lord Soames of Fletching (Con): My Lords, I welcome the tenor and content of the Statement my noble friend the Minister read out. However, does he agree with me that one of the principal problems our police forces have is the lack of quality in their leadership at middle-rank and senior-rank levels? Will he consider looking at the way the Armed Forces trains its officers to ensure that, when police officers take positions of senior command, they are prepared and wholly trained for such awesome responsibilities?

Lord Sharpe of Epsom (Con): My noble friend makes some solid points. It is undeniable that some of the incidents which have been seen over the past few years, and which are coming to light now, are a consequence of a failure of leadership. I am pleased that the leadership of the country's main police force is in very good hands, and I support Sir Mark Rowley of the Metropolitan Police in the work he has to do. My noble friend also makes some very good points about leadership more generally. I believe—and I will be asking about this more frequently—that the College of Policing is working on the reinstatement of a national police college to ensure rigorous, nationally consistent standards.

Baroness Chakrabarti (Lab): My Lords, it is no fault of the Minister, but metaphors about passing batons and crossing finishing lines will be seen to be

complacent and even insensitive by many victims of sexual and violent crime in particular. I share the concerns expressed repeatedly on all sides of your Lordships' House that, when reversing drastic police cuts in a hurry, there will be issues with the quality of recruitment, vetting, training and discipline, as we have heard. So, rather than constantly batting this off to the College of Policing, will the Government take responsibility and propose a clear timeline for a legislative framework of standards across the nation for all those vital matters?

Lord Sharpe of Epsom (Con): The noble Baroness will be aware that a number of ongoing reviews on matters such as dismissals are due to conclude very shortly. She makes some very good points about victims, and we are committed to delivering justice for victims and putting some of the vile offenders referred to behind bars for longer, but there is obviously still a long way to go. We have previously discussed at the Dispatch Box some of the factors the noble Baroness mentioned and, while I will not go into them in detail again, I note that programmes such as Operation Soteria are delivering meaningful results.

Lord Vaux of Harrowden (CB): The noble Lord was quite right in saying that I was going to mention fraud. The Statement says that crime is falling, excluding fraud. Fraud remains a substantial growth industry and now accounts for over 40% of all crime against the individual. The noble Lord agreed last week that the current level of law enforcement resources aimed at it is insufficient. He skilfully shot my fox earlier by referring to the national fraud strategy that is to be issued this week, which is an improvement on "imminently" and "shortly". How many of these 20,591 officers who have been recruited have specialist fraud skills?

Lord Sharpe of Epsom (Con): The noble Lord asks a question which I cannot answer at the moment. I will endeavour to find out those statistics and I would hope that some of those questions about resourcing will be dealt with on publication of the strategy this week. As regards the overall uplift, as I said earlier, 91% of the new intake, as it were, are involved in frontline policing.

Baroness Berridge (Con): My Lords, while the diversity statistics my noble friend outlined are encouraging, in terms of women and ethnic minorities they are still not proportionate to the population. Is not one of the issues that many police forces have, particularly the Met, retaining those staff? Can my noble friend outline how we are going to monitor—maybe with swifter inspections from His Majesty's Inspectorate of Constabulary and Fire & Rescue Services—whether they retain their female and ethnic minority staff and promote them at the same rate as their white officers?

Lord Sharpe of Epsom (Con): My noble friend makes some very good points. Obviously, as she would expect me to say, these are matters for local police forces themselves. However, I absolutely take the point, and we should all be involved in making sure that retention and lack of attrition remains as it is.

Lord Grocott (Lab): My Lords, I find it pretty astonishing that the Government should call for national rejoicing that they have finally got the level of policing up to the level of 13 years ago, under the last Labour Government. An apology for all the cuts that were made in the early years of this Government would be in order. As for comments in the Statement such as criminals now "must be cursing their luck" because the figures have gone up, the inevitable response is that immediately after 2010, criminals must have been rejoicing at the savage cuts made to policing—to dangerous levels—in many cities in this country.

The Minister still has not answered a couple of specific questions that were put to him. First, we are told that these 20,000 new recruits have been recruited since 2019. How many people have left the police service during that precise period, and is that allowed for in describing the number of police officers available today? Secondly, this mass recruitment is obviously to be welcomed, but can he tell us how many of these new recruits actually leave the police service before they have completed their probationary period? It is no use having the police officers unless they give a substantial period of service after they have been trained.

Lord Sharpe of Epsom (Con): My Lords, in fact there are more policemen than under the last Labour Government: 3,542 more, to be precise. The fact is that demand for policing has changed since 2010, which is why in 2019 the Government made this commitment to increase the number of police officers by 20,000, to help the police respond. I am afraid that I cannot say how many of this new intake will complete their probationary period, as, obviously, some will still be in their probationary period. I will endeavour to find out the statistics and come back to the noble Lord. On the number who left, I have already gone into the statistics in some detail on the number who were recruited, as well as the attrition statistics.

The Lord Bishop of Gloucester: My Lords, it is very good to hear the Minister speak about police uplift. I am certainly not asking for more and more but I am asking for more join-up. I am really concerned about the "we are coming for you" rhetoric being part of the solution, and the sense that if we simply arrest more people and send more people to prison, we will reduce reoffending. There was nothing in the data about the high rate of reoffending. Unless we look at what is going on in our prisons, at how we rehabilitate people and address some of the systemic issues relating to why people offend in the first place, we will not be doing that join-up across the criminal justice system. I am really concerned about the rhetoric whereby, if you arrest more people and lock them up for longer, our streets will be safer; the data simply does not reflect that. Will the Minister say more about the join-up across the whole of the criminal justice system?

Lord Sharpe of Epsom (Con): The right reverend Prelate has made some very good points. The public would expect charge, arrest and prevention rates to increase from the current levels. However, without work on reoffending and the criminal justice system in

[Lord Sharpe of Epsom]
the round, as the right reverend Prelate suggests, I think that things will fail to improve as much as we would all like. I cannot give her any precise details but, when it comes to the drug strategy, work is being done between the Ministry of Justice, the criminal justice system more generally and the Home Office on reoffending and referring people to preventive programmes at an earlier stage. That should yield some results.

Lord Bellingham (Con): Will the Minister join me in paying tribute to Paul Sanford, who was appointed Norfolk chief constable in 2021? He made it among his priorities to clamp down on the county lines and low-level antisocial behaviour, and he has succeeded in both areas. However, is the Minister aware that rural counties such as Norfolk, Suffolk and Lincolnshire are facing quite profound problems with the police funding formula? As a consequence, Paul Sanford's predecessor had to scrap the police community support officer programme. What can the Minister say about those counties that have suffered relative to other counties in funding and their desire to reinstate that programme in future?

Lord Sharpe of Epsom (Con): I thank my noble friend for his question and I am happy to join him in congratulating the chief constable whom he has mentioned. As for the funding formula, I do not have the precise details in front of me. However, as I said in the Statement, the demand has changed over the past 10 years. If the funding has changed, that will be a reflection of the change in demand.

Viscount Stansgate (Lab): My Lords, the Minister's Statement refers to the importance of public trust. As the House will know, in the case of the Metropolitan Police, that is understandably very low—indeed, the Metropolitan Police is itself on probation. To follow up his answer to my noble friend a moment ago about probation, do the Government keep figures on the current number of police officers in the Metropolitan Police who are on probation? Do the Government have an estimate of those who are expected to pass through their probation to become finally qualified police officers?

Lord Sharpe of Epsom (Con): I am glad that the noble Viscount has raised the subject of the Metropolitan Police. It is a little disappointing that it is one of the only forces—in fact, the only force—that did not meet its targets in police uplift, with only an additional 3,468 officers recruited, whereas the target was for 4,557, and the funding was there to do that. As for the probationary statistics that the noble Viscount asked for, as I said in answer to an earlier question, I am afraid that I do not have them to hand, but I shall endeavour to find them and communicate them to the noble Viscount.

Lord Dholakia (LD): My Lords, the composition of police forces should reflect the community that they represent. Why has recruitment of those from ethnic-minority and diverse communities been so low in the Metropolitan Police?

Lord Sharpe of Epsom (Con): That I cannot answer but, as I said, in the national picture, the fact is that we have more officers identifying as ethnic minorities than ever before.

Baroness Blower (Lab): My Lords, as the Minister said, it is not just about hitting a target; it is also about public trust. How concerned is he about the media reports around police recruitment of unsuitable so-called rogue candidates being given jobs, precisely to meet government targets? The police inspectorate has said explicitly that hundreds of people have joined the police in the past three years who simply should not have. If the Minister recognises this, what is he going to do to address it?

Lord Sharpe of Epsom (Con): I hope that I have gone into reasonable detail about the standards of vetting that are required and expected. I also point out that there were 10 applicants for every job, which implies—or should imply, at least—that there is a reasonable pool from which to choose and, I hope, get the right people. That is of course not a guarantee that there will not be a few bad apples in this particular barrel, but I sincerely hope that there are not—but perhaps I might be surprised if there are not as well.

Baroness Lawrence of Clarendon (Lab): My Lords, even with the police uplift programme, since 2010 there are 9,000 fewer police officers, and 6,000 fewer on the beat in real terms. Does the Minister think that this programme is sufficient, given that 90% of crimes go unsolved every year, or are the Government considering further action?

Lord Sharpe of Epsom (Con): My Lords, the noble Baroness asks me to comment on operational policing matters. I have talked a bit about neighbourhood policing activities; I have also, on a number of occasions, said that 91% of policemen are involved in front-line activities. These are really issues that should be debated between police and crime commissioners and chief constables, depending on the area.

Baroness McIntosh of Pickering (Con): My Lords, as my noble friend Lord Bellingham said, rural crime takes on a life of its own. North Yorkshire was the first police force, I understand, to create a rural task force. Will the Home Office give a specific target for rural crime to ensure that the funding for such task forces is secured going forward?

Lord Sharpe of Epsom (Con): My noble friend will be aware that, as I said in answer to the previous question, these are operational matters for chief constables and police and crime commissioners—and, of course, in the case of police and crime commissioners, the people who elect them.

Lord Watts (Lab): My Lords, this will not wash. The people outside know that crime is going up; they know that there are not the police numbers on the

street. How will the Government make sure that these criminals get longer sentences when there are no places in prison for them?

Lord Sharpe of Epsom (Con): My Lords, the noble Lord is wrong: crime is going down and there are more police officers than ever before. That is according to the Crime Survey for England and Wales, which the Office for National Statistics recognises as the most reliable source of those statistics. As for inviting me to comment on sentencing practices and so on, which obviously stray into the responsibilities of other government departments, I am not going to do that.

Baroness Wilcox of Newport (Lab): My Lords, the Minister has given us a great deal of data this afternoon. However, the proportion of front-line officers is lower today than in any year since 2011, while the proportion of officers in organisational support is higher today than in any year since 2011. Have the Government considered the merits of committing to a target for putting more police and PCSOs on the streets in our nations and regions?

Lord Sharpe of Epsom (Con): I say to the noble Baroness that, again, that is an invitation to comment on operational policing matters, which depend very much on local circumstances. However, 91% of all police are currently in front-line roles and, as I have already said, the nature of that—the demand, if you like—has changed over the last decade and it would not be wise for me to speculate as to how that demand has changed in various local areas.

Lord Watson of Wyre Forest (Lab): My Lords, just last week we heard that the Met Police may be failing to identify serial killers, in the wake of the appalling case of Stephen Port. The report identified five key failings: lack of training; poor supervision; unacceptable record-keeping; confusing policies; and inadequate intelligence procedures. How are the Government urgently supporting the Met to fix this?

Lord Sharpe of Epsom (Con): The Government's support for Sir Mark Rowley has been very clear indeed, and I am happy to wish him very well in his endeavours over the coming months. He has a very large set of responsibilities on his shoulders and, as far as I can see, he is discharging them well. The noble Lord asked me about operational policing in London. He will be aware that the responsibility for that, as the police and crime commissioner, is with the Mayor of London.

Lord Kennedy of Southwark (Lab Co-op): My Lords, 41% of crime is fraud, so why does the Minister keep using figures that do not include fraud?

Lord Sharpe of Epsom (Con): The fraud strategy will be published this week.

Lord Weir of Ballyholme (DUP): My Lords, while the Government make a virtue of the fact that police numbers in England have started to turn marginally upwards, in Northern Ireland we have reached a point at which the security threat is the highest it has been for many years from terrorist and dissident organisations, and yet the number of police officers in Northern Ireland is perhaps the lowest it has been in many decades, if not the entire history of the state. What representations have Ministers been making to their colleagues in the Northern Ireland Office to ensure that the citizens of Northern Ireland are given an equal level of protection from crime and terrorist actions?

Lord Sharpe of Epsom (Con): The picture that the noble Lord paints is obviously concerning. I will say that this is not a marginal uplift but a substantial uplift. As regards specific circumstances in Northern Ireland, I am afraid I cannot answer his question on the numbers, but I will investigate and come back to him.

Lord Brooke of Alverthorpe (Lab): My Lords, I think there is general agreement that trust has declined since 2010. We need to restore that as best we can. Knowing the Minister, I was rather surprised by his throwaway line in response to some of the questions about trust. When he said that there will be "a few bad apples", I found that rather complacent. The police inspectorate has said that, of the people being recruited into the police force, some hundreds have come in within the past three years who should not be there. We know the plan that has been set in place to try to avoid a repetition of this in the future, but what is happening to try to root out the 300 or so that are around?

Lord Sharpe of Epsom (Con): I am sorry if I sounded complacent to the noble Lord. It was really just a reflection on the statistics of this, as with any normal distribution—the noble Lord will know how normal distributions of population cohorts and so on work out. That is all that that comment was meant to reflect. As regards the numbers of police that have been recruited, I have commented extensively on the vetting processes. The dismissals review, which I referred to earlier, is concluding this month. I hope that we will have a lot more to say very soon on how that process will be strengthened.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am sorry: the Minister has not answered my question about the fraud strategy. The Government have been consistently excluding fraud from the reporting of crimes —why?

Lord Sharpe of Epsom (Con): My Lords, the noble Lord is quite right. I am sorry if I seemed to evade the question. The simple fact of the matter is that I cannot comment on the strategy because I have not seen it, it is due to be published this week, and it will address all the various questions that the noble Lord has asked me—in other words, I do not know.

Baroness Taylor of Stevenage (Lab): My Lords, as we have heard from my noble friend Lady Lawrence, even with the police uplift programme, there is still a shortage of over 9,000 police officers. As well as the decimation of neighbourhood policing that that has caused, many of the officers lost in earlier rounds of cuts will have been among the most experienced and

[Baroness Taylor of Stevenage]
highly trained; for example, officers trained in specialist intelligence, firearms and dealing with sexual offences. This has put immense pressure on those left behind to hold the fort and may explain, for example, why only 1% of rape offences reach a conviction. What assessment have the Government carried out of the impact of this loss of experience, and how long will it take to build back up so that the specialist officer posts can be filled?

Lord Sharpe of Epsom (Con): The noble Baroness is right to talk about specialist skills and experience. I do not recognise the 9,000 number: as I have said repeatedly this afternoon, we have record numbers of police. I am afraid I cannot answer, as with the question that the noble Lord, Lord German, asked, about age distribution and so on. I can say that certain specific programmes, such the one I referenced earlier, Operation Soteria, are delivering very strong results. The necessary people are being trained in the right way in dealing with some of the things that are of significant public concern.

Online Safety Bill

Committee (4th Day)

4.18 pm

Relevant document: 28th Report from the Delegated Powers Committee

Clause 11: Safety duties protecting children

Amendment 23

Moved by ***Lord Russell of Liverpool***

23: Clause 11, page 10, line 9, at beginning insert "eliminate,"

Member's explanatory statement

This amendment would require user to user services to eliminate identified risks to children from their platforms in addition to mitigating and managing them.

Lord Russell of Liverpool (CB): My Lords, this large group of 33 amendments is concerned with preventing harm to children, by creating a legal requirement to design the sites and services that children will access in a way that will put their safety first and foremost. I thank my co-sponsors, the noble Baronesses, Lady Kidron and Lady Harding, and the noble Lord, Lord Knight. First of all, I wish to do the most important thing I will do today: to wish the noble Baroness, Lady Kidron, a very happy birthday.

Noble Lords: Hear, hear!

Lord Russell of Liverpool (CB): My co-sponsors will deal with some of the more detailed elements of the 30 amendments that we are dealing with. These will include safety duties, functionality and harm, and codes of practice. I am sure that the noble Lords, Lord Stevenson and Lord Knight, and the right reverend Prelate the Bishop of Oxford will speak to their own amendments.

I will provide a brief overview of why we are so convinced of the paramount need for a safety by design approach to protect children and remind digital companies and platforms, forcibly and legally, of their obligation to include the interests and safety of children as a paramount element within their business strategies and operating models. These sites and services are artificial environments. They were designed artificially and can be redesigned artificially.

In her testimony to the US Senate in July 2021, the Facebook whistleblower Frances Haugen put her finger on it rather uncomfortably when talking about her erstwhile employer:

"Facebook know that they are leading young users to anorexia content … Facebook's internal research is aware that there are a variety of problems facing children on Instagram … they know that severe harm is happening to children".

She was talking about, probably, three years ago.

On the first day of Committee, the noble Lord, Lord Allan, who is not with us today, used the analogy of the legally mandated and regulated safe design of aeroplanes and automobiles and the different regimes that cover their usage to illustrate some of our choices in dealing with regulation. We know why aeroplanes and cars have to be designed safely; we also know that either form of transportation could be used recklessly and dangerously, which is why we do not allow children to fly or drive them.

First, let us listen to the designers of these platforms and services through some research done by the 5Rights Foundation in July 2021. These are three direct quotes from the designers:

"Companies make their money from attention. Reducing attention will reduce revenue. If you are a designer working in an attention business, you will design for attention … Senior stakeholders like simple KPIs. Not complex arguments about user needs and human values … If a senior person gives a directive, say increase reach, then that's what designers design for without necessarily thinking about the consequences".

Companies know exactly what they need to do to grow and to drive profitability. However, they mostly choose not to consider, mitigate and prioritise to avoid some of the potentially harmful consequences. What they design and prioritise are strategies to maximise consumption, activity and profitability. They are very good at it.

Let us hear what the children say, remembering that some recent research indicates that 42% of five to 12 year-olds in this country use social media. The Pathways research project I referred to earlier worked closely with 21 children aged 12 to 18, who said: "We spend more time online than we feel we should, but it's tough to stop or cut down". "If we're not on social media, we feel excluded". "We like and value the affirmations and validations we receive". "We create lots of visual content, much of it about ourselves, and we share it widely". "Many of us are contacted by unknown adults". "Many of us recognise that, through using social media, we have experienced body image and relationships problems".

To test whether the children in this research project were accurately reporting their experiences, the project decided to place a series of child avatars—ghost children, in effect—on the internet, whose profiles very clearly stated that they were children. It did this to test whether these experiences were true.

They found—in many cases within a matter of hours of the profiles going online—proactive contacting by strangers and rapid recommendations to engage more

and more. If searches were conducted for eating disorders or self-harm, the avatars were quickly able to access content irrespective of their stated ages and clearly evident status as children. At the same time they were being sent harmful or inappropriate content, they also received age-relevant advertising for school revision and for toys—the social media companies knew that these accounts were registered as children.

This research was done two years ago. Has anything improved since then? It just so happens that 5Rights has produced another piece of research which is about to be released, and which used the exact same technique—creating avatars to see what they would experience online. They used 10 avatars based on real children aged between 10 and 16, so what happened? For an 11 year-old avatar, Instagram was recommending images of knives with the caption "This is what I use to self-harm"; design features were leading children from innocent searches to harmful content very quickly.

I think any grandparents in the Chamber will be aware of an interesting substance known as "Slime"—a form of particularly tactile playdough which one's grandchildren seem to enjoy. Typing in "Slime" on Reddit was one search, and one click, away from pornography; exactly the same thing happened on Reddit when the avatar typed in "Minecraft", another very popular game with our children or grandchildren. A 15 year-old female avatar was private-messaged on Instagram by a user that she did not follow—an unknown adult who encouraged her to link on to pornographic content on Telegram, another instant messaging service. On the basis of this evidence, it appears that little or nothing has changed; it may have even got slightly worse.

By an uncomfortable coincidence, last week, Meta, the parent company of Facebook and Instagram, published better than expected results and saw its market value increase by more than $50 billion in after-hours trading. Mark Zuckerberg, the founder of Meta, proudly announced that Meta is pouring investment into artificial intelligence tools to make its platform more engaging and its advertising more effective. Of particular interest and concern given the evidence of the avatars was his announcement that since the introduction of Reels, a short-term video feed designed specifically to respond to competition from TikTok, its AI-driven recommendations had boosted the average time people spend on Instagram by 24%.

To return to the analogy of planes and cars used by the noble Lord, Lord Allan, we are dealing here with planes and cars in the shape of platforms and applications which we know are flawed in their design. They are not adequately designed for safety, and we know that they can put users, particularly children and young people, in the way of great harm, as many grieving families can testify.

In conclusion, our amendments propose that companies must design digital services that cater for the vulnerabilities, needs, and rights of children and young people by default; children's safety cannot and must not be an afterthought or a casualty of their business models. We are asking for safety by design to protect children to become the mandatory standard. What we have today is unsafe design by default, driven by commercial strategies which can lead to children becoming collateral damage.

Given that it is the noble Baroness's birthday, I am sure we can feel confident that the Minister will have a positive tone when he replies. I beg to move.

4.30 pm

Baroness Kidron (CB): It is a great pleasure to follow my noble friend Lord Russell and to thank him for his good wishes. I assure the Committee that there is nowhere I would rather spend my birthday, in spite of some competitive offers. I remind noble Lords of my interests in the register, particularly as the chair of 5Rights Foundation.

As my noble friend has set out, these amendments fall in three places: the risk assessments, the safety duties and the codes of practice. However, together they work on the overarching theme of safety by design. I will restrict my detailed remarks to a number of amendments in the first two categories. This is perhaps a good moment to recall the initial work of Carnegie, which provided the conceptual approach of the Bill several years ago in arguing for a duty of care. The Bill has gone many rounds since then, but I think the principle remains that a regulated service should consider its impact on users before it causes them harm. Safety by design, to which all the amendments in this group refer, is an embodiment of a duty of care. In thinking about these amendments as a group, I remind the Committee that both the proportionality provisions and the fact that this is a systems and processes Bill means that no company can, should or will be penalised for a single piece of content, a single piece of design or, indeed, low-level infringements.

Amendments 24, 31, 77 and 84 would delete "content" from the Government's description of what is harmful to children, meaning that the duty is to consider harm in the round rather than just harmful content. The definition of "content" is drawn broadly in Clause 207 as

"anything communicated by means of an internet service",

but the examples in the Bill, including

"written material … music and data of any description",

once again fail to include design features that are so often the key drivers of harm to children.

On day three of Committee, the Minister said:

"The Bill will address cumulative risk where it is the result of a combination of high-risk functionality, such as live streaming, or rewards in service … This will initially be identified through Ofcom's sector risk assessments, and Ofcom's risk profiles and risk assessment guidance will reflect where a combination of risk in functionalities such as these can drive up the risk of harm to children. Service providers will have to take Ofcom's risk profiles into account in their own risk assessments for content which is illegal or harmful to children".—[*Official Report*, 27/4/23; col. 1385.]

However, in looking at the child safety duties, Clause 11(5) says:

"The duties … in subsections (2) and (3) apply across all areas of a service, including the way it is designed, operated and used",

but subsection (14) says:

"The duties set out in subsections (3) and (6)"—

which are the duties to operate proportionate systems and processes to prevent and protect children from encountering harmful content and to include them in terms of service—

"are to be taken to extend only to content that is harmful to children where the risk of harm is presented by the nature of the content (rather than the fact of its dissemination)".

[Baroness Kidron]

I hesitate to say whether that is contradictory. I am not actually sure, but it is confusing. I am concerned that while we are reassured that "content" means content and activity and that the risk assessment considers functionality, "harm" is then repeatedly expressed only in the form of content.

Over the weekend, I had an email exchange with the renowned psychoanalyst and author, Norman Doidge, whose work on the plasticity of the brain profoundly changed how we think about addiction and compulsion. In the exchange, he said that

"children's exposures to super doses, of supernormal images and scenes, leaves an imprint that can hijack development".

Then, he said that

"the direction seems to be that AI would be working out the irresistible image or scenario, and target people with these images, as they target advertising".

His argument is that it is not just the image but the dissemination and tailoring of that image that maximises the impact. The volume and frequency of those images create habits in children that take a lifetime to change—if they change at all. Amendments 32 and 85 would remove this language to ensure that content that is harmful by virtue of its dissemination is accounted for.

I turn now to Amendments 28 and 82, which cut the reference to the

"size and capacity of the provider of the service"

in deeming what measures are proportionate. We have already discussed that small is not safe. Such platforms such as Yubo, Clapper and Discord have all been found to harm children and, as both the noble Baroness, Lady Harding, and the noble Lord, Lord Clement-Jones, told us, small can become big very quickly. It is far easier to build to a set of rules than it is to retrofit them after the event. Again, I point out that Ofcom already has duties of proportionality; adding size and capacity is unnecessary and may tip the scale to creating loopholes for smaller services.

Amendment 138 seeks to reverse the exemption in Clause 54 of financial harms. More than half of the 100 top-grossing mobile phone apps contain loot boxes, which are well established as unfair and unhealthy, priming young children to gamble and leading to immediate hardship for parents landed with extraordinary bills.

By rights, Amendments 291 and 292 could fit in the future-proof set of amendments. The way that the Bill in Clause 204 separates out functionalities in terms of search and user-to-user is in direct opposition to the direction of travel in the tech sector. TikTok does shopping, Instagram does video, Amazon does search; autocomplete is an issue across the full gamut of services, and so on and so forth. This amendment simply combines the list of functionalities that must be risk-assessed and makes them apply on any regulated service. I cannot see a single argument against this amendment: it cannot be the Government's intention that a child can be protected, on search services such as Google, from predictive search or autocomplete, but not on TikTok.

Finally, Amendment 295 will embed the understanding that most harm is cumulative. If the Bereaved Parents for Online Safety were in the Chamber, or any child caught up in self-harm, depression sites, gambling, gaming, bullying, fear of exposure, or the inexorable feeling of losing their childhood to an endless scroll, they would say at the top of their voices that it is not any individual piece of content, or any one moment or incident, but the way in which they are nudged, pushed, enticed and goaded into a toxic, harmful or dangerous place. Adding the simple words

"the volume of the content and the frequency with which the content is accessed"

to the interpretation of what can constitute harm in Clause 205 is one of the most important things that we can do in this Chamber. This Bill comes too late for a whole generation of parents and children but, if these safety by design amendments can protect the next generation of children, I will certainly be very glad.

Baroness Harding of Winscombe (Con): My Lords, it is an honour, once again, to follow the noble Baroness, Lady Kidron, and the noble Lord, Lord Russell, in this Committee. I am going to speak in detail to the amendments that seek to change the way the codes of practice are implemented. Before I do, however, I will very briefly add my voice to the general comments that the noble Baroness, Lady Kidron, and the noble Lord, Lord Russell, have just taken us through. Every parent in the country knows that both the benefit and the harm that online platforms can bring our children is not just about the content. It is about the functionality: the way these platforms work; the way they suck us in. They do give us joy but they also drive addiction. It is hugely important that this Bill reflects the functionality that online platforms bring, and not just content in the normal sense of the word "content".

I will now speak in a bit more detail about the following amendments: Amendments 65, 65ZA, 65AA, 89, 90, 90B, 96A, 106A, 106B, 107A, 114A—I will finish soon, I promise—112, 122ZA, 122ZB and 122ZC.

Lord Vaizey of Didcot (Con): My noble friend may have left one out.

Baroness Harding of Winscombe (Con): I am afraid I may well have done.

That list shows your Lordships some of the challenges we all have with the Bill. All these amendments seek to ensure that the codes of practice relating to child safety are binding. Such codes should be principles-based and flexible to allow companies to take the most appropriate route of compliance, but implementing these codes should be mandatory, rather than, as the Bill currently sets out, platforms being allowed to use "alternative measures". That is what all these amendments do—they do exactly the same thing. That was a clear and firm recommendation from the joint scrutiny committee. The government's response to that joint scrutiny committee report was really quite weak. Rather than rehearse the joint scrutiny committee's views, I will rehearse the Government's response and why it is not good enough to keep the Bill as it stands.

The first argument the Government make in their response to the joint scrutiny report is that there is no precedent for mandatory codes of conduct. But actually there are. There is clear precedent in child protection.

In the physical world, the SEND code for how we protect some of our most vulnerable children is mandatory. Likewise, in the digital world, the age-appropriate design code, which we have mentioned many a time, is also mandatory. So there is plenty of precedent.

The second concern—this is quite funny—was that stakeholders were concerned about having multiple codes of conduct because it could be quite burdensome on them. Well, forgive me for not crying too much for these enormous tech companies relative to protecting our children. The burden I am worried about is the one on Ofcom. This is an enormous Bill, which places huge amounts of work on a regulator that already has a very wide scope. If you make codes of conduct non-mandatory, you are in fact making the work of the regulator even harder. The Government themselves in their response say that Ofcom has to determine what the minimum standards should be in these non-binding codes of practice. Surely it is much simpler and more straightforward to make these codes mandatory and, yes, to add potentially a small additional burden to these enormous tech companies to ensure that we protect our children.

The third challenge is that non-statutory guidance already looks as if it is causing problems in this space. On the video-sharing platform regime, which is non-mandatory, Ofcom has already said that in its first year of operation it has

"seen a large variation in platforms' readiness to engage with Ofcom".

All that will simply make it harder and harder, so the burden will lie on this regulator—which I think all of us in this House are already worried is being asked to do an awful lot—if we do not make it very clear what is mandatory and what is not. The Secretary of State said of the Bill that she is

"determined to put these vital protections for … children … into law as quickly as possible".

A law that puts in place a non-mandatory code of conduct is not what parents across the country would expect from that statement from the Secretary of State. People out there—parents and grandparents across the land—would expect Ofcom to be setting some rules and companies to be required to follow them. That is exactly what we do in the physical world, and I do not understand why we would not want to do it in the digital world.

Finally—I apologise for having gone on for quite a long time—I will very briefly talk specifically to Amendment 32A, in the name of the noble Lord, Lord Knight, which is also in this group. It is a probing amendment which looks at how the Bill will address and require Ofcom and participants to take due regard of VPNs: the ability for our savvy children—I am the mother of two teenage girls—to get round all this by using a VPN to access the content they want. This is an important amendment and I am keen to hear what my noble friend Minister will say in response. Last week, I spoke about my attempts to find out how easy it would be for my 17 year-old daughter to access pornography on her iPhone. I spoke about how I searched in the App Store on her phone and found that immediately a whole series of 17-plus-rated apps came up that were pornography sites. What I did not mention then is that with that—in fact, at the top of the list—came a whole series of VPN apps. Just in case my daughter was naive enough to think that she could just click through and watch it, and Apple was right that 17 year-olds were allowed to watch pornography, which obviously they are not, the App Store was also offering her an easy route to access it through a VPN. That is not about content but functionality, and we need to properly understand why this bundle of amendments is so important.

4.45 pm

Lord Moylan (Con): My Lords, I was not going to speak on this group, but I was provoked into offering some reflections on the speech by the noble Lord, Lord Russell of Liverpool, especially his opening remarks about cars and planes, which he said were designed to be safe. He did not mention trains, about which I know something as well, and which are also designed to be safe. These are a few initial reflective points. They are designed in very different ways. An aeroplane is designed never to fail; a train is designed so that if it fails, it will come to a stop. They are two totally different approaches to safety. Simply saying that something must be designed to be safe does not answer questions; it opens questions about what we actually mean by that. The noble Lord went on to say that we do not allow children to drive cars and fly planes. That is absolutely true, but the thrust of his amendment is that we should design the internet so that it can be driven by children and used by children—so that it is designed for them, not for adults. That is my problem with the general thrust of many of these amendments.

A further reflection that came to mind as the noble Lord spoke was on a book of great interest that I recommend to noble Lords. It is a book by the name of *Risk* written in 1995 by Professor John Adams, then professor of geography at University College London. He is still an emeritus professor of geography there. It was a most interesting work on risk. First, it reflected how little we actually know of many of the things of which we are trying to assess risk.

More importantly, he went on to say that people have an appetite for risk. That appetite for risk—that risk budget, so to speak—changes over the course of one's life: one has much less appetite for risk when one gets to a certain age than perhaps one had when one was young. I have never bungee jumped in my life, and I think I can assure noble Lords that the time has come when I can say I never shall, but there might have been a time when I was younger when I might have flung myself off a cliff, attached to a rubber band and so forth—noble Lords may have done so. One has an appetite for risk.

The interesting thing that he went on to develop from that was the notion of risk compensation: that if you have an appetite for risk and your opportunities to take risks are taken away, all you do is compensate by taking risks elsewhere. So a country such as New Zealand, which has some of the strictest cycling safety laws, also has a very high incidence of bungee jumping among the young; as they cannot take risks on their bicycles, they will find ways to go and do it elsewhere.

Although these reflections are not directly germane to the amendments, they are important as we try to understand what we are seeking to achieve here, which

[LORD MOYLAN]
is a sort of hermetically sealed absence of risk for children. I do not think it will work. I said at Second Reading that I thought the flavour of the debate was somewhat similar to a late medieval conclave of clerics trying to work out how to mitigate the harmful effects of the invention of movable type. That did not work either, and I think we are in a very similar position today as we discuss this.

There is also the question of harm and what it means. While the examples being given by noble Lords are very specific and no doubt genuinely harmful, and are the sorts of things that we should like to stop, the drafting of the amendments, using very vague words such as "harm", is dangerous overreach in the Bill. To give just one example, for the sake of speed, when I was young, administering the cane periodically was thought good for a child in certain circumstances. The mantra was, "Spare the rod and spoil the child", though I never heard it said. Nowadays, we would not think it morally or psychologically good to do physical harm to a child. We would regard it as an unmitigated harm and, although not necessarily banned or illegal, it is something that—

Lord Russell of Liverpool (CB): My Lords, I respond to the noble Lord in two ways. First, I ask him to reflect on how the parents of the children who have died through what the parents would undoubtedly view as serious and unbearable harm would feel about his philosophical ruminations. Secondly, as somebody who has the privilege of being a Deputy Speaker in your Lordships' House, it is incumbent and germane for us all to focus on the amendment in question and stay on it, to save time and get through the business.

Lord Moylan (Con): Well, I must regard myself as doubly rebuked, and unfairly, because my reflections are very relevant to the amendments, and I have developed them in that direction. In respect of the parents, they have suffered very cruelly and wrongly, but although it may sound harsh, as I have said in this House before on other matters, hard cases make bad law. We are in the business of trying to make good law that applies to the whole population, so I do not think that these are wholly—

Baroness Harding of Winscombe (Con): If my noble friend could, would he roll back the health and safety regulations for selling toys, in the same way that he seems so happy to have no health and safety regulations for children's access to digital toys?

Lord Moylan (Con): My Lords, if the internet were a toy, aimed at children and used only by children, those remarks would of course be very relevant, but we are dealing with something of huge value and importance to adults as well. It is the lack of consideration of the role of adults, the access for adults and the effects on freedom of expression and freedom of speech, implicit in these amendments, that cause me so much concern.

I seem to have upset everybody. I will now take issue with and upset the noble Baroness, Lady Benjamin, with whom I have not engaged on this topic so far. At Second Reading and earlier in Committee, she used the phrase, "childhood lasts a lifetime". There are many people for whom this is a very chilling phrase. We have an amendment in this group—a probing amendment, granted—tabled by the noble Lord, Lord Knight of Weymouth, which seeks to block access to VPNs as well. We are in danger of putting ourselves in the same position as China, with a hermetically sealed national internet, attempting to put borders around it so that nobody can breach it. I am assured that even in China this does not work and that clever and savvy people simply get around the barriers that the state has erected for them.

Before I sit down, I will redeem myself a little, if I can, by giving some encouragement to the noble Baroness, Lady Kidron, on Amendments 28 and 32 —although I think the amendments are in the name of the noble Lord, Lord Russell of Liverpool. These amendments, if we are to assess the danger posed by the internet to children, seek to substitute an assessment of the riskiness of the provider for the Government's emphasis on the size of the provider. As I said earlier in Committee, I do not regard size as being a source of danger. When it comes to many other services— I mentioned that I buy my sandwich from Marks & Spencer as opposed to a corner shop—it is very often the bigger provider I feel is going to be safer, because I feel I can rely on its processes more. So I would certainly like to hear how my noble friend the Minister responds on that point in relation to Amendments 28 and 32, and why the Government continue to put such emphasis on size.

More broadly, in these understandable attempts to protect children, we are in danger of using language that is far too loose and of having an effect on adult access to the internet which is not being considered in the debate—or at least has not been until I have, however unwelcomely, raised it.

Lord Vaizey of Didcot (Con): My Lords, I assure your Lordships that I rise to speak very briefly. I begin by reassuring my noble friend Lord Moylan that he is loved in this Chamber and outside. I was going to say that he is the grit in the oyster that ensures that a consensus does not establish itself and that we think hard about these amendments, but I will revise that and say he is now the bungee jumper in our ravine. I think he often makes excellent and worthwhile points about the scope and reach of the Bill and the unintended consequences. Indeed, we debated those when we debated the amendments relating to Wikipedia, for example.

Obviously, I support these amendments in principle. The other reason I wanted to speak was to wish the noble Baroness, Lady Kidron—Beeban—a happy birthday, because I know that these speeches will be recorded on parchment bound in vellum and presented to her, but also to thank her for all the work that she has done for many years now on the protection of children's rights on the internet. It occurred to me, as my noble friend Lady Harding was speaking, that there were a number of points I wanted to seek clarity on, either from the Minister or from the proponents of the amendments.

First, the noble Baroness, Lady Harding, mentioned the age-appropriate design code, which was a victory for the noble Baroness, Lady Kidron. It has, I think, already had an impact on the way that some sites that are frequented by children are designed. I know, for

instance, that TikTok—the noble Baroness will correct me—prides itself on having made some changes as a result of the design code; for example, its algorithms are able, to a certain extent, to detect whether a child is under 13. I know anecdotally that children under 13 sometimes do have their accounts taken away; I think that is a direct result of the amendments made by the age-appropriate design code.

I would like to understand how these amendments, and the issue of children's rights in this Bill, will interact with the age-appropriate design code, because none of us wants the confetti of regulations that either overlap or, worse, contradict themselves.

Secondly, I support the principle of functionality. I think it is a very important point that these amendments make: the Bill should not be focused solely on content but should take into account that functionality leads to dangerous content. That is an important principle on which platforms should be held to account.

Thirdly, going back to the point about the age-appropriate design code, the design of websites is extremely important and should be part of the regulatory system. Those are the points I wanted to make.

5 pm

In relation to how my noble friend Lord Moylan is approaching the Bill, I would say this: having been a Minister when the British Government—and, indeed, other Governments—had no power at all, it was very telling when the then Prime Minister threatened Google with legislation on the issue of child abuse images, saying, "If you do not do something, I will legislate".

At that time, I was on the tech side of the argument. Google went from saying, "It is impossible to do anything" to identifying 130,000 phrases that people might type into search engines when searching for child abuse images, which, in theory—I have not tried this myself, I hasten to add—would come up with no return and, indeed, a warning that the person in question was searching for those images.

Again, I say to my noble friend Lord Moylan—who I encourage to keep going with his scepticism about the Bill; it is important—that it is a bit of a dead end at any point in his argument to compare us with China. That is genuinely comparing apples with oranges. When people were resisting regulation in this sphere, they would always say, "That's what the Chinese want". We have broadcasting regulation and other forms of health and safety regulation. It is not the mark of an autocratic or totalitarian state to have regulation; platforms need to be held to account. I simply ask the proponents of the amendments to make it clear as they proceed how this fits in with existing regulations, such as the age-appropriate design code.

Baroness Fox of Buckley (Non-Afl): My Lords, I want, apart from anything else, to speak in defence of philosophical ruminations. The only way we can scrutinise the amendments in Committee is to do a bit of philosophical rumination. We are trying to work out what the amendments might mean in terms of changing the Bill.

I read these amendments, noted their use of "eliminate" —we have to "eliminate" all risks—and wondered what that would mean. I do not want to feel that I cannot ask these kinds of difficult questions for fear that I will offend a particular group or that it would be insensitive to a particular group of parents. It is difficult but we are required as legislators to try to understand what each other are trying to change, or how we are going to try to change the law.

I say to those who have put "eliminate" prominently in a number of these amendments that it is impossible to eliminate all risks to children—is it not?—if they are to have access to the online world, unless you ban them from the platforms completely. Is "eliminate" really helpful here?

Previously in Committee, I talked a lot about the potential dangers, psychologically and with respect to development, of overcoddling young people, of cotton wool kids, and so on. I noted an article over the weekend by the science journalist Tom Chivers, which included arguments from the Oxford Internet Institute and various psychologists that the evidence on whether social media is harmful, particularly for teenagers, is ambiguous.

I am very convinced by the examples brought forward by the noble Baroness, Lady Kidron—and I too wish her a happy birthday. We all know about the targeting of young people and so forth, but I am also aware of the positives. I always try to balance these things out and make sure that we do not deny young people access to the positives. In fact, I found myself cheering at the next group of amendments, which is unusual. First, they depend on whether you are four or 14—in other words, you have to be age-specific—and, secondly, they recognise that we do not want to pass anything in the Bill that actually denies children access to either their own privacy or the capacity to know more.

I also wanted to explore a little the idea of expanding the debate away from content to systems, because this is something that I think I am not quite understanding. My problem is that moving away from the discussion on whether content is removed or accessible, and focusing on systems, does not mean that content is not in scope. My worry is that the systems will have an impact on what content is available.

Let me give some examples of things that can become difficult if we think that we do not want young people to encounter violence and nudity—which makes it seem as though we know what we are talking about when we talk about "harmful". We will all recall that, in 2018, Facebook removed content from the Anne Frank Centre posted by civil rights organisations because it included photographs of the Holocaust featuring undressed children among the victims. Facebook apologised afterwards. None the less, my worry is these kinds of things happening. Another example, in 2016, was the removal of the Pulitzer Prize-winning photograph "The Terror of War", featuring fleeing Vietnamese napalm victims in the 1970s, because the system thought it was something dodgy, given that the photo was of a naked child fleeing.

I need to understand how system changes will not deprive young people of important educational information such as that. That is what I am trying to distinguish. The point made by the noble Lord, Lord Moylan, about "harmful" not being defined—I have endlessly gone on about this, and will talk more about it later—is difficult because we think that we know what we mean by "harmful" content.

[Baroness Fox of Buckley]

Finally, on the amendments requiring compliance with Ofcom codes of practice, that would give an extraordinary amount of power to the regulator and the Secretary of State. Since I have been in this place, people have rightly drawn my attention to the dangers of delegating power to the Executive or away from any kind of oversight—there has been fantastic debate and discussion about that. It seems to me that these amendments advocate delegated powers being given to the Secretary of State and Ofcom, an unelected body—the Secretary of State could amend for reasons of public policy in order to protect children—and this is to be put through the negative procedure. In any other instance, I would have expected outcry from the usual suspects, but, because it involves children, we are not supposed to object. I worry that we need to have more scrutiny of such amendments and not less, because in the name of protecting children unintended consequences can occur.

Baroness Kidron (CB): I want to answer the point that amendments cannot be seen in isolation. Noble Lords will remember that we had a long and good debate about what constituted harms to children. There was a big argument and the Minister made some warm noises in relation to putting harms to children in the Bill. There is some alignment between many people in the Chamber whereby we and Parliament would like to determine what harm is, and I very much share the noble Baroness's concern about pointing out what that is.

On the issue of the system versus the content, I am not sure that this is the exact moment but the idea of unintended consequences keeps getting thrown up when we talk about trying to point the finger at what creates harm. There are unintended consequences now, except neither Ofcom nor the Secretary of State or Parliament but only the tech sector has a say in what the unintended consequences are. As someone who has been bungee jumping, I am deeply grateful that there are very strict rules under which that is allowed to happen.

The Lord Bishop of Gloucester: My Lords, I support the amendments in this group that, with regard to safety by design, will address functionality and harms—whatever exactly we mean by that—as well as child safety duties and codes of practice. The noble Lord, Lord Russell, and the noble Baronesses, Lady Harding and Lady Kidron, have laid things out very clearly, and I wish the noble Baroness, Lady Kidron, a happy birthday.

I also support Amendment 261 in the name of my right reverend friend the Bishop of Oxford and supported by the noble Lord, Lord Clement-Jones, and the noble Viscount, Lord Colville. This amendment would allow the Secretary of State to consider safety by design, and not just content, when reviewing the regime.

As we have heard, a number of the amendments would amend the safety duties to children to consider all harms, not just harmful content, and we have begun to have a very interesting debate on that. We know that service features create and amplify harms to children. These harms are not limited to spreading harmful content; features in and of themselves may cause harm—for example, beautifying filters, which can create unrealistic body ideals and pressure on children to look a certain way. In all of this, I want us to listen much more to the voices of children and young people—they understand this issue.

Last week, as part of my ongoing campaign on body image, including how social media can promote body image anxiety, I met a group of young people from two Gloucestershire secondary schools. They were very good at saying what the positives are, but noble Lords will also be very familiar with many of the negative issues that were on their minds, which I will not repeat here. While they were very much alive to harmful content and the messages it gives them, they were keen to talk about the need to address algorithms and filters that they say feed them strong messages and skew the content they see, which might not look harmful but, because of design, accentuates their exposure to issues and themes about which they are already anxious. Suffice to say that underpinning most of what they said to me was a sense of powerlessness and anxiety when navigating the online world that is part of their daily lives.

The current definition of content does not include design features. Building in a safety by design principle from the outset would reduce harms in a systematic way, and the amendments in this group would address that need.

Baroness Fraser of Craigmaddie (Con): My Lords, I support this group of amendments. Last week, I was lucky—that is not necessarily the right word—to participate in a briefing organised by the noble Lord, Lord Russell of Liverpool, with the 5Rights Foundation on its recent research, which the noble Lord referred to. As the mother of a 13 year-old boy, I came away wondering why on earth you would not want to ensure safety by design for children.

I am aware from my work with disabled children that we know, as Ofcom knows from its own research, that children—or indeed anyone with a long-term health impact or a disability—are far more likely to encounter and suffer harm online. As I say, I struggle to see why you would not want to have safety by design.

This issue must be seen in the round. In that briefing we were taken through how quickly you could get from searching for something such as "slime" to extremely graphic pornographic content. As your Lordships can imagine, I went straight back to my 13 year-old son and said, "Do you know about slime and where you have you seen it?" He said, "Yes, Mum, I've watched it on YouTube". That echoes the point made by the noble Baroness, Lady Kidron—to whom I add my birthday wishes—that these issues have to be seen in the round because you do not just consume content; you can search on YouTube, shop on Google, search on Amazon and all the rest of it. I support this group of amendments.

5.15 pm

Viscount Colville of Culross (CB): I too wish my noble friend Lady Kidron a happy birthday.

I will speak to Amendment 261. Having sat through the Communications Committee's inquiries on regulating the internet, it seemed to me that the real problem was the algorithms and the way they operated. We have

heard that again and again throughout the course of the Bill. It is no good worrying just about the content, because we do not know what new services will be created by technology. This morning we heard on the radio from the Google AI expert, who said that we have no idea where AI will go or whether it will become cleverer than us; what we need to do is to keep an eye on it. In the Bill, we need to make sure that we are looking at the way technology is being developed and the possible harms it might create. I ask the Minister to include that in his future-proofing of the Bill, because, in the end, this is a very fast-moving world and ecosystem. We all know that what is present now in the digital world might well be completely changed within a few years, and we need to remain cognisant of that.

Lord Clement-Jones (LD): My Lords, we have already had some very significant birthdays during the course of the Bill, and I suspect that, over many more Committee days, there will be many more happy birthdays to celebrate.

This has been a fascinating debate and the Committee has thrown up some important questions. On the second day, we had a very useful discussion of risk which, as the noble Lord, Lord Russell, mentioned, was prompted by my noble friend Lord Allan. In many ways, we have returned to that theme this afternoon. The noble Baroness, Lady Fox, who I do not always agree with, asked a fair question. As the noble Baroness, Lady Kidron, said, it is important to know what harms we are trying to prevent—that is how we are trying to define risk in the Bill—so that is an absolutely fair question.

The Minister has shown flexibility. Sadly, I was not able to be here for the previous debate, and it is probably because I was not that he conceded the point and agreed to put children's harms in the Bill. That takes us a long way further, and I hope he will demonstrate that kind of flexibility as we carry on through the Bill.

The noble Lord, Lord Moylan, and I have totally different views about what risk it is appropriate for children to face. I am afraid that I absolutely cannot share his view that there is this level of risk. I do not believe it is about eliminating risk—I do not see how you can—but the Bill should be about preventing online risk to children; it is the absolute core of the Bill.

As the noble Lord, Lord Russell, said, the Joint Committee heard evidence from Frances Haugen about the business model of the social media platforms. We listened to Ian Russell, the father of Molly, talk about the impact of an unguarded internet on his daughter. It is within the power of the social media companies to do something about that; this is not unreasonable.

I was very interested in what the noble Viscount, Lord Colville, said. He is right that this is about algorithms, which, in essence, are what we are trying to get to in all the amendments in this really important group. It is quite possible to tackle algorithms if we have a requirement in the Bill to do so, and that is why I support Amendment 261, which tries to address to that.

However, a lot of the rest of the amendments are trying to do exactly the same thing. There is a focus not just on moderating harmful content but on the harmful systems that make digital services systematically unsafe for children. I listened with great interest to what the noble Lord, Lord Russell, said about the 5Rights research which he unpacked. We tend to think that media platforms such as Reddit are relatively harmless but that is clearly not the case. It is very interesting that the use of avatars is becoming quite common in the advertising industry to track where advertisements are ending up—sometimes, on pornography sites. It is really heartening that an organisation such as 5Rights has been doing that and coming up with its conclusions. It is extremely useful for us as policymakers to see the kinds of risks that our children are undertaking.

We were reminded about the origins—way back, it now seems—of the Carnegie duty of care. In a sense, we are trying to make sure that that duty of care covers the systems. We have talked about the functionality and harms in terms of risk assessment, about the child safety duties and about the codes of practice. All those need to be included within this discussion and this framework today to make sure that that duty of care really sticks.

I am not going to go through all the amendments. I support all of them: ensuring functionalities for both types of regulated service, and the duty to consider all harms and not just harmful content. It is absolutely not just about the content but making sure that regulated services have a duty to mitigate the impact of harm in general, not just harms stemming from content.

The noble Baroness, Lady Harding, made a terrific case, which I absolutely support, for making sure that the codes of practice are binding and principle based. At the end of the day, that could be the most important amendment in this group. I must admit that I was quite taken with her description of the Government's response, which was internally contradictory. It was a very weak response to what I, as a member of the Joint Committee, thought was a very strong and clear recommendation about minimum standards.

This is a really important group of amendments and it would not be a difficult concession for the Government to make. They may wish to phrase things in a different way but we must get to the business case and the operation of the algorithms; otherwise, I do not believe this Bill is going to be effective.

I very much take on board what about the noble Viscount said about looking to the future. We do not know very much about some of these new generative AI systems. We certainly do not know a great deal about how algorithms within social media companies operate. We will come, no doubt, to later amendments on the ability to find out more for researchers and so on, but transparency was one of the things our Joint Committee was extremely keen on, and this is a start.

Lord Knight of Weymouth (Lab): My Lords, I too agree that this has been a really useful and interesting debate. It has featured many birthday greetings to the noble Baroness, Lady Kidron, in which I obviously join. The noble Lord, Lord Moylan, bounced into the debate that tested the elasticity of the focus of the group, and bounced out again. Like the noble Lord, Lord Clement-Jones, I was particularly struck by the speech from the noble Baroness, Lady Harding, on the non-mandatory nature of the codes. Her points about reducing Ofcom's workload, and mandatory codes having precedent, were really significant and I look forward to the Minister's response.

[Lord Knight of Weymouth]

If I have understood it correctly, the codes will be generated by Ofcom, and the Secretary of State will then table them as statutory instruments—so they will be statutory, non-mandatory codes, but with statutory penalties. Trying to unravel that in my mind was a bit of a thing as I was sitting there. Undoubtedly, we are all looking forward to the Minister's definition of harm, which he promised us at the previous meeting of the Committee.

I applaud the noble Lord, Lord Russell, for the excellent way in which he set out the issues in this grouping and—along with the Public Bill Office—for managing to table these important amendments. Due to the Bill's complexity, it is an achievement to get the relatively simple issue of safety by design for children into amendments to Clause 10 on children's risk assessment duties for user-to-user services; Clause 11 on the safety duties protecting children; and the reference to risk assessments in Clause 19 on record-keeping. There is a similar set of amendments applying to search; to the duties in Clause 36 on codes of practice duties; to Schedule 4 on the content of codes of practice; and to Clause 39 on the Secretary of State's powers of direction. You can see how complicated the Bill is for those of us attempting to amend it.

What the noble Lord and his amendments try to do is simple enough. I listened carefully to the noble Baroness, Lady Fox, as always. The starting point is, when designing, to seek to eliminate harm. That is not to say that they will eliminate all potential harms to children, but the point of design is to seek to eliminate harms if you possibly can. It is important to be clear about that. Of course, it is not just the content but the systems that we have been talking about, and ensuring that the codes of practice that we are going to such lengths to legislate for are stuck to—that is the point made by the noble Baroness, Lady Harding—relieving Ofcom of the duty to assess all the alternative methods. We certainly support the noble Lord, Lord Russell, in his amendments. They reinforce that it is not just about the content; the algorithmic dissemination, in terms of volume and context, is really important, especially as algorithms are dynamic—they are constantly changing in response to the business models that underpin the user-to-user services that we are debating.

The business models want to motivate people to be engaged, regardless of safety in many ways. We have had discussion of the analogy on cars and planes from the noble Lord, Lord Allan. As I recall, in essence he said that in this space there are some things that you want to regulate like planes, to ensure that there are no accidents, and some where you trade off freedom and safety, as we do with the regulation of cars. In this case, it is a bit more like regulating for self-driving cars; in that context, you will design a lot more around trying to anticipate all the things that humans when driving will know instinctively, because they are more ethical individuals than you could ever programme an AI to be when driving a car. I offer that slight adjustment, and I hope that it helps the noble Lord, Lord Moylan, when he is thinking about trains, planes and automobiles.

In respect of the problem of the business models and their engagement over safety, I had contact this weekend and last week from friends much younger than I am, who are users of Snap. I am told that there is an AI chatbot on Snap, which I am sure is about engaging people for longer and collecting more data so that you can engage them even longer and, potentially, collect data to drive advertising. But you can pay to get rid of that chatbot, which is the business model moving somewhere else as and when we make it harder for it to make money as it is. Snap previously had location sharing, which you had to turn off. It created various harms and risks for children that their location was being shared with other people without them necessarily authorising it. We can all see how that could create issues.

Lord Bethell (Con): Does the noble Lord have any reflections, talking about Snap, as to how the internet has changed in our time? It was once really for adults, when it was on a PC and it was only adults who had access to it. There has, of course, been a huge explosion in child access to the internet because of the mobile phone—as we have heard, two-thirds of 10 year-olds now have a mobile phone—and an app such as Snap now has a completely different audience from the one it had five or 10 years ago. Does the noble Lord have any reflections on what the consequences of the explosion of children's access to applications such as Snap has been on those thinking about the harms and protection of children?

5.30 pm

Lord Knight of Weymouth (Lab): I am grateful to the noble Lord. In many ways, I am reminded of the article I read in the *New York Times* this weekend and the interview with Geoffrey Hinton, the now former chief scientist at Google. He said that as companies improve their AI systems, they become increasingly dangerous. He said of AI technology:

> "Look at how it was five years ago and how it is now. Take the difference and propagate it forwards. That's scary".

Yes, the huge success of the iPhone, of mobile phones and all of us, as parents, handing our more redundant iPhones on to our children, has meant that children have huge access. We have heard the stats in Committee around the numbers who are still in primary school and on social media, despite the terms and conditions of those platforms. That is precisely why we are here, trying to get things designed to be safe as far as is possible from the off, but recognising that it is dynamic and that we therefore need a regulator to keep an eye on the dynamic nature of these algorithms as they evolve, ensuring that they are safe by design as they are being engineered.

My noble friend Lord Stevenson has tabled Amendment 27, which looks at targeted advertising, especially that which requires data collection and profiling of children. In that, he has been grateful to Global Action Plan for its advice. While advertising is broadly out of scope of the Bill, apart from in respect of fraud, it is significant for the Minister to reflect on the user experience for children. Whether it is paid or organic content, it is pertinent in terms of their safety as children and something we should all be mindful of. I say to the noble Lord, Lord Vaizey, that as I understand it, the age-appropriate design code does a fair amount in respect of the data privacy of children, but this is

much more about preventing children encountering the advertising in the first place, aside from the data protections that apply in the age-appropriate design code. But the authority is about to correct me.

Baroness Kidron (CB): Just to add to what the noble Lord has said, it is worth noting that we had a debate, on Amendment 92, about aligning the age-appropriate design code likely to be accessed and the very important issue that the noble Lord, Lord Vaizey, raised about alignment of these two regimes. I think we can say that these are kissing cousins, in that they take a by-design approach. The noble Lord is completely right that the scope of the Bill is much broader than data protection only, but they take the same approach.

Lord Knight of Weymouth (Lab): I am grateful, as ever, to the noble Baroness, and I hope that has assisted the noble Lord, Lord Vaizey.

Finally—just about—I will speak to Amendment 32A, tabled in my name, about VPNs. I was grateful to the noble Baroness for her comments. In many ways, I wanted to give the Minister the opportunity to put something on the record. I understand, and he can confirm whether my understanding is correct, that the duties on the platforms to be safe is regardless of whether a VPN has been used to access the systems and the content. The platforms, the publishers of content that are user-to-user businesses, will have to detect whether a VPN is being used, one would suppose, in order to ensure that children are being protected and that that is genuinely a child. Is that a correct interpretation of how the Bill works? If so, is it technically realistic for those platforms to be able to detect whether someone is landing on their site via a VPN or otherwise? In my mind, the anecdote that the noble Baroness, Lady Harding, related, about what the App Store algorithm on Apple had done in pushing VPNs when looking for porn, reinforces the need for app stores to become in scope, so that we can get some of that age filtering at that distribution point, rather than just relying on the platforms.

Substantially, this group is about platforms anticipating harms, not reviewing them and then fixing them despite their business model. If we can get the platforms themselves designing for children's safety and then working out how to make the business models work, rather than the other way around, we will have a much better place for children.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I join in the chorus of good wishes to the bungee-jumping birthday Baroness, Lady Kidron. I know she will not have thought twice about joining us today in Committee for scrutiny of the Bill, which is testament to her dedication to the cause of the Bill and, more broadly, to protecting children online. The noble Lord, Lord Clement-Jones, is right to note that we have already had a few birthdays along the way; I hope that we get only one birthday each before the Bill is finished.

Lord Clement-Jones (LD): My birthday is in October, so I hope not.

Lord Parkinson of Whitley Bay (Con): Very good—only one each, and hopefully fewer. I thank noble Lords for the points they raised in the debate on these amendments. I understand the concerns raised about how the design and operation of services can contribute to risk and harm online.

The noble Lord, Lord Russell, was right, when opening this debate, that companies are very successful indeed at devising and designing products and services that people want to use repeatedly, and I hope to reassure all noble Lords that the illegal and child safety duties in the Bill extend to how regulated services design and operate their services. Providers with services that are likely to be accessed by children will need to provide age-appropriate protections for children using their service. That includes protecting children from harmful content and activity on their service. It also includes reviewing children's use of higher-risk features, such as live streaming or private messaging. Service providers are also specifically required to consider the design of functionalities, algorithms and other features when delivering the child safety duties imposed by the Bill.

I turn first to Amendments 23 and 76 in the name of the noble Lord, Lord Russell. These would require providers to eliminate the risk of harm to children identified in the service's most recent children's risk assessment, in addition to mitigating and managing those risks. The Bill will deliver robust and effective protections for children, but requiring providers to eliminate the risk of harm to children would place an unworkable duty on providers. As the noble Baroness, Lady Fox, my noble friend Lord Moylan and others have noted, it is not possible to eliminate all risk of harm to children online, just as it is not possible entirely to eliminate risk from, say, car travel, bungee jumping or playing sports. Such a duty could lead to service providers taking disproportionate measures to comply; for instance, as noble Lords raised, restricting children's access to content that is entirely appropriate for them to see.

Lord Knight of Weymouth (Lab): Does the Minister accept that that is not exactly what we were saying? We were not saying that they would have to eliminate all risk: they would have to design to eliminate risks, but we accept that other risks will apply.

Lord Parkinson of Whitley Bay (Con): It is part of the philosophical ruminations that we have had, but the point here is that elimination is not possible through the design or any drafting of legislation or work that is there. I will come on to talk a bit more about how we seek to minimise, mitigate and manage risk, which is the focus.

Amendments 24, 31, 32, 77, 84, 85 and 295, from the noble Lord, Lord Russell, seek to ensure that providers do not focus just on content when fulfilling their duties to mitigate the impact of harm to children. The Bill already delivers on those objectives. As the noble Baroness, Lady Kidron, noted, it defines "content" very broadly in Clause 207 as

"anything communicated by means of an internet service".

Under this definition, in essence, all communication and activity is facilitated by content.

Lord Clement-Jones (LD): I hope that the Minister has in his brief a response to the noble Baroness's point about Clause 11(14), which, I must admit, comes across extraordinarily in this context. She quoted it, saying:

"The duties set out … are to be taken to extend only to content that is harmful to children where the risk of harm is presented by the nature of the content (rather than the fact of its dissemination)".

Is not that exception absolutely at the core of what we are talking about today? It is surely therefore very difficult for the Minister to say that this applies in a very broad way, rather than purely to content.

Lord Parkinson of Whitley Bay (Con): I will come on to talk a bit about dissemination as well. If the noble Lord will allow me, he can intervene later on if I have not done that to his satisfaction.

I was about to talk about the child safety duties in Clause 11(5), which also specifies that they apply to the way that a service is designed, how it operates and how it is used, as well as to the content facilitated by it. The definition of content makes it clear that providers are responsible for mitigating harm in relation to all communications and activity on their service. Removing the reference to content would make service providers responsible for all risk of harm to children arising from the general operation of their service. That could, for instance, bring into scope external advertising campaigns, carried out by the service to promote its website, which could cause harm. This and other elements of a service's operations are already regulated by other legislation.

Baroness Kidron (CB): I apologise for interrupting. Is that the case, and could that not be dealt with by defining harm in the way that it is intended, rather than as harm from any source whatever? It feels like a big leap that, if you take out "content", instead of it meaning the scope of the service in its functionality and content and all the things that we have talked about for the last hour and a half, the suggestion is that it is unworkable because harm suddenly means everything. I am not sure that that is the case. Even if it is, one could find a definition of harm that would make it not the case.

Lord Parkinson of Whitley Bay (Con): Taking it out in the way that the amendment suggests throws up that risk. I am sure that it is not the intention of the noble Lord or the noble Baroness in putting it, but that is a risk of the drafting, which requires some further thought.

Clause 11(2), which is the focus of Amendments 32, 85 and 295, already means that platforms have to take robust action against content which is harmful because of the manner of its dissemination. However, it would not be feasible for providers to fulfil their duties in relation to content which is harmful only by the manner of its dissemination. This covers content which may not meet the definition of content which is harmful to children in isolation but may be harmful when targeted at children in a particular way. One example could be content discussing a mental health condition such as depression, where recommendations are made repeatedly or in an amplified manner through the use of algorithms. The nature of that content per se may not be inherently harmful to every child who encounters it, but, when aggregated, it may become harmful to a child who is sent it many times over. That, of course, must be addressed, and is covered by the Bill.

5.45 pm

The Bill requires providers to specifically consider as part of their risk assessments how algorithms could affect children's exposure to illegal content and content which is harmful to children on their service. Service providers will need specifically to consider the harm from content that arises from the manner of dissemination —for example, content repeatedly sent to someone by a person or persons, which is covered in Clause 205(3)(c). Providers will also need to take steps to mitigate and effectively manage any risks, and to consider the design of functionalities, algorithms and other features to meet their illegal content and child safety duties. Ofcom will have a range of powers at its disposal to help it assess whether providers are fulfilling their duties. That includes the power to require information from providers about the operation of their algorithms.

Lord Clement-Jones (LD): Can the Minister assure us that he will take another look at this between Committee and Report? He has almost made the case for this wording to be taken out—he said that it is already covered by a whole number of different clauses in the Bill—but it is still here. There is still an exception which, if the Minister is correct, is highly misleading: it means that you have to go searching all over the Bill to find a way of attacking the algorithm, essentially, and the way that it amplifies, disseminates and so on. That is what we are trying to get to: how to address the very important issue not just of content but of the way that the algorithm operates in social media. This seems to be highly misleading, in the light of what the Minister said.

Lord Parkinson of Whitley Bay (Con): I do not think so, but I will certainly look at it again, and I am very happy to speak to the noble Lord as I do. My point is that it would not be workable or proportionate for a provider to prevent or protect all children from encountering every single instance of the sort of content that I have just outlined, which would be the effect of these amendments. I will happily discuss that with the noble Lord and others between now and Report.

Amendment 27, by the noble Lord, Lord Stevenson, seeks to add a duty to prevent children encountering targeted paid-for advertising. As he knows, the Bill has been designed to tackle harm facilitated through user-generated content. Some advertising, including paid-for posts by influencers, will therefore fall under the scope of the Bill. Companies will need to ensure that systems for targeting such advertising content to children, such as the use of algorithms, protect them from harmful material. Fully addressing the challenges of paid-for advertising is a wider task than is possible through the Bill alone. The Bill is designed to reduce harm on services which host user-generated content, whereas online advertising poses a different set of problems, with different actors. The Government are taking forward work in this area through the online

advertising programme, which will consider the full range of actors and sector-appropriate solutions to those problems.

Lord Stevenson of Balmacara (Lab): I understand the Minister's response, and I accept that there is a parallel stream of work that may well address this. However, we have been waiting for the report from the group that has been looking at that for some time. Rumours—which I never listen to—say that it has been ready for some time. Can the Minister give us a timescale?

Lord Parkinson of Whitley Bay (Con): I cannot give a firm timescale today but I will seek what further information I can provide in writing. I have not seen it yet, but I know that the work continues.

Amendments 28 and 82, in the name of the noble Lord, Lord Russell, seek to remove the size and capacity of a service provider as a relevant factor when determining what is proportionate for services in meeting their child safety duties. This provision is important to ensure that the requirements in the child safety duties are appropriately tailored to the size of the provider. The Bill regulates a large number of service providers, which range from some of the biggest companies in the world to small voluntary organisations. This provision recognises that what it is proportionate to require of providers at either end of that scale will be different.

Removing this provision would risk setting a lowest common denominator. For instance, a large multinational company could argue that it is required only to take the same steps to comply as a smaller provider.

Amendment 32A from the noble Lord, Lord Knight of Weymouth, would require services to have regard to the potential use of virtual private networks and similar tools to circumvent age-restriction measures. He raised the use of VPNs earlier in this Committee when we considered privacy and encryption. As outlined then, service providers are already required to think about how safety measures could be circumvented and take steps to prevent that. This is set out clearly in the children's risk assessment and safety duties. Under the duty at Clause 10(6)(f), all services must consider the different ways in which the service is used and the impact of such use on the level of risk. The use of VPNs is one factor that could affect risk levels. Service providers must ensure that they are effectively mitigating and managing risks that they identify, as set out in Clause 11(2). The noble Lord is correct in his interpretation of the Bill vis-à-vis VPNs.

Lord Knight of Weymouth (Lab): Is this technically possible?

Lord Parkinson of Whitley Bay (Con): Technical possibility is a matter for the sector—

Lord Knight of Weymouth (Lab): I am grateful to the noble Lord for engaging in dialogue while I am in a sedentary position, but I had better stand up. It is relevant to this Committee whether it is technically possible for providers to fulfil the duties we are setting out for them in statute in respect of people's ability to use workarounds and evade the regulatory system. At some point, could he give us the department's view on whether there are currently systems that could be used —we would not expect them to be prescribed—by platforms to fulfil the duties if people are using their services via a VPN?

Lord Parkinson of Whitley Bay (Con): This is the trouble with looking at legislation that is technologically neutral and future-proofed and has to envisage risks and solutions changing in years to come. We want to impose duties that can technically be met, of course, but this is primarily a point for companies in the sector. We are happy to engage and provide further information, but it is inherently part of the challenge of identifying evolving risks.

The provision in Clause 11(16) addresses the noble Lord's concerns about the use of VPNs in circumventing age-assurance or age-verification measures. For it to apply, providers would need to ensure that the measures they put in place are effective and that children cannot normally access their services. They would need to consider things such as how the use of VPNs affects the efficacy of age-assurance and age-verification measures. If children were routinely using VPNs to access their service, they would not be able to conclude that Clause 11(16) applies. I hope that sets out how this is covered in the Bill.

Amendments 65, 65ZA, 65AA, 89, 90, 90B, 96A, 106A, 106B, 107A, 114A, 122, 122ZA, 122ZB and 122ZC from the noble Lord, Lord Russell of Liverpool, seek to make the measures Ofcom sets out in codes of practice mandatory for all services. I should make it clear at the outset that companies must comply with the duties in the Bill. They are not optional and it is not a non-statutory regime; the duties are robust and binding. It is important that the binding legal duties on companies are decided by Parliament and set out in legislation, rather than delegated to a regulator.

Codes of practice provide clarity on how to comply with statutory duties, but should not supersede or replace them. This is true of codes in other areas, including the age-appropriate design code, which is not directly enforceable. Following up on the point from my noble friend Lady Harding of Winscombe, neither the age-appropriate design code nor the SEND code is directly enforceable. The Information Commissioner's Office or bodies listed in the Children and Families Act must take the respective codes into account when considering whether a service has complied with its obligations as set out in law.

As with these codes, what will be directly enforceable in this Bill are the statutory duties by which all sites in scope of the legislation will need to abide. We have made it clear in the Bill that compliance with the codes will be taken as compliance with the duties. This will help small companies in particular. We must also recognise the diversity and innovative nature of this sector. Requiring compliance with prescriptive steps rather than outcomes may mean that companies do not use the most effective or efficient methods to protect children.

I reassure noble Lords that, if companies decide to take a different route to compliance, they will be required to document what their own measures are and how they amount to compliance. This will ensure that Ofcom has oversight of how companies comply with their duties. If the alternative steps that providers

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have taken are insufficient, they could face enforcement action. We expect Ofcom to take a particularly robust approach to companies which fail to protect their child users.

My noble friend Lord Vaizey touched on the age-appropriate design code in his remarks—

Baroness Harding of Winscombe (Con): My noble friend the Minister did not address the concern I set out that the Bill's approach will overburden Ofcom. If Ofcom has to review the suitability of each set of alternative measures, we will create an even bigger monster than we first thought.

Lord Parkinson of Whitley Bay (Con): I do not think that it will. We have provided further resource for Ofcom to take on the work that this Bill will give it; it has been very happy to engage with noble Lords to talk through how it intends to go about that work and, I am sure, would be happy to follow up on that point with my noble friend to offer her some reassurance.

Responding to the point from my noble friend Lord Vaizey, the Bill is part of the UK's overall digital regulatory landscape, which will deliver protections for children alongside the data protection requirements for children set out in the Information Commissioner's age-appropriate design code. Ofcom has strong existing relationships with other bodies in the regulatory sphere, including through the Digital Regulation Co-operation Forum. The Information Commissioner has been added to this Bill as a statutory consultee for Ofcom's draft codes of practice and relevant pieces of guidance formally to provide for the ICO's input into its areas of expertise, especially relating to privacy.

Amendment 138 from the noble Lord, Lord Russell of Liverpool, would amend the criteria for non-designated content which is harmful to children to bring into scope content whose risk of harm derives from its potential financial impact. The Bill already requires platforms to take measures to protect all users, including children, from financial crime online. All companies in scope of the Bill will need to design and operate their services to reduce the risk of users encountering content amounting to a fraud offence, as set out in the list of priority offences in Schedule 7. This amendment would expand the scope of the Bill to include broader commercial harms. These are dealt with by a separate legal framework, including the Consumer Protection from Unfair Trading Regulations. This amendment therefore risks creating regulatory overlap, which would cause confusion for business while not providing additional protections to consumers and internet users.

Amendment 261 in the name of the right reverend Prelate the Bishop of Oxford seeks to modify the existing requirements for the Secretary of State's review into the effectiveness of the regulatory framework. The purpose of the amendment is to ensure that all aspects of a regulated service are taken into account when considering the risk of harm to users and not just content.

As we have discussed already, the Bill defines "content" very broadly and companies must look at every aspect of how their service facilitates harm associated with the spread of content. Furthermore, the review clause makes explicit reference to the systems and processes which regulated services use, so the review can already cover harm associated with, for example, the design of services.

6 pm

Amendments 291, 292, and 293 seek to ensure that companies' child safety duties apply to a broader range of functionalities which can facilitate harm online. The current list of functionalities in the Bill is not exhaustive. Services will therefore need to assess the risk from any feature or functionality of their service which enables user interaction and could cause harm to users.

The points raised in these amendments are covered already in the Bill in the places I have set out. I will consult the official record of this debate to see whether there are any areas which I have not followed up, but I invite noble Lords not to press their amendments in this group.

Lord Russell of Liverpool (CB): My Lords, I thank the Minister for his response. I think the entire Chamber will be thankful that I do not intend to respond in any great detail to almost one hour and three-quarters of debate on this series of amendments—I will just make a few points and suggestions.

The point that the noble Baroness made at the beginning about understanding the design and architecture of the systems and processes is fundamental, both for understanding why they are causing the sorts of harm that they are at the moment and for trying to ensure that they are designed better in future than they have been to date. Clearly, they are seriously remiss in the harms that they are inflicting on a generation of young people.

On the point made by the noble Baroness, Lady Harding, about trying to make Ofcom's job easier—I can see the noble Lord, Lord Grade, in the corner—I would hope and anticipate that anything we could suggest that would lead the Government to make Ofcom's job slightly easier and clearer would be very welcome. The noble Lord appears to be making an affirmatory gesture, so I will take that as a yes.

I say to the noble Lord, Lord Moylan, that I fully understand the importance of waving the flag of liberty and free speech, and I acknowledge its importance. I also acknowledge the always-incipient danger of unintentionally preventing things from happening that can and should happen when you are trying to make things safer and prevent harm. Trying to get the right balance is extraordinarily difficult, but I applaud the noble Lord for standing up and saying what he said. If one were to judge the balance of the contributions here as a very rough opinion poll, the noble Lord might find himself in the minority, but that does not necessarily mean that he is wrong, so I would encourage him to keep contributing.

I sympathise with the noble Baroness, Lady Fox, in trying to find the right balance; it is something that we are all struggling to do. One of the great privileges we have in this House is that we have the time to do it in a manner which is actively discouraged in the other place. Even if we go on a bit, we are talking about

matters which are very important—in particular, the pre-legislative scrutiny committee was able to cover them in greater detail than the House of Commons was able to do.

The noble Lord, Lord Clement-Jones, was right. In the same way as they say, "Follow the money", in this case it is "follow the algorithms", because it is the algorithms which drive the business model.

On the points made by the noble Lord, Lord Knight, regarding the *New York Times* article about Geoffrey Hinton, one of the architects of AI in Google, I would recommend that all your Lordships read it to see somebody who has been at the forefront of developing artificial intelligence. Rather like a character in a Jules Verne novel suddenly being slightly aghast at what they have created—Frankenstein comes to mind—it makes one pause for thought. Even as we are talking about these things, AI is racing ahead like a greyhound in pursuit of a very fast rabbit, and there is no way that we will be able to catch up.

While I thank the noble Minister for his reply, as when we debated some of the amendments last week where the noble Baroness, Lady Harding, spoke about the train journey she took when she was trying to interrogate and interpret the different parts of the Bill and was trying to follow the trail and understand what was going on to the extent that she became so involved that she missed her station, I think there is a real point here about the fact that this Bill is very complex to follow and understand. Indeed, the way in which the Minster had to point to all the different points of the compass—so to speak—both within the Bill and without it in many of the answers that he gave to some of the amendments indicates to me that the Bill team is finding it challenging to respond to some of them. It is like filling in one of those diagrams where you join the dots, and you cannot quite see what it is until you have nearly finished. I find it slightly disturbing if the Bill team and some of the officials appear to be having a challenging time in trying to interpret, understand and explain some of the points we are raising; I would hope and expect that that could be done much more simply.

One of the pleas from all of us in a whole variety of these amendments is to get the balance right between legislating what it is that we want to legislate and making it simple enough to be understandable. At the moment, a criticism of this Bill is that it is extraordinary difficult to understand in many parts. I will not go through all the points, but there are some germane areas where it would be extremely helpful to pursue with the Minister and the Bill team some of the points we are trying to make. Many of them are raised by a variety of outside bodies which know infinitely more about it than I do, and which have genuine concerns. We have the time between Committee and Report to put some of those to bed or at least to understand them better than we do at the moment. We will probably be happy and satisfied with some of the responses that we receive from the department once we feel that we understand them, and perhaps more importantly, once we feel that the department and the Bill team themselves fully understand them. It is fair to say that at the moment we are not completely comfortable that they do. I do not blame the Minister for that. If I were in his shoes, I would be on a very long holiday and I would not be returning any time soon. However, we will request meetings—for one meeting, it would be too much, so we will try to put this into bit-size units and then try to dig into the detail in a manageable way without taking too much time to make sure that we understand each other.

With that, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendment 24 not moved.

Amendment 25

Moved by ***Lord Russell of Liverpool***

25: Clause 11, page 10, line 13, at end insert—

"(c) uphold children's rights per the United Kingdom's obligations as a signatory of the United Nations Convention on the Rights of the Child (UNCRC), with reference to General Comment No. 25 (2021) from the Committee on the Rights of the Child on children's rights in relation to the digital environment."

Member's explanatory statement

This amendment would mean regulated services would have to have regard for the UN Convention on the Rights of the Child to ensure children are treated according to their evolving capacities, in their best interests, in consideration of their wellbeing and are not locked out of spaces that they have a right to participate in and to access.

Lord Russell of Liverpool (CB): My Lords, I am sorry that it is me again—a bit like a worn 78. In moving Amendment 25, I will speak also to Amendments 78, 187 and 196, all of which speak to the principle of children's rights as set out in the UN Convention on the Rights of the Child and, more specifically, how those rights are applied to the digital world as covered in the United Nations' general comment No. 25, which was produced in 2021 and ratified by the UK Government. What we are suggesting and asking for is that the principles in this general comment are reflected in the Bill. I thank the noble Baronesses, Lady Harding, Lady Kennedy and Lady Bennett, and the noble Lord, Lord Alton—who is not with us—for adding their names to these amendments and for their support.

The general comment No. 25 that I mentioned recognises that children's rights are applicable in the digital world as well as the real world. These amendments try to establish in the Bill the rights of children. Believe it or not, in this rather lengthy Bill there is not a single reference—as far as we can discern—specifically to children's rights. There are a lot of other words, but that specific phrase is not used, amazingly enough. These amendments are an attempt to get children's rights specifically into the Bill. Amendments 30 and 105 in the names of the noble Lords, Lord Clement-Jones and Lord Knight, also seek to preserve the well-being of children. Our aims are very similar, but we will try to argue that the convention would achieve them in a particularly effective and concise way.

The online world is not optional for children, given what we know—not least from some of the detailed and harrowing experiences related by various of your Lordships in the course of the Bill. The fact that the

[Lord Russell of Liverpool]
online world is not optional for children may be worrying to some adults. We have all heard about parents, grandparents and others who have direct experience of their beloved coming to harm. By contrast, it is also fascinating to note how many senior executives, and indeed founders, of digital companies forbid their own children from possessing and using mobile phones, typically until they are 12 or 14. That is telling us something. If they themselves do not allow their children to have access to some of the online world we are talking about so much, that should give us pause for reflection.

Despite the many harms online, there is undoubted good that all children can benefit from, including in terms of their cognitive and skills development, social development and relationships. There are some brilliant things which come from being online. It is also beneficial because having age-appropriate experiences when they are online is part of their fundamental rights. That, essentially, is what these amendments are about.

Throughout the many years that the Bill has been in gestation, we have heard a lot about freedom of speech and how it must be preserved. Indeed, in contrast to children's rights not being mentioned once in the Bill, "freedom of expression" appears no less than 49 times. I venture to suggest to your Lordships that there is a degree of imbalance there which should cause us to pause and reflect on whether we have that balance quite right.

I will not go into detail, but the UNCRC is the most widely ratified human rights treaty in history, and it is legally binding on the states which are party to it. The UK is a signatory to this convention, yet if we do not get this right in the Bill, we are in danger of falling behind some of our global counterparts. Although I recognise that saying the name of this organisation may bring some members of the governing party out in a rather painful rash, the EU is incorporating the UNCRC into its forthcoming AI Act. Sweden has already incorporated it into law at a different level, and Canada, New Zealand and South Africa are all doing the same. It is not anything to be worried about. Even Wales incorporated it into its domestic law in 2004, and Scotland did so in 2021. This appears to be something that the English have a particular problem with.

6.15 pm

These amendments would ensure that, very importantly, those reading the Bill absolutely know that they must give due consideration to children's rights. It would not be optional. Amendments 25 and 78 would require services to uphold children's rights when implementing safety measures. Amendment 187 would reflect children's rights in Ofcom's duties, and Amendment 196 would ensure that Ofcom takes into consideration children's rights when it is making its assessments of risks.

In particular, we have tabled these amendments because one of the possible unintended consequences of the well-meaning and serious attempts by all of us to protect children better is that some of these companies and platforms may decide that having children access some of their services is too much bother. They may decide that it would be simpler to find means to exclude them completely because it would be too much trouble, money or regulatory hassle to try to build a platform or service which they know children will access, as that will impose a serious obligation on them for which they can be held legally accountable. That would be an unintended consequence. We do not want children locked out of services which are essential to their development, education and self-expression. That said, I have probably said enough. I beg to move.

Lord Weir of Ballyholme (DUP): My Lords, I rise on this group of amendments, particularly with reference to Amendments 25, 78, 187 and 196, to inject a slight note of caution—I hope in a constructive manner—and to suggest that it would be the wrong step to try to incorporate them into this legislation. I say at the outset that I think the intention behind these amendments is perfectly correct; I do not query the intention of the noble Lord, Lord Russell, and others. Indeed, one thing that has struck me as we have discussed the Bill is the commonality of approach across the Chamber. There is a strong common desire to provide a level of protection for children's rights, but I question whether these amendments are the right vehicle by which to do that.

It is undoubtedly the case that the spirit of the UNCRC is very strongly reflected within the Bill, and I think it moves in a complementary fashion to the Bill. Therefore, again, I do not query the UNCRC in particular. It can act as a very strong guide to government as to the route it needs to take, and I think it has had a level of influence on the Bill. I speak not simply as someone observing the Bill but as someone who, in a previous existence, served as an Education Minister in Northern Ireland and had direct responsibility for children's rights. The guidance we received from the UNCRC was, at times, very useful to Ministers, so I do not question any of that.

For three reasons, I express a level of concern about these amendments. I mentioned that the purpose of the UNCRC is to act as a guide—a yardstick—for government as to what should be there in terms of domestic protections. That is its intention. The UNCRC itself was never written as a piece of legislation, and I do not think it was the original intention to have it directly incorporated and implemented as part of law. The UNCRC is aspirational in nature, which is very worth while. However, it is not written in a legislative form. At times, it can be a little vague, particularly if we are looking at the roles that companies will play. At times, it sets out very important principles, but ones which, if left for interpretation by the companies themselves, could create a level of tension.

To give an example, there is within the UNCRC a right to information and a right to privacy. That can sometimes create a tension for companies. If we are to take the purpose of the UNCRC, it is to provide that level of guidance to government, to ensure that it gets it right rather than trying to graft UNCRC directly on to domestic law.

Secondly, the effect of these amendments would be to shift the interpretation and implementation of what is required of companies from government to the companies themselves. They would be left to try to determine this, whereas I think that the UNCRC is

principally a device that tries to make government accountable for children's rights. As such, it is appropriate that government has the level of responsibility to draft the regulations, in conjunction with key experts within the field, and to try to ensure that what we have in these regulations is fit for purpose and bespoke to the kind of regulations that we want to see.

To give a very good example, there are different commissioners across the United Kingdom. One of the key groups that the Government should clearly be consulting with to make sure they get it right is the Children's Commissioners of the different jurisdictions in the United Kingdom. Through that process, but with that level of ownership still lying with government and Ofcom, we can create regulations that provide the level of protection for our children that we all desire to see; whereas, if the onus is effectively shifted on to companies simply to comply with what is a slightly vague, aspirational purpose in these regulations, that is going to lead to difficulties as regards interpretation and application.

Thirdly, there is a reference to having due regard to what is in the UNCRC. From my experience, both within government and even seeing the way in which government departments do that—and I appreciate that "due regard" has case law behind it—even different government departments have tended to interpret that differently and in different pieces of legislation. At one extreme, on some occasions that effectively means that lip service has been paid to that by government departments and, in effect, it has been largely ignored. Others have seen it as a very rigorous duty. If we see that level of disparity between government departments within the same Government, and if this is to be interpreted as a direct instruction to and requirement of companies of varying sizes—and perhaps with various attitudes and feelings of responsibility on this subject—that creates a level of difficulty in and of itself.

My final concern in relation to this has been mentioned in a number of debates on various groups of amendments. Where a lot of Peers would see either a weakness in the legislation or something else that needs to be improved, we need to have as much consistency and clarity as possible in both interpretation and implementation. As such, the more we move away from direct regulations, which could then be put in place, to relying on the companies themselves interpreting and implementing, perhaps in different fashions, with many being challenged by the courts at times, the more we create a level of uncertainty and confusion, both for the companies themselves and for users, particularly the children we are looking to protect.

While I have a lot of sympathy for the intention of the noble Lord, Lord Russell, and while we need to find a way to incorporate into the Bill in some form how we can drive children's rights more centrally within this, the formulation of the direct grafting of the UNCRC on to this legislation, even through due regard, is the wrong vehicle for doing it. It is inappropriate. As such, it is important that we take time to try to find a better vehicle for the sort of intention that the noble Lord, Lord Russell, and others are putting forward. Therefore, I urge the noble Lord not to press his amendments. If he does, I believe that the Committee should oppose the amendments as drafted. Let us see if, collectively, we can find a better and more appropriate way to achieve what we all desire: to try to provide the maximum protection in a very changing world for our children as regards online safety.

Baroness Harding of Winscombe (Con): My Lords, I support these amendments. We are in the process of having a very important debate, both in the previous group and in this one. I came to this really important subject of online safety 13 years ago, because I was the chief executive of a telecoms company. Just to remind noble Lords, 13 years ago neither Snap, TikTok nor Instagram—the three biggest platforms that children use today—existed, and telecoms companies were viewed as the bad guys in this space. I arrived, new to the telecoms sector, facing huge pressure—along with all of us running telecoms companies—from Governments to block content.

I often felt that the debate 13 years ago too quickly turned into what was bad about the internet. I was spending the vast majority of my working day trying to encourage families to buy broadband and to access this thing that you could see was creating huge value in people's lives, both personal and professional. Sitting on these Benches, I fundamentally want to see a society with the minimum amount of regulation, so I was concerned that regulating internet safety would constrain innovation; I wanted to believe that self-regulation would work. In fact, I spent many hours in workshops with the noble Baroness, Lady Kidron, and many others in this Chamber, as we tried to persuade and encourage the tech giants—as everyone started to see that it was not the telecoms companies that were the issue; it was the emerging platforms—to self-regulate. It is absolutely clear that that has failed. I say that with quite a heavy heart; it has genuinely failed, and that is why the Bill is so important: to enshrine in law some hard regulatory requirements to protect children.

That does not change the underlying concern that I and many others—and everyone in this Chamber—have, that the internet is also potentially a force for good. All technology is morally neutral: it is the human beings who make it good or bad. We want our children to genuinely have access to the digital world, so in a Bill that is enshrining hard gates for children, it is really important that it is also really clear about the rights that children have to access that technology. When you are put under enormous pressure, it is too easy—I say this as someone who faced it 13 years ago, and I was not even facing legislation—to try to do what you think your Government want to do, and then end up causing harm to the individuals you are actually trying to protect. We need this counterbalance in this Bill. It is a shame that my noble friend Lord Moylan is not in his place, because, for the first time in this Committee, I find myself agreeing with him. It is hugely important that we remember that this is also about freedom and giving children the freedom to access this amazing technology.

Some parts of the Bill are genuinely ground-breaking, where we in this country are trying to work out how to put the legal scaffolding in place to regulate the internet. Documenting children's rights is not something where we need to start from scratch. That is why I put my name to this amendment: I think we should take a leaf

[Baroness Harding of Winscombe]
from the UN Convention on the Rights of the Child. I recognise that the noble Lord, Lord Weir of Ballyholme, made some very thought-provoking comments about how we have to be careful about the ambiguity that we might be creating for companies, but I am afraid that ambiguity is there whether we like it or not. These are not just decisions for government: the tension between offering services that will brighten the lives of children but risking them as well are exactly behind the decisions that technology companies take every day. As the Bill enshrines some obligations on them to protect children from the harms, I firmly believe it should also enshrine obligations on them to offer the beauty and the wonder of the internet, and in doing that enshrine their right to this technology.

6.30 pm

Baroness Bennett of Manor Castle (GP): My Lords, I have attached my name to Amendment 25 in the name of the noble Lord, Lord Russell, and I rise to speak primarily to that. It is a great pleasure to follow the noble Baroness, Lady Harding, and agree with every word she has just said. I will draw on two elements of my personal history that she reminded me of. As a journalist in country Australia in the early 1990s—pre-internet days—I worked the night shift, and at least once a week we would get a frantic phone call from a parent calling on behalf of a child along the lines of, "Do you know anything about dolphins?" A school project had just been discovered that needed to be done by the next morning, and the source of information that the parent thought of was, "The local newspaper—they might be able to tell us something!" I am slightly ashamed to say that we had a newspaper to get out and we very quickly told them to go away, so we were not a good source of information in that case. Most people in your Lordships' House will remember—but most young people will have no recollection of—a time when there was little access to information outside the hours when the library was open or you could go to a bookshop. There were literally no other sources available. We have to consider this amendment in the light of that.

I also want to slightly disagree with the comments of the noble Lord, Lord Bethell, on the previous group. He suggested that it was only with the arrival of phones that the internet became primarily or significantly a children's thing. The best I can date it is that either in 1979 or 1980 I was playing "Lemonade Stand" on one of the early Apples. This might have been considered to be a harmful game from some political perspectives, given that it very much encouraged a capitalist mindset, profit taking and indeed the Americanisation of culture—but none the less that was back in 1980, if not 1979, and children were there. If we look back over the history of the internet, we see that some of the companies started out with young people, under the age of 18 in some cases, who have been at the forefront of innovation and development of what we now think of as our social media or internet world. This is the children's world as much as it is the adults' world, and that is the reality.

I will pick up the points made by the noble Lord, Lord Weir of Ballyholme, who suggested that the UN Convention on the Rights of the Child was only a guide to government and not law. It is a great pity that the noble Baroness, Lady Kennedy of The Shaws, is not in her place, because she is far better equipped to deal with this angle than I am. But I will give it a go. Children's rights are humans' rights. The UN Convention on the Rights of the Child is the most backed and most ratified rights convention—

Lord Weir of Ballyholme (DUP): I appreciate what the noble Baroness is saying, but I made a slightly different point. I am suggesting not that what is there was not meant to be law but that it was not written in a form which should be simply directly put in as legislation. It was not drafted in that format on that basis, which is why a direct graft on to a domestic piece of legislation is not quite the way to do it. It is about using that as guidance as to what should be in the law, rather than simply a direct incorporation.

Baroness Bennett of Manor Castle (GP): I thank the noble Lord for his clarification, although, speaking not as a lawyer, my understanding is that a human right is a legal right; it is a law—a most fundamental right. In addition, every country in the world has ratified this except for the United States—which is another issue. I also point out that it is particularly important that we include reference to children's rights in this Bill, given the fact that we as a country currently treat our children very badly. There is a huge range of issues, and we should have a demonstration in this and every Bill that the rights of children are respected across all aspects of British society.

I will not get diverted into a whole range of those, but I point noble Lords to a report to the United Nations from the Equality and Human Rights Commission in February this year that highlighted a number of ways in which children's rights are not being lived up to in the UK. The most relevant part of this letter that the EHRC sent to the UN stresses that it is crucial to preserve children's rights to accessible information and digital connectivity. That comes from our EHRC.

I think it was the noble Lord, Lord Russell, who referred to the fact that we live in a global environment, and of course our social media and the internet is very much a global world. I urge everyone who has not done so to look at a big report done by UNICEF in 2019, *Global Kids Online*, which, crucially, involved a huge amount of surveys, consultation and consideration by young people. Later we will get to an amendment of mine which says that we should have the direct voice of young people overseeing the implementation of the Bill. I am talking not about the NGOs that represent them but specifically about children: we need to listen to the children and young people.

The UNICEF report said that it was quite easy to defend access to information and to reputable sources, but showed that accessing entertainment activities—some of the things that perhaps some grandparents in this Chamber might have trouble with—was associated with the positive development of digital skills. Furthermore, the report says:

"When parents restrict children's internet use"—

of course, this could also apply to the Government restricting their internet use—

"this has a negative effect on children's information-seeking and privacy skills".

So, if you do not give children the chance to develop these skills to learn how to navigate the internet, and they suddenly go to it at age 18 and a whole lot of stuff is out there that they have not developed any skills to deal with, you are setting yourself up for a real problem. So UNICEF stresses the real need to have children's access.

Interestingly, this report—which was a global report from UNICEF—said that

"fewer than one third of children had been exposed to"

something they had found uncomfortable or upsetting in the preceding year. That is on the global scale. Perhaps that is an important balance to some of the other debates we have had in your Lordships' House on the Bill.

Other figures from this report that I think are worth noting—this is from 2019, so these figures will undoubtedly have gone up—include the finding that

"one in three children globally is … an internet user and …. one in three internet users is a child".

We have been talking about this as though the internet is "the grown-ups' thing", but that is not the global reality. It was co-created, established and in some cases invented by people under the age of 18. I am afraid to say that your Lordships' House is not particularly well equipped to deal with this, but we need to understand this as best we possibly can. I note that the report also said, looking at the sustainable development goals on quality of education, good jobs and reducing inequality, that internet access for children was crucial.

I will make one final point. I apologise; I am aware that I have been speaking for a while, but I am passionate about these issues. Children and young people have agency and the ability to act and engage in politics. In several nations on these islands, 16 and 17 year-olds have the vote. I very much hope that that will soon also be the case in England, and indeed I hope that soon children even younger than that that will have the vote. I was talking about that with a great audience of year nines at the Queen's School in Bushey on Friday with Learn with the Lords. Those children would have a great opportunity—

Lord Harlech (Con): My Lords, we have a very full order of business to get through, so I encourage the noble Baroness to remain on topic.

Baroness Bennett of Manor Castle (GP): I think that is on topic. If 16 and 17 year-olds are voting, they have a right to access internet information about voting. I suggest that that is on topic.

My final point—for the pleasure of the noble Lord—is that historically we have seen examples where blocks and filters have denied children and young people who identify as LGBTQI+ access to crucial information for them. That is an example of the risk if we do not allow them right of access. On the most basic children's right of all, we have also seen examples of blocks and filters that have stopped access to breastfeeding information on the internet. Access is a crucial issue, and what could be a more obvious way to allow it than by writing in the United Nations Declaration on the Rights of the Child?

Baroness Fox of Buckley (Non-Afl): My Lords, I welcome many of these amendments. I found reading them slightly more refreshing than the more dystopian images we have had previously. It is quite exciting, actually, because the noble Baroness, Lady Harding, sounded quite upbeat, which is in contrast to previous contributions on what the online world is like.

I want to defend the noble Baroness, Lady Bennett of Manor Castle, from the intervention that suggested that she was going off topic, because the truth is that these amendments are calling for children's rights to be introduced into legislation via this Bill. I disagree with that, but we should at least talk about it if it is in the amendments.

Whereas I like the spirit of the amendments, it seems to me that children's rights, which I consider to have huge constitutional implications, require a proper Bill to bring them in and not to be latched on to this one. My concern is that children's rights can be used to undermine adult authority and are regularly cited as a way of undermining parents' rights, and that children under 18 cannot enact political rights. Whether they have agency or capacity, they are not legally able to exercise their political rights, and therefore someone has to act on their behalf as an intermediary—as a third party—which is why it can become such a difficult, politicised area.

I say that because it would be a fascinating discussion to have. I do not think this is the Bill to have it on, but the spirit of the amendments raises issues that we should bear in mind for the rest of our discussion. During lockdown, we as a society stopped young people having any social interaction at all. They were isolated, and a lot of new reports suggest that young people's mental health has suffered because they were on their own. They went online and, in many instances, it kept them sane. That is probably true not just of young people but of the rest of us, by the way, but I am making the point that it was not all bad.

Over recent years, as we have been concerned about children's safety and protecting them, we have discouraged them from roaming far from home. They do not go out on their bikes or run around all the time; they are told, "Come back home, you'll be safe". Of course, they have gone into their room and gone online, and now we say, "That's not safe either".

I want to acknowledge that the online world has helped young people overcome the problems of isolation and lack of community that the adult world has sometimes denied them developing. That is important: it can be a source of support and solidarity. Children need spaces to talk, engage and interact with friends, mates, colleagues and so on where they can push boundaries, and all sorts of things, without grown-ups interfering. That is what we have always understood from child development. It is why you do not have spies wandering around all the time following them.

The main thing is that we know the difference between a four year-old and a 14 year-old. In the Bill, we call a child anyone under 18, but I was glad that the amendments acknowledge that distinction in terms of appropriateness is important. When young people are online, or if they are involved in encrypted messages, such as WhatsApp, that does not mean they are all planning to join county lines or are being groomed—it

[Baroness Fox of Buckley]
is not all dodgy. Appropriateness in terms of child age and not always imagining that the worst is happening are an important counter that these amendments bring to some of the pessimism that we have heard until now.

The noble Lord, Lord Russell, said that children's rights are not mentioned in the Bill but freedom of expression has been mentioned 49 times. First, it is not a Bill about children's rights, but when he says that freedom of expression has been mentioned 49 times, I assure him that quantity is not quality and the mention of it means nothing.

6.45 pm

Baroness Harding of Winscombe (Con): I want to challenge the noble Baroness's assertion that the Bill is not about children's rights. Anyone who has a teenage child knows that their right to access the internet is keenly held and fought out in every household in the country.

Baroness Fox of Buckley (Non-Afl): The quip works, but political rights are not quips. Political rights have responsibilities, and so on. If we gave children rights, they would not be dependent on adults and adult society. Therefore, it is a debate; it is a row about what our rights are. Guess what. It is a philosophical row that has been going on all around the world. I am just suggesting that this is not the place—

Baroness Bennett of Manor Castle (GP): I am sorry, but I must point out that 16 and 17 year-olds in Scotland and Wales have the vote. That is a political right.

Baroness Fox of Buckley (Non-Afl): And it has been highly contentious whether the right to vote gives them independence. For example, you would still be accused of child exploitation if you did anything to a person under 18 in Scotland or Wales. In fact, if you were to tap someone and it was seen as slapping in Scotland and they were 17, you would be in trouble. Anyway, it should not be in this Bill. That is my point.

Baroness Finlay of Llandaff (CB): My Lords, perhaps I may intervene briefly, because Scotland and Wales have already been mentioned. My perception of the Bill is that we are trying to build something fit for the future, and therefore we need some broad underlying principles. I remind the Committee that the Well-being of Future Generations Act (Wales) Act set a tone, and that tone has run through all aspects of society even more extensively than people imagined in protecting the next generation. As I have read them, these amendments set a tone to which I find it difficult to understand why anyone would object, given that that is a core principle, as I understood it, behind building in future-proofing that will protect children, among others.

Baroness Healy of Primrose Hill (Lab): My Lords, I support the amendments in the name of the noble Lord, Lord Russell, to require regulated services to have regard to the UN Convention on the Rights of the Child. As we continue to attempt to strengthen the Bill by ensuring that the UK will be the safest place for children to be online, there is a danger that platforms may take the easy way out in complying with the new legislation and just block children entirely from their sites. Services must not shut children out of digital spaces altogether to avoid compliance with the child safety duties, rather than designing services with their safety in mind. Children have rights and, as the UN convention makes clear, they must be treated according to their evolving capacities and in their best interests in consideration of their well-being.

Being online is now an essential right, not an option, to access education, entertainment and friendship, but we must try to ensure that it is a safe space. As the 5Rights Foundation points out, the Bill risks infringing children's rights online, including their rights to information and participation in the digital world, by mandating that services prevent children from encountering harmful content, rather than ensuring services are made age appropriate for children and safe by design, as we discussed earlier. As risk assessments for adults have been stripped from the Bill, this has had the unintended consequence of rendering a child user relative to an adult user even more costly, as services will have substantial safety duties to comply with to protect children. 5Rights Foundation warns that this will lead services to determine that it is not worth designing services with children's safety in mind but that it could be more cost effective to lock them out entirely.

Ofcom must have a duty to have regard for the UNCRC in its risk assessments. Amendment 196 would ensure that children's rights are reflected in Ofcom's assessment of risks, so that Ofcom must have regard for children's rights in balancing their rights to be safe against their rights to access age-appropriate digital spaces. This would ensure compliance with general comment No. 25, as the noble Lord, Lord Russell, mentioned, passed in 2021, to protect children's rights to freedom of expression and privacy. I urge the Ministers to accept these amendments to ensure that the UK will be not only the safest place for children to be online but the best place too, by respecting and protecting their rights.

Baroness Kidron (CB): My Lords, I support all the amendments in this group, and will make two very brief points. Before I do, I believe that those who are arguing for safety by design and to put harms in the Bill are not trying to restrict the freedom of children to access the internet but to give the tech sector slightly less freedom to access children and exploit them.

My first point is a point of principle, and here I must declare an interest. It was my very great privilege to chair the international group that drafted general comment No. 25 on children's rights in relation to the digital environment. We did so on behalf of the Committee on the Rights of the Child and, as my noble friend Lord Russell said, it was adopted formally in 2021. To that end, a great deal of work has gone into balancing the sorts of issues that have been raised in this debate. I think it would interest noble Lords to know that the process took three years, with 150 submissions, many by nation states. Over 700 children in 28 countries were consulted in workshops of at least three hours. They had a good shout and, unlike many of the other

general comments, this one is littered with their actual comments. I recommend it to the Committee as a very concise and forceful gesture of what it might be to exercise children's rights in a balancing way across all the issues that we are discussing. I cannot remember who, but somebody said that the online world is not optional for children: it is where they grow up; it is where they spend their time; it is their education; it is their friendships; it is their entertainment; it is their information. Therefore, if it is not optional, then as a signatory to the UNCRC we have a duty to respect their rights in that environment.

My second point is rather more practical. During the passage of the age-appropriate design code, of which we have heard much, the argument was made that children were covered by the amendment itself, which said they must be kept in mind and so on. I anticipate that argument being made here—that we are aligning with children's rights, apart from the fact that they are indivisible and must be done in their entirety. In that case, the Government happily accepted that it should be explicit, and it was put in the Data Protection Act. It was one of the most important things that happened in relation to the age-appropriate design code. We might hope that, when this Bill is an Act, it will all be over—our job will be done and we can move on. However, after the Data Protection Act, the most enormous influx of lobbying happened, saying, "Please take the age down from 18 to 13". The Government, and in that case the ICO, shrugged their shoulders and said, "We can't; it's on the face of the Bill", because Article 1 of the UNCRC says that a child is anyone under the age of 18.

The evolving capacities of children are central to the UNCRC, so the concerns of the noble Baroness, Lady Fox, which I very much share, that a four year-old and a 14 year-old are not the same, are embodied in that document and in the general comment, and therefore it is useful.

These amendments are asking for that same commitment here—to children and to their rights, and to their rights to protection, which is at the heart of so much of what we are debating, and their well-being. We need their participation; we need a digital world with children in it. Although I agreed very much with the noble Baroness, Lady Bennett, and her fierce defending of children's rights, there are 1 billion children online. If two-thirds of them have not seen anything upsetting in the last year, that rather means that one-third of 1 billion children have—and that is too many.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I did not intend to speak in this debate but I have been inspired by it.

I was here for the encryption debate last week, which I did not speak in. One of the contributions was around unintended consequences of the legislation, and I am concerned about unintended consequences here.

I absolutely agree with the comments of the noble Baroness, Lady Bennett, around the need for children to engage on the internet. Due to a confidence and supply agreement with the then Government back in 2017, I ensured that children and adults alike in Northern Ireland have the best access to the internet in the United Kingdom, and I am very proud of that. Digital literacy is covered in a later amendment, Amendment 91, which I will be strongly supporting. It is something that everybody needs to be involved in, not least our young people—and here I declare an interest as the mother of a 16 year-old.

I have two concerns. The first was raised by my friend the noble Lord, Lord Weir, around private companies being legally accountable for upholding an international human rights treaty. I am much more comfortable with Amendments 187 and 196, which refer to Ofcom. I think that is where the duty should be. I have an issue not with the convention but with private companies being held responsible for it; Ofcom should be the body responsible.

Secondly, I listened very carefully to what the noble Baroness, Lady Kidron, said about general comment No. 25. If what I say is incorrect, I hope she will say so. Is general comment No. 25 a binding document on the Government? I understood that it was not.

Baroness Kidron (CB): We need to see the UNCRC included in the Bill. The convention is never opened up again, and how it makes itself relevant to the modern world is through the general comments; that is how the Committee on the Rights of the Child would interpret it.

Baroness Foster of Aghadrumsee (Non-Afl): So it is an interpretive document. The unintended consequences piece was around general comment No. 25 specifically having reference to children being able to seek out content. That is certainly something that I would be concerned about. I am sure that we will discuss it further in the next group of amendments, which are on pornography. If young people were able to seek out harmful content, that would concern me greatly.

I support Amendments 187 and 196, but I have some concerns about the unintended consequences of Amendment 25.

Lord Clement-Jones (LD): My Lords, I think this may have been a brief interlude of positivity. I am not entirely convinced, in view of some of the points that have been made, but certainly I think that it was intended to be.

I will speak first to Amendments 30 and 105. I do not know what the proprieties are, but I needed very little prompting from the LEGO Group to put forward amendments that, in the online world, seek to raise the expectation that regulated services must go beyond purely the avoidance of risk of harm and consider the positive benefits that technology has for children's development and their rights and overall well-being. It has been extremely interesting to hear that aspect of today's debate.

It recognises that through the play experience of children, both offline and online, it has an impact on the lives of millions of children that it engages with around the world, and it recognises the responsibility to ensure that, wherever it engages with them, the impact is positive and that it protects and upholds the rights of children and fosters their well-being as part of its mission.

7 pm

We have heard about UN general comment 25 on children's rights in the digital environment. The Government's response to the drafting process recognised the collective responsibility of all Governments and stakeholders to ensure

"that children can benefit from digital opportunities, and protecting them from online harms".

In line with this, the Bill now offers the opportunity to require regulated services to not only mitigate and manage risk in their service design but to consider the benefits of the service to children's rights and well-being. I am extending it rather further than some of the earlier discussions.

I agree that it is important to include reference to both rights and well-being in the Bill. An individual child may have low well-being even if all their rights are respected. For example, if a child does not feel socially connected or empowered in a positive online environment, they may experience low well-being even if their right to participate online is being respected. As drafted, the Bill instructs regulated services to have regard

"to the importance of protecting the rights of users and interested persons"

and give due consideration to benefits such as freedom of expression

"when deciding on, and implementing, safety measures and policies"

to comply with the regime.

I believe that, if the Bill is to fully deliver for children, it needs to ensure that there is consideration of the benefits of the service to children's rights and well-being. Without this inclusion, there is a risk that the design of online services will disproportionately restrict children's rights to participate in the online environment and the benefit it brings to their well-being. By instructing service providers to design for the benefits that technology can bring to children's rights and well-being alongside the mitigation of risk, which we have heard so much about, we have a real opportunity in the Bill to create a blueprint for the online environment that can both protect and nurture children's potential by supporting and empowering them, unleashing their creativity and helping them learn. We have heard many positive comments around the House on that. I hope the Minister will understand the clear intention here and take on board the positive intent of these amendments.

Briefly, many noble Lords have emphasised the importance of the UN Convention on the Rights of the Child. I am not going to add greatly to that debate, but children have a right to be safe and to privacy. They also have rights to information and participation in free speech, both online and offline. It was very interesting to hear, in particular from the noble Baroness, Lady Healy, and the noble Lord, Lord Russell, about their view that services may shut children out of digital spaces altogether to avoid compliance with the child safety duties, rather than designing services with their safety in mind. That is because the Bill focuses on content moderation rather than system design: we are back, in a sense, into that loop.

I believe that the reference to the UNCRC general comment 25 would be very useful. I understand the points made by the noble Lord, Lord Weir, and certainly the spirit in which he made them, but I cannot see why "having regard to" the UNCRC could not be in the Bill. I do not see that that is unduly prescriptive or difficult to interpret in those circumstances, or overly vague. So, on these Benches, we support those amendments.

Lord Knight of Weymouth (Lab): My Lords, we too support the spirit of these amendments very much and pay tribute to the noble Lord, Lord Russell, for tabling them.

In many ways, I do not need to say very much. I think the noble Baroness, Lady Kidron, made a really powerful case, alongside the way the group was introduced in respect of the importance of these things. We do want the positivity that the noble Baroness, Lady Harding, talked about in respect of the potential and opportunity of technology for young people. We want them to have the right to freedom of expression, privacy and reliable information, and to be protected from exploitation by the media. Those happen to be direct quotes from the UN Convention on the Rights of the Child, as some of the rights they would enjoy. Amendments 30 and 105, which the noble Lord, Lord Clement-Jones, tabled—I attached my name to Amendment 30—are very much in that spirit of trying to promote well-being and trying to say that there is something positive that we want to see here.

In particular, I would like to see that in respect of Ofcom. Amendment 187 is, in some ways, the more significant amendment and the one I most want the Minister to reflect on. That is the one that applies to Ofcom: that it should have reference to the UN Convention on the Rights of the Child. I think even the noble Lord, Lord Weir, could possibly agree. I understand his thoughtful comments around whether or not it is right to encumber business with adherence to the UN convention, but Ofcom is a public body in how it carries out its duties as a regulator. There are choices for regulation. Regulation can just be about minimum standards, but it can also be about promoting something better. What we are seeking here in trying to have reference to the UN convention is for Ofcom to regulate for something more positive and better, as well as police minimum standards. On that basis, we support the amendments.

Lord Parkinson of Whitley Bay (Con): My Lords, I will start in the optimistic spirit of the debate we have just had. There are many benefits to young people from the internet: social, educational and many other ways that noble Lords have mentioned today. That is why the Government's top priority for this legislation has always been to protect children and to ensure that they can enjoy those benefits by going online safely.

Once again, I find myself sympathetic to these amendments, but in a position of seeking to reassure your Lordships that the Bill already delivers on their objectives. Amendments 25, 78, 187 and 196 seek to add references to the United Nations Convention on the Rights of the Child and general comment 25 on children's rights in relation to the digital environment to the duties on providers and Ofcom in the Bill.

As I have said many times before, children's rights are at the heart of this legislation, even if the phrase itself is not mentioned in terms. The Bill already reflects

the principles of the UN convention and the general comment. Clause 207, for instance, is clear that a "child" means a person under the age of 18, which is in line with the convention. All providers in scope of the Bill need to take robust steps to protect users, including children, from illegal content or activity on their services and to protect children from content which is harmful to them. They will need to ensure that children have a safe, age-appropriate experience on services designed for them.

Both Ofcom and service providers will also have duties in relation to users' rights to freedom of expression and privacy. The safety objectives will require Ofcom to ensure that services protect children to a higher standard than adults, while also making sure that these services account for the different needs of children at different ages, among other things. Ofcom must also consult bodies with expertise in equality and human rights, including those representing the interests of children, for instance the Children's Commissioner. While the Government fully support the UN convention and its continued implementation in the UK, it would not be appropriate to place obligations on regulated services to uphold an international treaty between state parties. We agree with the reservations that were expressed by the noble Lord, Lord Weir of Ballyholme, in his speech, and his noble friend Lady Foster.

The convention's implementation is a matter for the Government, not for private businesses or voluntary organisations. Similarly, the general comment acts as guidance for state parties and it would not be appropriate to refer to that in relation to private entities. The general comment is not binding and it is for individual states to determine how to implement the convention. I hope that the noble Lord, Lord Russell, will feel reassured that children's rights are baked into the Bill in more ways than a first glance may suggest, and that he will be content to withdraw his amendment.

The noble Lord, Lord Clement-Jones, in his Amendments 30 and 105, seeks to require platforms and Ofcom to consider a service's benefits to children's rights and well-being when considering what is proportionate to fulfil the child safety duties of the Bill. They also add children's rights and well-being to the online safety objectives for user-to-user services. The Bill as drafted is focused on reducing the risk of harm to children precisely so that they can better enjoy the many benefits of being online. It already requires companies to take a risk-based and proportionate approach to delivering the child safety duties. Providers will need to address only content that poses a risk of harm to children, not that which is beneficial or neutral. The Bill does not require providers to exclude children or restrict access to content or services that may be beneficial for them.

Children's rights and well-being are already a central feature of the existing safety objectives for user-to-user services in Schedule 4 to the Bill. These require Ofcom to ensure that services protect children to a higher standard than adults, while making sure that these services account for the different needs of children at different ages, among other things. On this basis, while I am sympathetic to the aims of the amendments the noble Lord has brought forward, I respectfully say that I do not think they are needed.

More pertinently, Amendment 30 could have unintended consequences. By introducing a broad balancing exercise between the harms and benefits that children may experience online, it would make it more difficult for Ofcom to follow up instances of non-compliance. For example, service providers could take less effective safety measures to protect children, arguing that, as their service is broadly beneficial to children's well-being or rights, the extent to which they need to protect children from harm is reduced. This could mean that children are more exposed to more harmful content, which would reduce the benefits of going online. I hope that this reassures the noble Lord, Lord Russell, of the work the Bill does in the areas he has highlighted, and that it explains why I cannot accept his amendments. I invite him to withdraw Amendment 25.

Lord Russell of Liverpool (CB): My Lords, I thank all noble Lords for taking part in this discussion. I thank the noble Lord, Lord Weir, although I would say to him that his third point—that, in his experience, the UNCRC is open to different interpretations by different departments—is my experience of normal government. Name me something that has not been interpreted differently by different departments, as it suits them.

Lord Weir of Ballyholme (DUP): I entirely take that point. I was making the slightly wider point—not specifically with regard to the UNCRC—that, whenever legislative provision has been made that a particular department has to have due regard to something, while there is case law, "due regard" has tended to be treated very differently by different departments. So, if even departments within the same Government treat that differently, how much more differently would private companies treat it?

Lord Russell of Liverpool (CB): I would simply make the point that it would probably be more accurate to say that the departments treat it with "due disregard";

This has been a wide ranging debate and I am not going to go through all the different bits and pieces. I recommend that noble Lords read United Nations general comment 25 as it goes, in great detail, right to the heart of the issues we are talking about. For example —this is very pertinent to the next group of amendments—it explicitly protects children from pornography, so I absolutely recommend that it be mentioned in the next group of amendments.

As I expected, the Minister said, "We are very sympathetic but this is not really necessary". He said that children's rights are effectively baked into the Bill already. But what is baked into something that children—for whom this is particularly relevant—or even adults might decide to consume is not always immediately obvious. There are problems with an approach whereby one says, "It's fine because, if you really understood this rather complicated legislation, it would become completely clear to you what it means". That is a very accurate and compelling demonstration of exactly why some of us have concerns about this well-intentioned Bill. We fear that it will become a sort of feast, enabling company lawyers and regulators to engage in occasionally rather arcane discourse at great expense, demonstrating that what the Government claim is clearly baked in is not so clearly baked in.

7.15 pm

A common theme in many of these amendments on children's rights is that it is important that these rights are not implicitly covered in the Bill, as they are in myriad cases, but that it should be stated more clearly in key places in the Bill that it explicitly is about helping children and protecting their rights. It should be about protecting their right to be online, but also their right not to be abused or suffer harm online. That is at the heart of what we are trying to do. I suspect there is rich room for further discussion to see if we can make some of this slightly less "baked in" and find some form of legislative icing, with hundreds and thousands, which makes it completely clear which children's rights are being protected and how they will be protected. With that, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 and 27 not moved.

Amendment 27A

Moved by ***Lord Parkinson of Whitley Bay***

27A: Clause 11, page 11, line 19, at end insert—

"(10A) A duty to summarise in the terms of service the findings of the most recent children's risk assessment of a service (including as to levels of risk and as to nature, and severity, of potential harm to children)."

Member's explanatory statement

This amendment requires providers of Category 1 services to summarise (in their terms of service) the findings of their latest children's risk assessment. The limitation to Category 1 services is achieved by an amendment in the name of the Minister to clause 6.

Amendment 27A agreed.

Amendment 28 not moved.

Amendment 29

Moved by ***Baroness Ritchie of Downpatrick***

29: Clause 11, page 11, line 25, at end insert—

", except for pornographic content where age verification must always be applied, notwithstanding section 3(3)(a) of the Communications Act 2003."

Member's explanatory statement

This amendment would require a user-to-user service to apply age verification for pornographic content regardless of their size or capacity.

Baroness Ritchie of Downpatrick (Lab): My Lords, I am very happy to move Amendment 29 and to speak to Amendments 83 and 103, which are also in my name. We have just had a debate about the protection of children online, and this clearly follows on from that.

The intention of the Bill is to set general parameters through which different content types can be regulated. The problem with that approach, as the sheer number of amendments highlights, is this: not all content and users are the same, and therefore cannot be treated in the same way. Put simply, not all content online should be legislated for in the same way. That is why the amendments in this group are needed.

Pornography is a type of content that cannot be regulated in general terms; it needs specific provisions. I realise that some of these issues were raised in the debate last Tuesday on amendments in my name, and again on Thursday when we discussed harms to children. I recognise too that, during his response to Thursday's debate, the Minister made a welcome announcement on primary priority content which I hope will be set out in the Bill, as we have been asking for during this debate. While we wait to see the detail of what that announcement means, I think it safe to assume that pornography will be one of the harms named on the Bill, which makes discussion of these amendments that bit more straightforward.

Given that context, in Clause 11(3), user-to-user services that fall under the scope of Part 3 of the Bill have a duty to prevent children from accessing primary priority content. This duty is repeated in Clause 25(3) for search services. That duty is, however, qualified by the words,

"using proportionate systems and processes".

It is the word "proportionate" and how that would apply to the regulation of pornography that is at the heart of the issue.

Generally speaking, acting in a proportionate way is a sensible approach to legislation and regulation. For the most part, regulation and safeguards should ensure that a duty is not onerous or that it does not place a disproportionate cost on the service provider that may make their business unviable. While that is the general principle, proportionality is not an appropriate consideration for all policy decisions.

In the offline world, legislation and regulation is not always proportionate. This is even more stark when regulating for children. The noble Lord, Lord Bethell, raised the issue of the corner shop last Tuesday, and that example is apt to highlight my point today. We do not take a proportional approach to the sale of alcohol or cigarettes. We do not treat a corner shop differently from a supermarket. It would be absurd if I were to suggest that a small shop should apply different age checks for children when selling alcohol, compared to the age checks we expect a large supermarket to apply. Therefore, in the same way, we already do not apply proportionality to some online activities. For example, gambling is an activity that is age-verified for children. Indeed, gambling companies are not allowed to make their product attractive to children and must advertise in a regulated way to avoid harm to children and young people. The harm caused to children by gambling is significant, so the usual policy considerations of proportionality do not apply. Clearly, both online and offline, there are some goods and services to which a proportionality test is not applied; there is no subjectivity. A child cannot buy alcohol or gamble and should not be able to access pornography.

In the UK, there is a proliferation of online gambling sites. It would be absurd to argue that the size of a gambling company or the revenue that company makes should be a consideration in whether it should utilise age verification to prevent children placing a bet. In the same way, it would be absurd to argue that the size or revenue of a pornographic website could be used as an argument to override a duty to ensure that age verification is employed to ensure that children do not access that website.

This is not a grey area. It is beyond doubt that exposing children to pornography is damaging to their health and development. The Children's Commissioner's

report from this year has been much quoted already in Committee but it is worth reminding your Lordships what she found: that pornography was "widespread and normalised", to the extent that children cannot opt out. The average age at which children first see pornography is 13. By age nine, 10% had seen it, 27% had seen it by age 11 and half had seen it by age 13. The report found that frequent users of pornography are more likely to engage—unfortunately and sadly—in physically aggressive sex acts.

There is nothing proportionate about the damage of pornographic content. The size, number of visitors, financial budget or technical know-how must not be considerations as to whether or not to deploy age checks. If a platform is incapable for any reason of protecting children from harmful exposure to pornography, it must remove that content. The Bill should be clear: if there is pornography on a website, it must use age verification. We know that pornographic websites will do all they can to evade age verification. In France and Germany, which are ahead of us in passing legislation to protect minors from pornography, regulators are tangled up in court action as the pornographic sites they first targeted for enforcement action argue against the law.

We must also anticipate the response of websites that are not dedicated exclusively to pornography, especially social media—a point we touched on during Tuesday's debate. Reuters reported last year that an internal Twitter presentation stated that 13% of tweets were pornographic. Indeed, the Children's Commissioner has found that Twitter is the platform where young people are most likely to encounter pornographic content. I know that some of your Lordships are concerned about age-gating social media. No one is suggesting that social media should exclude children, a point that has been made already. What I am suggesting is that pornography on that platform should be subject to age verification. The capabilities already exist to do this. New accounts on Twitter have to opt in to view pornographic content. Why cannot the opt-in function be age-gated? Twitter is moving to subscription content. Why can it not make pornographic content subscription based, with the subscription being age-verified. The solutions exist.

The Minister may seek to reassure the House that the Bill as drafted would not allow any website or search facility regulated under Part 3 that hosts pornographic content to evade its duties because of size, capacity or cost. But, as we have seen in France, these terms will be subject to court action. I therefore trust that the Government will bring forward an amendment to ensure that any platform that hosts pornographic content will employ age verification, regardless of any other factors. Perhaps the Minister in his wind-up can provide us with some detail or a hint of a future amendment at Report. I look forward to hearing and considering the Minister's response. I beg to move.

Baroness Benjamin (LD): My Lords, I wish to speak in support of Amendments 29, 83 and 103 in the name of the noble Baroness, Lady Ritchie. I am extremely pleased that the Minister said last Tuesday that pornography will be within primary priority content; he then committed on Thursday to naming primary priority content in the Bill. This is good news. We also know that pornography will come within the child safety duties in Clause 11. This makes me very happy.

In the document produced for the Government in January 2021, the BBFC said that there were millions of pornographic websites—I repeat, millions—and many of these will come within Part 3 of the Bill because they allow users to upload videos, make comments on content and chat with other users. Of course, some of these millions of websites will be very large, which means by definition that we expect them to come within the scope of the Bill. Under Clause 11(3) user-to-user services have a duty to prevent children accessing primary priority content. The duty is qualified by the phrase "using proportionate systems and processes". The facts of deciding what is proportionate are set out in Clause 11(11): the potential harm of the content based on the children's risk assessment, and the size and capacity of the provider of the service. Amendments 29, 83 and 103 tackle the issue of size and capacity.

7.30 pm

With millions of sites on the internet, it is not unreasonable to think that some sites will argue that, despite the potential harm to children, they are not of a size to have the capacity to invest in technology. The amendment would require all user-to-user sites with pornographic content to use age verification to determine that the person accessing the content was aged 18 years or older, regardless of size and capacity. This issue was touched upon on Tuesday in the amendments tabled by the noble Baroness, Lady Ritchie, which said there should be a level playing field for websites that contain pornographic content regardless of which part of the Bill they fall within. Websites that come within the scope of Part 5 do not have any exceptions and must have age verification to meet the duty in Clause 72, and that should also apply to Part 3 services.

The Government have said there is a significant risk of harm posed by children's access to pornography online since exposure to pornography may impact children's perception of sex and relationships, increase the likelihood of engaging in sexual activities and harmful or aggressive behaviour, and reduce concern about consent from partners. For those reasons alone, all sites with pornographic content should have age verification.

I know that we will have further debates on age verification in due course, but I hope the Government's announcement that pornographic content will be in the Bill means that age verification for pornography on Part 3 and Part 5 services will come into force at the same time. I urge the Government to support these amendments.

House resumed.

Merchant Shipping (Fire Protection) Regulations 2023

Motion to Approve

7.33 pm

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

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

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the draft regulations before the House relate to the fire safety of all passenger ships on international voyages, a limited class of passenger ships on non-international voyages, all cargo and sailing ships of 500 gross tonnage and over, and UK pleasure vessels of 500 gross tonnage and above. It makes provision for different generations of ship, with the fire protection requirements differing slightly between the generations.

The statutory instrument will be made under safety powers conferred by the Merchant Shipping Act 1995. It is subject to the enhanced scrutiny procedures under the European Union (Withdrawal) Act 2018—and therefore there is an affirmative procedure today—because it revokes an instrument that was amended by Section 2(2) of the European Communities Act 1972. The instrument does not implement any EU obligations.

I acknowledge the amendment to the Motion relating to this instrument in the name of the noble Baroness, Lady Scott of Needham Market, referencing the time taken to make these changes to the domestic statute book and other delays to international maritime secondary legislation. In its 33rd report of Session 2022-23, the Secondary Legislation Scrutiny Committee—SLSC—noted that the

"DfT is gradually addressing its backlog of implementing international maritime legislation but these Regulations illustrate why we were so concerned that it was allowed to accumulate in the first place".

I will address the amendment to the Motion and the SLSC's remarks, but I turn first to the instrument under consideration today.

The draft regulations implement the most up-to-date requirements of chapter II-2 of the International Convention for the Safety of Life at Sea 1974, known as SOLAS, and bring UK domestic law up to date and in line with internationally agreed requirements. The draft regulations contain direct references to the vast majority of the requirements of SOLAS chapter II-2. These references are made ambulatory, so future updates to the provisions will be given direct effect in UK law when they enter into force internationally. This will assist the UK in keeping legislation up with international requirements.

The regulations will revoke and replace the Merchant Shipping (Fire Protection) Regulations 2003 and the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998—the latter apply to ships constructed before 1 July 2002 and the former to ships constructed on or before that same date. The regulations will further improve the fire safety standards for ships and will enable the UK to enforce these requirements against UK ships wherever they may be in the world, and against non-UK ships when they are in UK waters. This provides a level playing field for the industry.

I turn to the content of the SI. Chapter II-2 of SOLAS contains provisions for structural fire protection, fire detection and fire extinction on ships. This includes the prevention of fire and explosion, suppression of fire, escape from fire, operational requirements, alternative design and arrangements, and other requirements specific to particular situations. Chapter II-2 is supplemented by the fire safety systems code and the fire testing procedures code. All are amended from time to time in the International Maritime Organization—IMO.

A number of amendments have been agreed in the IMO and have come into force internationally since UK law was last updated in 2003. Amendments contained in 20 resolutions have been agreed at the IMO over the years since 2003, with the most recent changes being made in 2020. Those amendments further improve the safety standards of fire protection but have not yet been implemented into UK law. The UK supported the amendments during IMO discussions and, as a party to SOLAS, now has an obligation to implement these further updates. Amendments include, but are not limited to, new requirements for cabin balconies, tanker gas measurement equipment, fire test protocols for materials placed on ships and requirements related to vehicle spaces—they can be quite technical. Details of all 20 amendments are set out in the Explanatory Memorandum to this instrument in the normal way.

I turn to the amendment to the Motion in the name of the noble Baroness, Lady Scott of Needham Market, and the recent remarks by the Secondary Legislation Scrutiny Committee to which I previously alluded. Keeping pace with the frequent amendments to international maritime conventions is challenging and requires frequent updating of the implementing legislation to keep up to date. The Department for Transport has an extensive secondary legislation programme but limited policy, analytical and legal resources with which to carry out that task. That has required some prioritisation, particularly over recent years, and a backlog relating to implementation of international obligations has been allowed to develop. I am not content with the situation, nor was my predecessor; in fact, it was my predecessor who put in place an action plan to address it.

However, it should be noted that the lack of domestic statutory underpinning did not prevent enforcement, and there are powers in the Merchant Shipping Act 1995 that allow for prosecutions to be brought. For example, Section 100 places a duty on the ship owner to take all reasonable steps to make sure that a ship is operated in a safe manner; failure to do so is an offence. Section 98 of the Act allows for prosecution where a ship is found to be dangerously unsafe. However, making these draft regulations is necessary to bring the changes to SOLAS into UK law, and doing so provides the clarity and certainty that the industry requires, particularly in relation to specific offences and penalties.

I reassure your Lordships' House that the Government are committed to clearing the maritime backlog. Good progress has been made on clearing the international backlog, which was identified in October 2021 by Robert Courts MP, the then Minister for Maritime, as comprising 13 instruments. Four of the 13 instruments currently remain to be made, with the instrument before your Lordships' House today being one of them. The remaining three instruments will be consulted on in the coming months for the purpose of making them this year, ensuring that the international maritime backlog will be cleared before the end of 2023.

My department is also planning ahead for the implementation of future amendments to international maritime conventions, including for amendments that

are still at the negotiating stage in the IMO and the International Labour Organization, the ILO. However, the House should note that there is often a fairly limited period between the adoption of the final, agreed text and the international in-force date. This is the case with both the IMO and the ILO. Therefore, in some cases, a short delay in implementation, owing to the parliamentary procedures in the UK, is inevitable. However, the objective remains that such a delay will be an exception rather than the rule, and that any delay will be as short as possible.

Approval of these regulations is crucial to ensuring that the UK meets its international obligations. The UK has already agreed to the amendments in the IMO. The Government are taking action to clear the maritime backlog and are on target to clear the international backlog by the end of the year. I beg to move.

Amendment to the Motion

Moved by ***Baroness Scott of Needham Market***

At the end insert "that this House regrets that the draft Regulations represent a 20-year delay in the implementation of vital international safety resolutions; and calls on His Majesty's Government to take urgent action to address the backlog of international maritime legislation awaiting implementation."

Baroness Scott of Needham Market (LD): My Lords, I have tabled an amendment to the Motion—unusually, not because I disagree with the content of the statutory instrument but for precisely the opposite reason. This is a very important instrument concerning the most serious occurrence that can befall a vessel at sea—namely, a fire. Despite everything the Minister has said, I find it incomprehensible that it has taken the UK Government 20 years to bring these international regulations into domestic law. I am not attacking the Minister, who I know to be diligent and committed to the maritime sector, and nor am I attacking her team of civil servants. However, many Ministers and very many civil servants have been in place over the last 20 years since these regulations needed to be incorporated into domestic law.

As the Minister referred to, the Secondary Legislation Scrutiny Committee's report on this instrument describes the further 20 IMO regulations that have been agreed to apply to ships exceeding 500 gross tonnes. The Minister mentioned one regulation that was as recent as 2020—but that is still three years ago. The same report noted that the Maritime and Coastguard Agency said that UK ships were "mostly in compliance". It then went on to say that the ships would have risked being unable to trade in other jurisdictions had they not been in compliance. In other words, the UK has been relying on other countries to enforce these regulations. I put it to the Minister that this is not only bad in itself but damaging to our reputation as a leading maritime nation.

In its most recent report, published earlier this week, the SLSC considered an SI relating to seafarers' documents. Since 1958, the ILO's Seafarers' Identity Documents Convention has included fishermen in its definition of seafarers, but the UK has neglected to bring its regulations in line until now. This is not a theoretical matter—it caused great distress during the pandemic, when fishers were not treated as seafarers—so it is right that it should be corrected now. Again, for a seafaring nation, we have to ask why it was not dealt with sooner.

In October 2021, the then Minister Robert Courts was questioned by the Select Committee about the backlog. The following January, the committee commented on the inadequate information provided to it on a number of SIs. It is a different issue, but it is troubling nevertheless. The International Relations and Defence Committee of our House, in its March 2022 report on the United Nations Convention on the Law of the Sea, said:

> "It remains unclear why the UK Government has not signed the 1986 Convention on Conditions for Registration of Ships, and we regret that this has not happened".

It feels to me that this is systemic; a pattern is emerging.

7.45 pm

It is fascinating that, in this country, we have spent pretty much the last decade debating sovereignty in its many forms. We have walked away from a 50 year-old alliance to achieve sovereignty, but what we see here is that, in this interconnected world order, many things transcend national boundaries. In that sense, true sovereignty is a myth; it is about the trade-off between the benefits and loss of sovereignty. In the case of shipping—and there are other cases, such as aviation—we give up the right to fully determine our own laws to ensure a safe and competitive shipping industry worldwide. After all that debate, we have a situation where, in the scheme of things, relatively small matters of law have not been brought into domestic legislation, and we have relied on other countries to do that for us.

I am very grateful for, and reassured by, the Minister's comments on addressing the backlog and that it will be completed this year. However, on her point about resources—and I do understand the problem of resources—can she say that she is confident that she has the resources to continue to keep this up to date in the way she described? As difficult as it is for anyone to comment on retained EU law in this time of uncertainty, does she agree that there is a potential problem if a large number of retained EU laws relating to transport need to be dealt with by the end of the year, as the Bill originally proposed?

The global leadership to which this Government aspire is not just about talking big; it is about being a reliable international partner that respects laws and conventions to which it is a signatory. I beg to move.

Lord Berkeley (Lab): My Lords, I support the amendment in the name of the noble Baroness, Lady Scott, and the points she made. I too emphasise that this is not a criticism of the present Minister, who I know is trying very hard to catch up with these regulations; the problem goes back many years before she was appointed.

Today, the issue of fires on ships is very topical, because, as noble Lords will have seen, the ferry "Pentalina" caught fire near Orkney at the weekend and was grounded. I do not think that we know what the cause was, but, luckily, nobody was hurt. It indicates the importance that must be attached to fire prevention

[Lord Berkeley]

on ships. Its sister ship, MV "Alfred", managed to hit a rock off the Orkney islands last summer—luckily, in broad daylight. Again, nobody was hurt, but these accidents happen, for whatever reason.

It is interesting to reflect that, while the noble Baroness's amendment mentions a 20-year delay, the issue of lifejackets and bulkheads in river steamers was raised last year, which was 33 years after the "Marchioness" accident, in which a lot of people died. I appreciate that the Government are trying to catch up, but we have to comply with international regulations, and I hope that this work carries on. I am sure that we will all be monitoring the progress that the Minister outlined when she introduced the regulations.

I have one or two questions on some of the issues that the Minister outlined and on things in the Explanatory Memorandum. As we found when we were talking about seafarers' wages, it is quite difficult and complicated. We are talking here, if I read paragraph 6.1 of the Explanatory Memorandum correctly, about

"passenger ships engaged on international voyages",

which I think means being registered in the UK, and

"a small class of passenger ships engaged on domestic voyages".

I suppose that includes the ships I have been talking about in the Orkneys. Does it include the ferries to and from the Isle of Wight? Where is the cut-off? It probably includes the "Scillonian III" going to the Isles of Scilly. I have no problem with this; I would just like to know what it applies to and what it does not. If you get a foreign-registered ship operating within the UK, I trust that the regulations still apply to it. It is terribly important that they do, of course.

I was interested to see in paragraph 6.2 the exceptions to the small ships regulations are that

"government ships and naval ships are not within scope of that instrument".

Does that mean that it does not matter if naval ships catch fire or is there some other reason for not including them? Is there some alternative regulation? Naval ships, like any other ships, have had the habit of catching fire in the past and, clearly, preserving not only the lives of the seafarers but the government asset is pretty important.

I believe there is a sort of boundary between the 500-tonne ships included here and earlier regulations for smaller ships. I think the Minister has mentioned this before, but it would be nice to have some clarity on that.

My final point is on paragraph 7.2 of the Explanatory Memorandum. In her introduction, the Minister mentioned

"fire protection, prevention of fire and explosion, detection and suppression of fire, escape from fire, operational requirements, alternative design and arrangements and other requirements".

That is a pretty wide-ranging definition. Presumably when the MCA gets round to the detail of this everybody will know what it is talking about but it is not very clear from this. It clearly has the right intention of reducing the risk and the scope of fire.

I suppose the issue that came up in the Explanatory Memorandum, which again the Minister referred to, is the fact that there are 19 different changes under paragraph 7. This indicates that the MCA is keeping up with different changes. That is very good but perhaps she could also explain what "ambulatory" means in relation to fire on ships. I look forward to her responses and again I congratulate her on bringing this forward because it is very difficult, very complicated and going to do good when it becomes legislation. I have posed a few questions and I look forward to her responses.

Lord Greenway (CB): My Lords, I think this is the first occasion we have had to welcome the Minister to her new post as Shipping Minister. My mind goes back nearly 40 years to when it was almost de rigueur for the Shipping Minister to reside in this House, so it is extremely welcome to have a Shipping Minister back with us again.

These draft resolutions are extremely important, as has been pointed out by the noble Baroness, Lady Scott. Fire, as she said, remains one of the major areas of disaster at sea. Ships, thank God, are not usually built of wood any more but they carry all sorts of noxious substances that burn like hell if they catch fire and there have been a number of notable examples recently even of car batteries catching fire and sinking ships.

I should say we are almost here again. Every time we have one of these regulations coming forward, we say the same thing: why has it taken so long for this to be incorporated into British law? The original fire protection regulations were in 2003 and almost immediately there was a change in 2004. As we have heard, there have been about 20 such changes since then. Why has it all suddenly come into one thing nearly 20 years later? It hints, dare I say it, at a certain amount of sloppiness in the department that these things have not been dealt with more promptly.

Our standing is still, thank goodness, very high in the International Maritime Organization but things like this cannot help in due course. I know we do not have the merchant fleet we had many years ago but we are still an important player in the maritime scene and I think we should be acting more promptly to agree new regulations.

The "ambulatory reference" provision is most welcome because I hope it will put an end to all this complaining about delay because when new regulations come out of the International Maritime Organization it will be automatic in future.

I certainly have a lot of sympathy with the noble Baroness, Lady Scott. The performance of this country has not been up to scratch in these maritime matters, but I welcome the fact that everything should be sorted out by the end of this year.

Baroness Randerson (LD): My Lords, I start by thanking my noble friend for tabling her amendment and giving us the opportunity to raise these important issues. I also thank the Minister and acknowledge her efforts to tackle this backlog which is of such concern to us all. I want to mention here the role of the Secondary Legislation Scrutiny Committee, of which I recently became a member. I have often referred to its excellent work in making sure that our attention is drawn to these important lapses.

As others have said, this SI relates to a total of about 20 IMO resolutions which successive UK Governments have so far ignored. Some of these, as

has been pointed out, date back 20 years. The Minister referred to resources and I think that reveals to us how hopelessly beyond the Government's capacity are their plans for the future revocation of EU law. If they cannot manage 20 year-old IMO regulations on fire, they are not going to manage several hundred transport-related pieces of legislation.

All of this relates, of course, to fire protection and, as has been pointed out, fire is one of the greatest dangers faced by mariners and their passengers. It is important to remember that these regulations relate to passenger vessels. That means that there will be people on board who are not professionals, not trained in how to respond if a fire breaks out, and not familiar with how things work or the layout of the ship; in other words, there are lots of people on board—the passengers—who are an additional risk, so it is not just mariners and their status we should be concerned about.

Some of these 20 regulations are about fire detection—the design of extinguishers and storage arrangements. As the Minister said, they are very technical. But some of them are about the basic design and construction materials of the ships concerned. So we could be talking about a maritime version of the Grenfell situation, where dangerous materials have been used. I have no reason to believe that that is the case, but I have no evidence, and neither do any of the rest of us, about whether there is a problem, because it has not been the subject of regulation.

8 pm

I was surprised that the Explanatory Memorandum, in the section on impact, in paragraph 12.3, said:

"Routine surveys … have established that the ships … are … mostly in compliance with the updated Convention requirements".

If they are not in compliance, of course, they cannot trade internationally. But the phrase "mostly in compliance" is not very reassuring.

I have another question for the Minister. Paragraph 6.2 of the Explanatory Memorandum makes it clear that these regulations do not apply to

"government ships and naval ships".

The noble Lord, Lord Berkeley, referred to this, and I want to press the point. Why do they not apply? What standards do apply to government and naval ships? Is there a technical reason why they are not subject to the same standards? Is there a separate IMO regulation for government and naval ships, or is it an exemption that the UK Government are seizing to avoid imposing the same standards?

Paragraph 6.3 states that regulations for ships operating only on domestic voyages are "currently being reviewed". The noble Lord, Lord Berkeley, also referred to this. I would like to press the Minister on the timescale. How long will it take for this review to be concluded and why would they be any different? A fire at sea is of equal danger whether it applies in UK waters or when the ship is travelling internationally. Can the Minister assure us that domestic shipping will have equal standards of protection? How long will it take to get there?

Finally, I welcome the process outlined in paragraph 6.10, which means that in future the Government will accept new IMO regulations and incorporate them more or less automatically into UK law. That is so sensible, and it is a breath of fresh air to see this Government face up to their international responsibilities rather than try to cut us off from major international organisations. I wonder whether anyone has told Jacob Rees-Mogg that the Government have adopted that policy, but I am fully in support of it.

Baroness Taylor of Stevenage (Lab): My Lords, first, I thank the noble Baroness, Lady Scott of Needham Market, for moving this regret amendment, which has enabled a good discussion around the issues of compliance on these very important regulations—and I thank the Minister. I certainly get a sense that a real grip is now being taken of some of the issues raised by the amendment. I was grateful for a very detailed and thorough response. I echo the noble Baroness, Lady Scott, in that my comments are certainly not directed at the Minister who is responsible for this now, or at the civil servants dealing with this backlog.

There cannot be many more terrifying prospects than of a fire at sea. The enormous risk to crew and passengers and to those who are charged with rescue, as well as those in adjacent ports and harbours, are incalculable. Therefore, while we would not wish to hold up the implementation of these much-needed regulations, we, too, feel that questions need to be answered relating to the inexplicable delay, in some cases of 20 years, in implementing such a critical safety regime. We note that contained within the wording of the regulation and the Explanatory Memorandum is the detail of a very significant backlog in implementing international legislation which needed very urgent attention from the Government.

We, too, were very grateful for the report of the Secondary Legislation Scrutiny Committee, which pointed out that the IMO requirements on firefighting and fire protection matters were last implemented in 2003. We note the 20 further IMO resolutions agreed that apply to ships of more than 500 gross tonnes, whether carrying cargo or passengers. It quotes DfT figures that there are 440 ships on the UK flag subject to the IMO requirements in this instrument, of which, as the noble Baroness, Lady Randerson, said, 324 are "mostly in compliance" and wholly or partially UK-owned. It is the Maritime and Coastguard Agency that has determined that these are "mostly in compliance". However, I am a bit concerned about that term as well. What does "mostly in compliance" actually mean? Do we have a specific number of those surveyed, and what are the gaps in compliance? Is the Minister able to estimate how many ships are not currently compliant with these regulations and what steps will be taken to inform them of the importance of compliance before these regulations go any further in being implemented? As the noble Baroness, Lady Randerson, said, "mostly in compliance" is not very reassuring, and I would agree with that.

It is only when these regulations come into effect that the UK can enforce the same requirements on foreign-flagged ships in UK waters. Can the Minister respond to the question asked by the SLSC about why the DfT has taken so long to address the backlog? She partially gave us some answers to that but, as she said, there was a report to the House of Commons from Robert Courts MP in 2021-22, and she stated that the backlog would be cleared by the end of 2023. If I heard

[Baroness Taylor of Stevenage]
her correctly, four of the regulations have taken 20 years to produce. Will we get the other nine done by the end of year? I hope that is the case.

The Minister stated that resources have been a very significant issue in that backlog. The noble Baroness, Lady Scott, said that this seems like a systemic failing, and I cannot help but feel the same thing, with all the instances documented by the SLSC. It is very worrying. I wonder whether the Health and Safety Executive, for example, would take as an acceptable justification that resources were the issue, if there was non-compliance. I say that having been the leader of a local authority that was subject to Health and Safety Executive regulations.

I note that there is provision in the instrument for five-yearly reviews, which we are pleased to see with such important safety legislation. However, will sufficient resources be made available to carry out this thorough review process, if they have not been to implement the regulations themselves?

I have a number of questions on the regulations. I note the requirement for the Secretary of State to give approval to submissions relating to ships. Will these approvals be done on submission of written evidence, or will there be a requirement for inspection to ensure compliance with the relevant merchant shipping notices?

In relation to the exemptions set out in Clause 10, how does the Secretary of State reassure himself or herself that the exemption is valid and, under Regulation 10(7), where does the liability sit if the Secretary of State signs off an exemption which is later found to have resulted in loss of property or life? Is it with the owner or master, or with the Secretary of State?

Regulation 11 sets out details of a regime of engineering analysis in relation to exemptions. What analysis has been done of the likely workload for this and the capacity within the DfT to manage the review of the submitted engineering analyses? If the answers to those questions are not available immediately, I am happy to take written responses.

My noble friend Lord Berkeley gave the example of the "Pentalina". On that incident, I commend the work of the RNLI, which very quickly rescued all 60 passengers, which was its usual fantastic work. I was also very reassured to hear my noble friend with his customary advocacy for Scilly passengers. I want to mention the example of the "Felicity Ace", given by my honourable friend Mike Kane MP and mentioned by the noble Lord, Lord Greenway. The Commons debate on these regulations set out new risks associated with the carriage of electric vehicles on shipping. In this example, which was cited, a serious fire took place on the "Felicity Ace" earlier this year. Some 4,000 cars were being carried, and although, thank goodness, no lives were lost on that occasion, the ship sadly sank to the bottom of the Atlantic, as the fire continued to be fuelled by the lithium batteries in the cars. I am aware that the land-based fire service has some concerns relating to similar risks, so this is clearly an important issue for shipping fire safety regulations to take into account. Can the Minister give us an update on how that risk is being considered, specifically in relation to fire safety on shipping?

The Conference on Fire Safety at Sea, held in 2022 in Lisbon, identified 20 specific challenges for vehicle-carrying ships. These are currently being assessed for their impact on risk reduction and cost, and advisory groups are being set up with operators and flag states. It is estimated that the potential of this work to significantly strengthen independent fire protection is between 35% and 45%. Will that data be considered as these regulations are implemented?

Lastly, I note that only five responses were received to the consultation on these regulations. Can the Minister tell us what consideration was given to extending the consultation or to approaching operators directly to achieve a better response rate? We also note that four of the five consultation responses, while supporting the ambulatory reference provision contained in the regulations—we agree that it is very sensible that these regulations are now updated automatically, as international regulations are updated—asked that arrangements be put in place to consult operators to ensure that changes are discussed with them before they are made. Will the Minister comment on any steps that have been put in place to do this?

We look forward to hearing the Minister's response to the further points raised in this debate. I am sure there can be no argument relating to the critical importance of safety at sea, so we are keen to hear why this has all taken so long and to learn how any lessons learned from the delay will be used to improve the process for the future. Our maritime nation depends so much on our ability to trade, travel and ship goods safely. We owe it to all those involved to ensure our ships meet the highest fire and other safety standards, without decades of delay for the implementation of internationally agreed regulations. I do not think there is any disagreement across the House on any of that. We need to make sure that the systems and resources are in place to deal with it.

Baroness Vere of Norbiton (Con): My Lords, I am enormously grateful to all noble Lords who have taken part in this short debate covering the ground of the regulations themselves and of course the backlog, which I am aware has been debated a number of times in your Lordships' House, both in the Chamber and in Grand Committee in the Moses Room. Indeed, we will probably debate it again a few more times before the end of the year, as the backlog will once again resurface, and there will no doubt be further debates on the bits of secondary legislation that come through. However, I believe I can give myself some credit. I was a bit savvy before the debate today, in that I wrote to the SLSC last week; towards the end of the week, I placed a copy of the letter in the Library, and I will obviously share it with all noble Lords who have spoken today. It is the latest update on the international maritime backlog. If I could wish it away, I sincerely would, but I will no doubt be on my feet in front of your Lordships many times to explain that I am doing my absolute utmost to make it go away.

It is important to note that, in all circumstances, resources are never unlimited—they simply are not. The noble Baroness, Lady Taylor, said that I stated that this was a very significant issue. I never said that—I did not say that at all. Of course resources

must be considered, and of course any Government of any colour will need to prioritise. In these circumstances, we did prioritise: the Department for Transport and the Maritime and Coastguard Agency prioritise in the secondary legislation that we bring through. The Department for Transport has an enormous secondary legislation programme, and one of the limiting factors is not resources in the department but the time that your Lordships have to consider secondary legislation—parliamentary time is one of our biggest challenges in getting secondary legislation, or indeed other legislation, through.

8.15 pm

Lord Berkeley (Lab): Before the Minister finishes on resources, can I make a comment? Most of the detailed work on catching up falls on the MCA. I have heard quite a few comments from people who deal with it saying that it is very short-staffed. The Minister shakes her head but I have heard it from other people. They say it is partly because the pay rates are pretty low but also because there is a shortage of people with the necessary highly technical experience. Perhaps she would look into that. I hope it is not what is restraining catching up.

Baroness Vere of Norbiton (Con): Obviously, the MCA is quite a large organisation and has many different people fulfilling different roles. The question is whether we have the right people focusing on the backlog at this moment. We absolutely do, and I still intend to get the backlog cleared by 2023. I think that would be welcomed by all.

On the various other issues mentioned by noble Lords, it is worth reflecting on the impact of the delays of these regulations to UK ship fire safety. The vast majority of the ships on the UK register, to which these regulations apply, trade internationally. The vast majority will have been built with these regulations in mind. They already operate internationally and therefore need to comply with these requirements in other port state jurisdictions. We have seen no evidence that delays in introducing this instrument have led to an increased risk from fire on ships to which it would apply. Indeed, looking at the MCA surveys and detentions data, we believe that compliance with the requirements of SOLAS chapter II-2 has been very good. Since 2015, 21 UK ships have been detained for fire-related non-compliance, but none of these detentions related to contraventions of the requirements of SOLAS II-2.

As I noted in my opening remarks, there are other ways for the MCA to enforce against unseaworthy and unsafe practices on ships. We consider the elements within the contravention at all times. The MCA already provides advice on the convention, whether or not those amendments have already gone into UK domestic law, because they are advising ship owners and operators about when they are travelling beyond UK waters, when they will have to comply. It is not the case that we are starting from a clean slate and have ship owners and operators who do not know that this is coming down the track. They absolutely do: these are international ships plying international waters, and therefore they will be complying. The MCA has found no evidence that they are not. There is no question that the MCA is not keeping up with the changes per se, as a noble Lord or noble Baroness mentioned. It is just that the legislation has not been put in place.

A number of noble Lords mentioned the ambulatory references. The noble Baroness, Lady Randerson, seemed to imply that it was a new thing but, again, it is not. We have been doing it for quite some time, particularly for maritime regulations. As the noble Lord, Lord Greenway, pointed out, that is a way that we can stop this backlog building up again in the future, because one does not then need to go back to the original secondary instrument and change it whenever amendments are made. That is why we do it. Indeed, there are many more amendments coming into force on 1 January 2024, I believe.

There are safeguards that should be in after consultation with the industry. We are satisfied that we have very good consultation routes into the industry around SOLAS changes. If there are objections and the UK Government decide that they want to object to something, we would pass further secondary legislation to exempt that particular thing. In general, we believe that we have a high standing within the IMO, and we nearly always agree with the changes that go through. Therefore, we feel that putting in ambulatory references is absolutely the way to go.

I welcome the noble Baroness, Lady Randerson, to the SLSC. I do not know whether I should be more or less terrified now as my secondary legislation goes through that committee, but I am sure that her immeasurable experience will be very helpful in that scrutiny. As I noted, there will be a few more to come before the end of the year.

I cannot give a timeline on the review of the domestic legislation and regulations for domestic voyages and ships. In maritime, there are different regulations for different types of vessels on different types of water, which is why it is so very complicated and needs to be reviewed and why we did not simply lump all the domestic vessels in with these regulations; that would not have been right. If I have any further information on the timeline, I will certainly write.

Which regulations cover other vessels is hugely varied. It never ceases to amaze me how many classes of ships there are. There are regulations relating to workboats, fishing vessels, domestic passenger vessels and so on, so I cannot provide a specific example covering all possible types of vessels. In general, naval ships will follow these regulations. However, they may have certain exclusions because of their need to carry out warfare, so they might be slightly different. The MCA still inspects naval ships, but they have a slightly different arrangement with the MoD, given the different tasking of those vessels.

I briefly want to cover the retained EU law point. Obviously, the retained EU law Bill is continuing its passage through Parliament. My department has the resources available and is starting to plan the legislative programme that will follow that Bill when it comes into law.

I am convinced that there are other things that I have not yet answered, but I will be very happy to write. In doing so, I will include a copy of the letter that I wrote to the SLSC on a recent update. I look forward to discussing maritime secondary legislation again with noble Lords in the future.

Baroness Scott of Needham Market (LD): My Lords, I also thank everyone who has taken part in this short debate, particularly the Minister, who I believe is committed to dealing with this backlog, much as we all regret the fact that it appears. I remain bemused that, in effect, we will continue to rely on other countries to enforce our legislation for us because we do not have the resources, whether parliamentary or Civil Service time, to put it into domestic law. I am sure that the Minister would privately agree that that is not a satisfactory situation.

With the best will in the world, I hope that we do not have to come back to this again—I am sure the Minister hopes that too—but we will watch the progress with great interest. I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Online Safety Bill

Committee (4th Day) (Continued)

8.24 pm

Clause 11: Safety duties protecting children

Debate on Amendment 29 resumed.

Baroness Kidron (CB): My Lords, I support the noble Baroness, Lady Ritchie, in her search to make it clear that we do not need to take a proportionate approach to pornography. I would be delighted if the Minister could indicate in his reply that the Government will accept the age-assurance amendments in group 22 that are coming shortly, which make it clear that porn on any regulated service, under Part 3 or Part 5, should be behind an age gate.

In making the case for that, I want to say very briefly that, after the second day of Committee, I received a call from a working barrister who represented 90 young men accused of serious sexual assault. Each was a student and many were in their first year. A large proportion of the incidents had taken place during freshers' week. She rang to make sure that we understood that, while what each and every one of them had done was indefensible, these men were also victims. As children brought up on porn, they believed that their sexual violence was normal—indeed, they told her that they thought that was what young women enjoyed and wanted. On this issue there is no proportionality.

Lord Bethell (Con): My Lords, I also support Amendments 29, 83 and 103 from the noble Baroness, Lady Ritchie. As currently drafted, the Bill makes frequent reference to Ofcom taking into account

"the size and capacity of … a service"

when it determines the extent of the measures a site should apply to protect children. We have discussed size on previous days; I am conscious that the point has been made in part, but I hope the Committee will forgive me if I repeat it clearly. When it comes to pornography and other harms to children, size does matter. As I have said many times recently, porn is porn no matter the size of the website or publisher involved with it. It does not matter whether it is run by a huge company such as MindGeek or out of a shed in London or Romania by a small gang of people. The harm of the content to children is still exactly the same.

Our particular concern is that, if the regulations from Ofcom are applied to the bigger companies, that will create a lot of space for smaller organisations which are not bending to the regulations to try to gain a competitive advantage over the larger players and occupy that space. That is the concern of the bigger players. They are very open to age verification; what concerns them is that they will face an unequal, unlevel playing field. It is a classic concern of bigger players facing regulation in the market: that bad actors will gain competitive advantage. We should be very cognisant of that when thinking about how the regulations on age verification for porn will be applied. Therefore, the measures should be applied in proportion to the risk of harm to children posed by a porn site, not in proportion to the site's financial capacity or the impact on its revenues of basic protections for children.

In this, we are applying basic, real-world principles to the internet. We are denying its commonly held exceptionalism, which I think we are all a bit tired of. We are applying the same principles that you might apply in the real world, for instance, to a kindergarten, play centre, village church hall, local pub, corner shop or any other kind of business that brings itself in front of children. In other words, if a company cannot afford to implement or does not seem capable of implementing measures that protect children, it should not be permitted by law to have a face in front of the general public. That is the principle that we apply in the real world, and that is the principle we should be applying on the internet.

Allowing a dimension of proportionality to apply to pornography cases creates an enormous loophole in the legislation, which at best will delay enforcement for particular sites when it is litigated and at worst will disable regulatory action completely. That is why I support the amendments in the name of the noble Baroness, Lady Ritchie.

8.30 pm

Lord Clement-Jones (LD): My Lords, the proposers of these amendments have made a very good case to answer. My only reservation is that I think there are rather more subtle and proportionate ways of dealing with this—I take on board entirely what the noble Lord, Lord Bethell, says.

I keep coming back to the deliberations that we had in the Joint Committee. We said:

"All statutory requirements on user-to-user services, for both adults and children, should also apply to Internet Society Services likely to be accessed by children, as defined by the Age Appropriate Design Code".

This goes back to the test that we described earlier, to

"ensure all pornographic websites would have to prevent children from accessing their content",

and back to that definition,

"likely to be accessed by children".

The Government keep resisting this aspect, but it is a really important way of making sure that we deal with this proportionately. We are going to have this discussion about minimum age-assurance standards. Rather than simply saying, "It has to be age verification",

if we had a set of principles for age assurance, which can encompass a number of different tools and approaches, that would also help with the proportionality of what we are talking about.

The Government responded to the point we made about age assurance. The noble Baroness, Lady Kidron, was pretty persuasive in saying that we should take this on board in our Joint Committee report, and she had a Private Member's Bill at the ready to show us the wording, but the Government came back and said:

"The Committee's recommendations stress the importance of the use of age assurance being proportionate to the risk that a service presents".

They have accepted that this would be a proportionate way of dealing with it, so this is not black and white. My reservation is that there is a better way of dealing with this than purely driving through these three or four amendments, but there is definitely a case for the Government to answer on this.

Lord Knight of Weymouth (Lab): My Lords, I think the whole Committee is grateful to my noble friend Lady Ritchie for introducing these amendments so well.

Clearly, there is a problem. The anecdote from the noble Baroness, Lady Kidron, about the call she had had with the barrister relating to those freshers' week offences, and the sense that people were both offenders and victims, underscored that. In my Second Reading speech I alluded to the problem of the volume of young people accessing pornography on Twitter, and we see the same on Reddit, Discord and a number of other platforms. As the noble Baroness said, it is changing what so many young people perceive to be normal about sexual relationships, and that has to be addressed.

Ofcom very helpfully provided a technical briefing on age assurance and age verification for Members of your Lordships' House—clearly it did not persuade everybody, otherwise we would not be having this debate. Like the noble Lord, Lord Clement-Jones, I am interested in this issue of whether it is proportionate to require age verification, rather than age assurance.

For example, on Amendment 83 in my noble friend's name in respect of search, I was trying to work out in my own mind how that would work. If someone used search to look for pornographic content and put in an appropriate set of keywords but was not logged in—so the platform would not know who they are—and if age verification was required, would they be interrupted with a requirement to go through an age-verification service before the search results were served up? Would the search results be served up but without the thumbnails of images and with some of the content suppressed? I am just not quite sure what the user experience would be like with a strict age-verification regime being used, for example, in respect of search services.

Lord Bethell (Con): My Lords, some light can be shone on that question by thinking a little about what the gambling industry has been through in the last few years as age verification has got tougher in that area. To answer the noble Lord's question, if someone does not log into their search and looks for a gambling site, they can find it, but when they come to try to place a bet, that is when age verification is required.

Lord Knight of Weymouth (Lab): That is right. What is interesting about that useful intervention from the noble Lord, Lord Bethell, is that that kind of gets search off the hook in respect of gambling. You are okay to follow the link from the search engine, but then you are age-gated at the point of the content. Clearly, with thumbnail images and so on in search, we need something better than that. The Bill requires something better than that already; should we go further? My question to the Minister is whether this could be similar to the discussion we had with the noble Baroness, Lady Harding, around non-mandatory codes and alternative methods. I thought that the Minister's response in that case was quite helpful.

Could it be that if Part 3 and category 2A services chose to use age verification, they could be certain that they are compliant with their duties to protect children from pornographic and equivalent harmful content, but if they chose age-assurance techniques, it would then be on them to show Ofcom evidence of how that alternative method would still provide the equivalent protection? That would leave the flexibility of age assurance; it would not require age verification but would still set the same bar. I merely offer that in an attempt to be helpful to the Minister, in the spirit of where the Joint Committee and the noble Lord, Lord Clement-Jones, were coming from. I look forward to the Minister's reply.

Baroness Harding of Winscombe (Con): Before the noble Lord sits down, can I ask him whether his comments make it even more important that we have a clear and unambiguous definition of age assurance and age verification in the Bill?

Lord Knight of Weymouth (Lab): I would not want to disagree with the noble Baroness for a moment.

Baroness Kidron (CB): Does the noble Lord think it is also important to have some idea of measurement? Age assurance in certain circumstances is far more accurate than age verification.

Lord Knight of Weymouth (Lab): Yes; the noble Baroness is right. She has pointed out in other discussions I have been party to that, for example, gaming technology that looks at the movement of the player can quite accurately work out from their musculoskeletal behaviour, I assume, the age of the gamer. So there are alternative methods. Our challenge is to ensure that if they are to be used, we will get the equivalent of age verification or better. I now hand over to the Minister.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I think those last two comments were what are known in court as leading questions.

As the noble Baroness, Lady Ritchie of Downpatrick, said herself, some of the ground covered in this short debate was covered in previous groups, and I am conscious that we have a later grouping where we will cover it again, including some of the points that were made just now. I therefore hope that noble Lords will understand if I restrict myself at this point to Amendments 29, 83 and 103, tabled by the noble Baroness, Lady Ritchie.

[Lord Parkinson of Whitley Bay]

These amendments seek to mandate age verification for pornographic content on a user-to-user or search service, regardless of the size and capacity of a service provider. The amendments also seek to remove the requirement on Ofcom to have regard to proportionality and technical feasibility when setting out measures for providers on pornographic content in codes of practice. While keeping children safe online is the top priority for the Online Safety Bill, the principle of proportionate, risk-based regulation is also fundamental to the Bill's framework. It is the Government's considered opinion that the Bill as drafted already strikes the correct balance between these two.

The provisions in the Bill on proportionality are important to ensure that the requirements in the child-safety duties are tailored to the size and capacity of providers. It is also essential that measures in codes of practice are technically feasible. This will ensure that the regulatory framework as a whole is workable for service providers and enforceable by Ofcom. I reassure your Lordships that the smaller providers or providers with less capacity are still required to meet the child safety duties where their services pose a risk to children. They will need to put in place sufficiently stringent systems and processes that reflect the level of risk on their services, and will need to make sure that these systems and processes achieve the required outcomes of the child safety duty. Wherever in the Bill they are regulated, companies will need to take steps to ensure that they cannot offer pornographic content online to those who should not see it. Ofcom will set out in its code of practice the steps that companies in the scope of Part 3 can take to comply with their duties under the Bill, and will take a robust approach to sites that pose the greatest risk of harm to children, including sites hosting online pornography.

The passage of the Bill should be taken as a clear message to providers that they need to begin preparing for regulation now—indeed, many are. Responsible providers should already be factoring in regulatory compliance as part of their business costs. Ofcom will continue to work with providers to ensure that the transition to the new regulatory framework will be as smooth as possible.

The Government expect companies to use age-verification technologies to prevent children accessing services that pose the highest risk of harm to children, such as online pornography. The Bill will not mandate that companies use specific technologies to comply with new duties because, as noble Lords have heard me say before, what is most effective in preventing children accessing pornography today might not be equally effective in future. In addition, age verification might not always be the most appropriate or effective approach for user-to-user companies to comply with their duties. For instance, if a user-to-user service, such as a particular social medium, does not allow pornography under its terms of service, measures such as strengthening content moderation and user reporting would be more appropriate and effective for protecting children than age verification. This would allow content to be better detected and taken down, instead of restricting children from seeing content which is not allowed on the service in the first place. Companies may also use another approach if it is proportionate to the findings of the child safety risk assessment and a provider's size and capacity. This is an important element to ensure that the regulatory framework remains risk-based and proportionate.

In addition, the amendments in the name of the noble Baroness, Lady Ritchie, risk inadvertently shutting children out of large swathes of the internet that are entirely appropriate for them to access. This is because it is impossible totally to eliminate the risk that a single piece of pornography or pornographic material might momentarily appear on a site, even if that site prohibits it and has effective systems in place to prevent it appearing. Her amendments would have the effect of essentially requiring every service to block children through the use of age verification.

Those are the reasons why the amendments before us are not ones that we can accept. Mindful of the fact that we will return to these issues in a future group, I invite the noble Baroness to withdraw her amendment.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank all noble Lords who have participated in this wide-ranging debate, in which various issues have been raised.

The noble Baroness, Lady Benjamin, made the good point that there needs to be a level playing field between Parts 3 and 5, which I originally raised and which other noble Lords raised on Tuesday of last week. We keep coming back to this point, so I hope that the Minister will take note of it on further reflection before we reach Report. Pornography needs to be regulated on a consistent basis across the Bill.

8.45 pm

The noble Baroness, Lady Kidron—I offer my congratulations on her birthday; it was remiss of me not to do so earlier—emphasised the need for clarity and consistency yet again, as well as the effects of pornography, which follow people through their lives, give an unrealistic view of relationships and can lead to increased violence against women. We must always remember that one incident of pornography can plague you for the rest of your life, because it will possibly play on your mind and have indirect or unintended consequences for your life's passage after that.

The noble Lord, Lord Bethell, talked about equality across the Bill, as well as across websites. He raised yet another great real-world example: if organisations such as schools and nurseries cannot keep people safe, we do not allow them to look after children; if businesses cannot keep children safe, they need to be regulated to do so.

The noble Lord, Lord Clement-Jones, stated that it seems that the view of the Committee is clear: we need principles in the Bill that are universal to keep children safe. That is the clear message throughout the Committee debate so far. There may be a better way, and I hope that we can work with the noble Lord, Lord Clement-Jones, and my noble friend Lord Knight and his colleagues, along with the Government Benches, to achieve that.

My noble friend Lord Knight in his summing up raised an excellent point. Again, I come back to this issue: if we do not have clarity or consistency, none of

this work will be as it is intended it should be. If different duties apply and if different levels of proportionality exist, that will only create uncertainty.

The Minister made the point that, with pornography now named as a harm to children, as announced on Thursday of last week, he hoped to consider how consistency is brought across the Bill to ensure that all providers in Parts 3 and 5 will be kept safe from pornography. It seems clear from deliberations in Committee so far that noble Lords do not think that the Bill brings that clarity and consistency. That clearly needs to be addressed and corrected.

This is not about shoving kids out; everyone understands that, despite best efforts, pornography may slip through. It is about consistency. I ask the Minister during the interregnum period between now and the end of Committee and the beginning of Report to further reflect on the issues to do with the need for clarity and consistency in dealing with pornography across the Bill. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendments 30 to 32A not moved.

Clause 11, as amended, agreed.

Amendment 33

Moved by ***Lord Knight of Weymouth***

33: After Clause 11, insert the following new Clause—

"Offence of failing to comply with a relevant duty

(1) The provider of a service to whom a relevant duty applies commits an offence if the provider fails to comply with the duty.

(2) In the application of sections 178(2) and 179(5) to an offence under this section (where the offence has been committed with the consent or connivance of an officer of the entity or is attributable to any neglect on the part of an officer of the entity) the references in those provisions to an officer of an entity include references to any person who, at the time of the commission of the offence—

(a) was (within the meaning of section 93) a senior manager of the entity in relation to the activities of the entity in the course of which the offence was committed; or

(b) was a person purporting to act in such a capacity.

(3) A person who commits an offence under this section is liable on conviction on indictment to—

(a) imprisonment for a term not exceeding two years,

(b) a fine, or

(c) both.

(4) The Secretary of State may by regulations amend the sanctions in subsection (3), and such regulations may—

(a) specify the maximum fine under subsection (3)(b), and

(b) implement a scale to apply in cases where there have been repeated breaches of a relevant duty.

(5) In this section, "relevant duty" means a duty provided for by section 11 of this Act.

(6) Regulations under subsection (4) are subject to the affirmative procedure."

Member's explanatory statement

This new Clause would make it an offence for the provider of a user-to-service not to comply with the safety duties protecting children set out in Clause 11. Where the offence was committed with the consent or connivance of a provider's senior manager or other officer, or was attributable to their neglect, that person, as well as the entity, would be guilty of the offence.

Lord Knight of Weymouth (Lab): My noble friend Lord Stevenson apologises that he can no longer be with the Committee, and he apologised to me that I suddenly find myself introducing this amendment. It heads up an important group because it tackles the issue of enforcement and, in essence, how we ensure that Ofcom has all the tools it needs to persuade some of the richest, largest and most litigious companies in the world to comply with the regime we are setting out in the Bill. Amendment 33, which my noble friend tabled and I am moving, sets out an offence of failing to comply with a relevant duty in respect of the child safety duties, if they do so negligently, and that it would be an imprisonable offence for a senior manager or other officer. I recall that those of us who sat on the Joint Committee discussed the data protection regime and whether there could be a similarly designated officer to the data controller in companies in respect of the safety duties with which the company would have to comply.

Clearly, this amendment has now been superseded by the government amendments that were promised, and which I am sure my noble friend was looking to flush out with this amendment. Flushed they are, so I will not go into any great detail about Amendment 33, because it is better to give time to the Minister to clarify the Government's intentions. I shall listen carefully to him, as I will to the noble Lord, Lord Curry, who has great expertise in better regulation and who, I am sure, through talking to his amendments, will give us the benefit of his wisdom on how we can make this stick.

That leaves my Amendment 219, which in essence is about the supply chain that regulated companies use. I am grateful to the noble Lords, Lord Mann and Lord Austin, and the noble Baroness, Lady Deech, for putting their names to the amendment. Their enthusiasm did not run to missing the Arsenal game and coming to support in the Chamber, but that implies great trust in my ability to speak to the amendment, for which I accept the responsibility and compliment.

The amendment was inspired by a meeting that some Members of your Lordships' House and the other place had in an all-party group that was looking, in particular, at the problems of the incel culture online. We heard from various organisations about how incel culture relates to anti-Semitism and misogyny, and how such content proliferates and circulates around the web. It became clear that it is fairly commonplace to use things such as cloud services to store the content and that the links are then shared on platforms. On the mainstream platforms, there might be spaces where, under the regime we are discussing under the Bill now that we have got rid of the controversial "legal but harmful" category, this content might be seen to be relatively benign, certainly in the category of freedom of expression, but starts to capture the interest of the target demographic for it. They are then taken off by links into smaller, less regulated sites and then, in turn, by links into cloud services where the real harmful content is hosted.

[Lord Knight of Weymouth]

Therefore, by way of what reads as an exceptionally complicated and difficult amendment in respect of entities A, B and C, we are trying to understand whether it is possible to bring in those elements of the supply chain, of the technical infrastructure, that are used to disseminate hateful content. Such content too often leads to young men taking their own lives and to the sort of harm that we saw in Plymouth, where that young man went on the rampage and killed a number of people. His MP was one of the Members of Parliament at that meeting. That is what I want to explore with Amendment 219, which opens the possibility for this regime to ensure that well-resourced platforms cannot hide behind other elements of the infrastructure to evade their responsibilities.

Lord Bethell (Con): My Lords, I beg the forbearance of the Committee because, despite the best efforts of the Whips, this group includes two major issues that I must tackle.

Starting with senior management liability, I thank the Minister and the entire ministerial team for their engagement on this big and important subject. I am enormously proud of the technology sector and the enormous benefits that it has brought to the economy and to society. I remain a massive champion of innovation and technology in the round. However, senior executives in the technology sphere have had a long-standing blind spot. Their manifesto is that the internet is somehow different from the rest of the real world and that nothing must stand on its way. My noble friend Lord Moylan gave that pony quite a generous trot round the arena, so I will not go through it again, but when it comes to children, they have consistently failed to take seriously their safeguarding responsibilities.

I spoke in Committee last week of my experience at the Ministry of Sound. When I saw the internet in the late 1990s, I immediately saw a wonderful opportunity to target children, to sell to them, to get past their parents and normal regulation, and to get into their homes and their wallets. Lots of other people had the same thought, and for a long time we have let them do what they like. This dereliction of their duty of care has led to significant consequences, and the noble Lord, Lord Russell, spoke very movingly about that. Those consequences are increasing all the time because of the take-up of mobile phones and computers by ever younger children. That has got to stop, and it is why we are here. That is why we have this Bill—to stop those consequences.

To change this, we cannot rely just on rhetoric, fines and self-regulation. We tried that, the experiment has failed, and we must try a different approach. We found that exhortations and a playing-it-nicely approach failed in the financial sector before the financial crisis. We remember the massive economic and societal costs of that failure. Likewise, in the tech sector, senior managers of firms big and small must be properly incentivised and held accountable for identifying and mitigating risks to children in a systematic way. That is why introducing senior management liability for child safety transgressions is critical. Senior management must be accountable for ensuring that child safety permeates the company and be held responsible when risks of serious harm arise or gross failures take place. Just think how the banks have changed their attitude since the financial crisis because of senior liability.

I am pleased that the Government have laid their own amendment, Amendment 200A. I commend the Minister for bringing that forward and am extremely grateful to him and to the whole team for their engagement around this issue. The government amendment creates a new offence, holding senior managers accountable for failure to comply with confirmation decisions from Ofcom relating to protecting children from harmful content. I hope that my noble friend will agree that it is making Ofcom's job easier by providing clear consequences for the non-enforcement of such decisions.

It is a very good amendment, but there are some gaps, and I would like to address those. It is worrying that the government amendment does not cover duties related to tackling child sexual exploitation and abuse. As it stands, this amendment is a half-measure which fails to hold senior managers liable for the most severe abuse online. Child sexual abuse and exploitation offences are at a record high, as we heard earlier. NSPCC research shows that there has been an 84% rise in online grooming since 2017-18. Tech companies must be held accountable for playing their role in tackling this.

That is why the amendment in my name does the following: first, it increases the scope of the Government's amendment to make individuals also responsible for confirmation decisions on illegal safety duties related to child sexual abuse and exploitation. Secondly, it brings search services into scope, including both categories of service providers, which is critical for ensuring that a culture of compliance is adopted throughout the sector.

9 pm

I ask my noble friend the Minister: first, what is the Government's rationale for not holding senior managers accountable for acting on confirmation decisions related to child sexual abuse offences in their amendment? Secondly, will he commit to discussing this further to ensure that the amendment covers these offences?

I would also like to speak to probing Amendments 220A to 220C in my name. Without effective enforcement, the many words and hours we spend in this House and in the other place talking about the need for robust online safety will come to nothing. Unless we get the enforcement provisions of this Bill right, the aims of the Bill will fail. We know that other content providers will not implement the Bill unless they know that there will be significant penalties for non-compliance. Often companies need to know that the penalty for the consequences of what they do will outweigh doing nothing. For instance, research on the gambling industry has found that unless companies fear the consequences of ineffective enforcement, they simply will not invest in robust technologies.

The amendments in the name of the noble Lord, Lord Curry, in this group are clearly aimed at this very issue, and I express enormous thanks to the noble Lord. Those amendments seek to remove discretion from the regulator and ensure that enforcement action takes place.

As to the amendments to Clause 138, as your Lordships are aware, Ofcom is required to produce guidance on how it intends to enforce the duties and

requirements of the Bill. Ofcom has already set out its road map for enforcement, which gives a start to its framework. But these amendments seek to put some flesh on the bones. Amendment 220A states that guidance must cover four important topics. The first is how ancillary services such as payment providers will be used in the enforcement process if the service provider is either free or uses cryptocurrency or other virtual currency. This is absolutely critical for users and providers. It simply cannot be the case that sites which are free or use alternative payment methods could find themselves able to avoid enforcement.

Secondly, guidance should be produced which shows how internet service providers will be used in access restriction orders. The Government have previously suggested that ISPs are less willing to be involved in policing than previously suggested, but without the ability to block sites in contravention of the measures in the Bill, it seems there is a significant gap in the enforcement toolbox. Blocking content is something ISPs already do; they already block sites to protect intellectual property, such as football and other sporting rights. If you try to play a Taylor Swift song, you will find out how effective they are at that. It simply cannot be the case that ISPs would deem TV rights more important than child safety.

The third and fourth topics for guidance in the amendment set out what action Ofcom will take if an ancillary service provider, or a person who provides an access facility, fails to act on a relevant court order. We need to know what will happen when the next court action is ignored.

I hope my noble friend the Minister will be able to provide information on how he envisages enforcement will be implemented under this Bill, and I would be glad to meet him to discuss the matter further.

Lord Curry of Kirkharle (CB): My Lords, in view of the hour, I will be brief, and I have no interests to declare other than that I have grandchildren. I rise to speak to a number of amendments tabled in my name in this group: Amendments 216A to 216C, 218ZZA to 218ZD and 218BA to 218BC. I do not think I have ever achieved such a comprehensive view of the alphabet in a number of amendments.

These amendments carry a simple message: Ofcom must act decisively and quickly. I have tabled them out of a deep concern that the Bill does not specify timescales or obligations within which Ofcom is required to act. It leaves Ofcom, as the regulator, with huge flexibility and discretion as to when it must take action; some action, indeed, could go on for years.

Phrases such as

"OFCOM may vary a confirmation decision"

or it

"may apply to the court for an order"

are not strong enough, in my view. If unsuitable or harmful material is populating social media sites, the regulator must take action. There is no sense of urgency within the drafting of the Bill. If contravention is taking place, action needs to be taken very quickly. If Ofcom delays taking an action, the harmful influence will continue. If the providers of services know that the regulator will clamp down quickly and severely on those who contravene, they are more likely to comply in the first place.

I was very taken by the earlier comments of the noble Baroness, Lady Harding, about putting additional burdens on Ofcom. These amendments are not designed to put additional burdens on Ofcom; indeed, the noble Lord, Lord Knight, referred to the fact that, for six years, I chaired the Better Regulation Executive. It was my experience that regulators that had a reputation for acting quickly and decisively, and being tough, had a much more compliant base as a consequence.

Noble Lords will be pleased to hear that I do not intend to go through each individual amendment. They all have a single purpose: to require the regulator—in this case, Ofcom—to act when necessary, as quickly as possible within specified timescales; and to toughen up the Bill to reduce the risk of continuous harmful content being promoted on social media.

I hope that the Minister will take these comments in the spirit in which they are intended. They are designed to help Ofcom and to help reduce the continuous adverse influence that many of these companies will propagate if they do not think they will be regulated severely.

Baroness Fox of Buckley (Non-Afl): My Lords, I understand that, for legislation to have any meaning, it has to have some teeth and you have to be able to enforce it; otherwise, it is a waste of time, especially with something as important as the legislation that we are discussing here.

I am a bit troubled by a number of the themes in these amendments and I therefore want to ask some questions. I saw that the Government had tabled these amendments on senior manager liability, then I read amendments from both the noble Lord, Lord Bethell, and the Labour Party, the Opposition. It seemed to me that even more people would be held liable and responsible as a result. I suppose I have a dread that—even with the supply chain amendment—this means that lots of people are going to be sacked. It seems to me that this might spiral dangerously out of control and everybody could get caught up in a kind of blame game.

I appreciate that I might not have understood, so this is a genuine attempt to do so. I am concerned that these new amendments will force senior managers and, indeed, officers and staff to take an extremely risk-averse approach to content moderation. They now have not only to cover their own backs but to avoid jail. One of my concerns has always been that this will lead to the over-removal of legal speech, and more censorship, so that is a question I would like to ask.

I also want to know how noble Lords think this will lie in relation to the UK being a science and technology superpower. Understandably, some people have argued that these amendments are making the UK a hostile environment for digital investment, and there is something to be balanced up there. Is there a risk that this will lead to the withdrawal of services from the UK? Will it make working for these companies unattractive to British staff? We have already heard that Jimmy Wales has vowed that the Wikimedia foundation will not scrutinise posts in the way demanded by the Bill. Is he going to be thrown in prison, or will Wikipedia pull out? How do we get the balance right?

What is the criminal offence that has a threat of a prison sentence? I might have misunderstood, but a technology company manager could fail to prevent a

[Baroness Fox of Buckley]
child or young person encountering legal but none the less allegedly harmful speech, be considered in breach of these amendments and get sent to prison. We have to be very careful that we understand what this harmful speech is, as we discussed previously. The threshold for harm, which encompasses physical and psychological harm, is vast and could mean people going to prison without the precise criminal offence being clear. We talked previously about VPNs. If a tech savvy 17-year-old uses a VPN and accesses some of this harmful material, will someone potentially be criminally liable for that young person getting around the law, find themselves accused of dereliction of duty and become a criminal?

My final question is on penalties. When I was looking at this Bill originally and heard about the eye-watering fines that some Silicon Valley companies might face, I thought, "That will destroy them". Of course, to them it is the mere blink of an eye, and I do get that. This indicates to me, given the endless conversations we have had on whether size matters, that in this instance size does matter. The same kind of liabilities will be imposed not just on the big Silicon Valley monsters that can bear these fines, but on Mumsnet—or am I missing something? Mumsnet might not be the correct example, but could not smaller platforms face similar liabilities if a young person inadvertently encounters harmful material? It is not all malign people trying to do this; my unintended consequence argument is that I do not want to create criminals when a crime is not really being committed. It is a moral dilemma, and I do understand the issue of enforcement.

Baroness Harding of Winscombe (Con): I rise very much to support the comments of my noble friend Lord Bethell and, like him, to thank the Minister for bringing forward the government amendments. I will try to address some of the comments the noble Baroness, Lady Fox, has just made.

One must view this as an exercise in working out how one drives culture change in some of the biggest and most powerful organisations in the world. Culture change is really hard. It is hard enough in a company of 10 people, let alone in a company with hundreds of thousands of employees across the world that has more money than a single country. That is what this Bill requires these enormous companies to do: to change the way they operate when they are looking at an inevitably congested, contested technology pipeline, by which I mean—to translate that out of tech speak—they have more work to do than even they can cope with. Every technology company, big or small, always has this problem: more good ideas than their technologists can cope with. They have to prioritise what to fix and what to implement. For the last 15 years, digital companies have prioritised things that drive income, but not the safety of our children. That requires a culture change from the top of the company.

9.15 pm

I draw heavily on my experience over the last eight years as a non-exec on the Court of the Bank of England, where I have seen first-hand the implementation of the senior managers regime. I have seen it first-hand because of the extraordinary privilege of a member of the court to sit as an observer in the Prudential Regulatory Authority meetings, but I have also seen it first-hand as the chair of the Bank's remuneration committee, where I had to sign off as a senior manager. I promise your Lordships that it completely changes your approach to compliance if your own personal name is being used. That makes a huge difference. It does not matter how huge or historic the company, which is why I used the example of the Bank of England; once it is in your name, you behave differently.

We need the very senior managers of these enormous companies to change the way they behave. Sad though this is, I do not believe they will change if it is just about money, as we see time and again. They will change if they have to think about whether, in their own name, they are breaking the law. My understanding of the Government's amendment—this is where I get to my questions for the Minister—is that they cannot stumble into that by mistake; they have to wilfully ignore the direction of the regulator. I hope the Minister can confirm and explain that.

My other question is: are we confident that the amendment as drafted really tackles the very senior managers? I share some of the concerns of the noble Baroness, Lady Fox: we do not want middle managers, deep in the leviathan of an enormous company, being sacrificial lambs while the company does not really address the issue. We want change from the top to reshape the way these companies think about the trade-offs they have to face. I hope the Minister can clarify that.

Baroness Kidron (CB): My Lords, I support something between the amendments of the noble Lords, Lord Stevenson and Lord Bethell, and the Government. I welcome all three and put on record my thanks to the Government for making a move on this issue.

There are three members of the pre-legislative committee still in the Chamber at this late hour, and I am sure I am not the only one of those three who remembers the excruciating detail in which Suzanne Webb MP, during evidence given with Meta's head of child safety, established that there was nowhere to report harm, but nowhere—not up a bit, not sideways, not to the C-suite. It was stunning. I have used that clip from the committee's proceedings several times in schools to show what we do in the House of Lords, because it was fascinating. That fact was also made abundantly clear by Frances Haugen. When we asked her why she took the risk of copying things and walking them out, she said, "There was nowhere to go and no one to talk to".

Turning to the amendments, like the noble Baroness, Lady Harding, I am concerned about whether we have properly dealt with C-suite reporting and accountability, but I am a hugely enthusiastic supporter of that accountability being in the system. I will be interested to hear the Minister speak to the Government's amendment, but also to some of the other issues raised by the noble Lord, Lord Knight.

I will comment very briefly on the supply chain and Amendment 219. Doing so, I go back again to Amendment 2, debated last week, which sought to add services not covered by the current scope but which clearly promoted and enabled access to harm and which were also likely to be accessed by children.

I have a long quote from the Minister but, because of the hour, I will not read it out. In effect, and to paraphrase, he said, "Don't worry, they will be caught by the other guys—the search and user-to-user platforms". If the structure of the Bill means that it is mandatory that the user-to-user and search platforms catch the people in the supply chain, surely it would be a great idea to put that in the Bill absolutely explicitly.

Finally, while I share some of the concerns raised by the noble Baroness, Lady Fox, I repeat my constant reprise of "risk not size". The size of the fine is related to the turnover of the company, so it is actually proportionate.

Lord Clement-Jones (LD): My Lords, this has been a really interesting debate. I started out thinking that we were developing quite a lot of clarity. The Government have moved quite a long way since we first started debating senior manager liability, but there is still a bit of fog that needs dispelling—the noble Baronesses, Lady Kidron and Lady Harding, have demonstrated that we are not there yet.

I started off by saying yes to this group, before I got to grips with the government amendments. I broadly thought that Amendment 33, tabled by the noble Lord, Lord Stevenson, and Amendment 182, tabled by the noble Lord, Lord Bethell, were heading in the right direction. However, I was stopped short by Trustpilot's briefing, which talked about a stepped approach regarding breaches and so on—that is a very strong point. It says that it is important to recognise that not all breaches should carry the same weight. In fact, it is even more than that: certain things should not even be an offence, unless you have been persistent or negligent. We have to be quite mindful as to how you formulate criminal offences.

I very much liked what the noble Lord, Lord Bethell, had to say about the tech view of its own liability. We have all seen articles about tech exceptionalism, and, for some reason, that seems to have taken quite a hold—so we have to dispel that as well. That is why I very much liked what the noble Lord, Lord Curry, said. It seemed to me that that was very much part of a stepped approach, while also being transparent to the object of the exercise and the company involved. That fits very well with the architecture of the Bill.

The noble Baroness, Lady Harding, put her finger on it: the Bill is not absolutely clear. In the Government's response to the Joint Committee's report, we were promised that, within three to six months, we would get that senior manager liability. On reading the Bill, I am certainly still a bit foggy about it, and it is quite reassuring that the noble Baroness, Lady Harding, is foggy about it too. Is that senior manager liability definitely there? Will it be there?

The Joint Committee made two other recommendations which I thought made a lot of sense: the obligation to report on risk assessment to the main board of a company, and the appointment of a safety controller, which the noble Lord, Lord Knight, mentioned. Such a controller would make it very clear—as with GDPR, you would have a senior manager who you can fix the duty on.

Like the noble Baroness, Lady Harding, I would very much like to hear from the Minister on the question of personal liability, as well as about Ofcom. It is important that any criminal prosecution is mediated by Ofcom; that is cardinal. You cannot just create criminal offences where you can have a prosecution without the intervention of Ofcom. That is extraordinarily important.

I have just a couple of final points. The noble Baroness, Lady Fox, comes back quite often to this point about regulation being the enemy of innovation. It very much depends what kind of innovation we are talking about. Technology is not necessarily neutral. It depends how the humans who deploy it operate it. In circumstances such as this, where we are talking about children and about smaller platforms that can do harm, I have no qualms about having regulation or indeed criminal liability. That is a really important factor. We are talking about a really important area.

I very strongly support Amendment 219. It deals with a really important aspect which is completely missing from the Bill. I have a splendid briefing here, which I am not going to read out, but it is all about Mastodon being one example of a new style of federated platform in which the app or hub for a network may be category 1 owing to the size of its user base but individual subdomains or networks sitting below it could fall under category 2 status. I am very happy to give a copy of the briefing to the Minister; it is a really well-written brief, and demonstrates entirely some of the issues we are talking about here.

I reassure the noble Lord, Lord Knight, that I think the amendment is very well drafted. It is really quite cunning in the way that it is done.

Baroness Stowell of Beeston (Con): My Lords, I wonder whether I can make a brief intervention—I am sorry to do so after the noble Lord, Lord Clement-Jones, but I want to intervene before my noble friend the Minister stands up, unless the Labour Benches are about to speak.

I have been pondering this debate and have had a couple of thoughts. Listening to the noble Lord, Lord Clement-Jones, I am reminded of something which was always very much a guiding light for me when I chaired the Charity Commission, and therefore working in a regulatory space: regulation is never an end in itself; you regulate for a reason.

I was struck by the first debate we had on day one of Committee about the purpose of the Bill. If noble Lords recall, I said in that debate that, for me, the Bill at its heart was about enhancing the accountability of the platforms and the social media businesses. I felt that the contribution from my noble friend Lady Harding was incredibly important. What we are trying to do here is to use enforcement to drive culture change, and to force the organisations not to never think about profit but to move away from profit-making to focusing on child safety in the way in which they go about their work. That is really important when we start to consider the whole issue of enforcement.

It struck me at the start of this discussion that we have to be clear what our general approach and mindset is about this part of our economy that we are seeking to regulate. We have to be clear about the crimes we think are being committed or the offences that need to be dealt with. We need to make sure that Ofcom has

[Baroness Stowell of Beeston]
the powers to tackle those offences and that it can do so in a way that meets Parliament's and the public's expectations of us having legislated to make things better.

I am really asking my noble friend the Minister, when he comes to respond on this, to give us a sense of clarity on the whole question of enforcement. At the moment, it is insufficiently clear. Even if we do not get that level of clarity today, when we come back later on and look at enforcement, it is really important that we know what we are trying to tackle here.

Lord Parkinson of Whitley Bay (Con): My Lords, I will endeavour to give that clarity, but it may be clearer still if I flesh some points out in writing in addition to what I say now.

9.30 pm

The amendments in this group address the Bill's enforcement powers. I begin by assuring noble Lords that there is a strong package of enforcement powers in the Bill, which will promote compliance with the regulatory regime that it ushers in and ensure that providers are held to account. Ofcom will be given robust powers to use against companies that do not comply with their duties under the Bill; it will be able to impose a penalty and/or direct companies to take specific steps to come into compliance. When companies do not comply with such a direction, Ofcom will be able to issue penalties up to £18 million or 10% of qualifying global revenue, which can be considerably more. Ofcom will also be able to apply to the courts for business disruption measures, which we will touch on in a later group. These are court orders that require third parties to withdraw their services from, or block access to, the non-compliant regulated service.

Amendment 33 in the name of the noble Lord, Lord Stevenson of Balmacara, and moved by the noble Lord, Lord Knight, Amendments 182 and 218B in the name of my noble friend Lord Bethell, and government Amendments 218A, 284D, 284E and 284F all seek to widen senior management liability. It makes sense if I begin with the government amendments.

Senior managers can already be held criminally liable when they fail to ensure that their company provides Ofcom with the information that it needs to regulate. These amendments create a new offence of failure to comply with a requirement imposed by Ofcom in a confirmation decision, in relation to specific child safety duties. In such cases, the senior manager responsible will be liable and can face up to two years in prison, a fine or both.

My noble friend Lady Harding asked me to comment on whether that has to be conscious or deliberate. The means by which the new offence is linked to individuals or senior managers is achieved through the existing liability provisions in Clause 178. It does not have to be conscious or deliberate. This will ensure that a relevant senior manager could be held criminally liable for the offence of failing to comply with the steps in a confirmation decision relating to any linked duty, if such an offence was committed with the consent or connivance of the senior manager or was attributable to the neglect of the senior manager.

This approach is modelled on provisions in the Irish Online Safety and Media Regulation Act 2022. It ensures that services know when an action or omission risks criminal liability, while providing sufficient legal certainty to ensure that the offence can be prosecuted. The duties to which this offence will be linked are the child safety duties under Clause 11(3) and duties for pornographic content under Clause 72. This focuses the new offence on harms that are central to child safety, including self-harm content, eating disorder content and pornography. This offence fulfils the Government's commitment in another place to bring forward an amendment in your Lordships' House strengthening the Bill's protections for children. I am grateful for the comments welcoming them.

Amendments 33 and 182 propose creating new offences for non-compliance with duties under the Bill. Attaching criminal liability directly to the duties would create uncertainty about the criminal action. Creating criminal offences that do not prescribe the required act or omission would give rise to real concerns about the quality of the criminal law. I am pleased to say that the Government's amendments will achieve the core aims of Amendments 33 and 182 while providing sufficient legal certainty to ensure that managers can be prosecuted. I appreciate that my noble friend Lord Bethell has recognised the benefits of this approach in the drafting of his Amendment 218B.

I note that that amendment and my noble friend's Amendment 182 link criminal liability with a wider range of duties, but it is important that this offence is a targeted one. As such, we have linked the offence with the specific duties which will most effectively focus efforts on child safety, and have intentionally targeted user-to-user sites, which have much greater control than search services over content and will therefore be best placed to prevent children accessing it. My noble friend asked about not linking senior management liability with child sexual exploitation and abuse content. The Bill already contains very strong powers to tackle child sexual exploitation and abuse content, including the power to require companies to use accredited technology to identify, take down and prevent users encountering such content.

Separately, the Bill imposes a requirement to report child sexual exploitation and abuse content to the National Crime Agency. Persons who falsify information in the course of their child sexual exploitation and abuse content reporting duties can be punished with up to two years in prison. This will tackle such exploitation and abuse at each stage, with strong preventive powers to ensure that such content is prevented from being encountered, that it is identified and removed, and that there are criminal sentences for falsifying information in the required reports to the National Crime Agency. At the same time, we are determined to ensure that this offence is as effective as possible in protecting children, while ensuring that it remains workable. We are willing to engage further with concerned parties to ensure that the provisions achieve these aims. I am very happy to discuss this further with my noble friend and other noble Lords if they wish to do so.

We are taking further steps to strengthen the Bill's enforcement powers by conferring on Ofcom additional powers of seizure from premises, as per Section 50 of

the Criminal Justice and Police Act 2001. Ofcom will be able to apply for a warrant to enter and inspect premises. Powers exercisable by warrant include the seizure of documentation and equipment. This amendment will, in certain circumstances, allow a person exercising this power to remove material from the premises, where it is not reasonably practicable to determine whether it is seizeable, in order to determine later whether they are entitled to seize it. Further, it allows a person to seize material where it is not reasonably practicable to separate it from seizeable material.

The amendments tabled by my fellow Northumbrian, the noble Lord, Lord Curry of Kirkharle, do three things. They require Ofcom to issue provisional notices of contravention if there are reasonable grounds for believing that a service or person is not complying with their duties; they provide that Ofcom can decide not to give an enforcement confirmation decision only if it is satisfied that systems and processes are in place to ensure that the service is in compliance; and they remove Ofcom's discretion to determine how long specific enforcement steps should take. While I certainly accept the helpful spirit in which the noble Lord has tabled these amendments, I worry that they would undermine the discretion of the regulator to manage the enforcement process as it sees fit in each case. This would, in turn, undermine Ofcom's ability to regulate in a proportionate way and could make Ofcom's enforcement processes unnecessarily punitive and inflexible.

Instead, the Bill sees Ofcom acting proportionately in performing its regulatory functions, targeting action where it is needed and adjusting timeframes as necessary. Ofcom will have a statutory obligation to produce guidance on its approach to enforcing the new regime the Bill brings in, just as it does with other sectors that it regulates. Ofcom strives to take a consistent approach across these sectors and often combines guidance on its general principles of enforcement. In addition, as the Bill sets out, Ofcom may draw on guidelines it has produced under Section 392 of the Communications Act which relate to the amount of penalties. These examples of existing enforcement guidance illustrate Ofcom's experience as a regulator in providing such enforcement guidance. Ofcom is well placed to produce clear and effective guidance to help businesses understand enforcement.

Amendment 219 in the name of the noble Lord, Lord Knight of Weymouth, seeks to impose liability on a provider where a company providing regulated services on its behalf does not comply with the duties in the Bill. The Bill sets out which services will need to comply with duties and makes it clear in Clause 198 that duties fall on the entity with control over the regulated service. Such entities are best placed to keep users safe online, as they can accurately assess risk and put in place systems and processes to minimise harm. At the same time, Ofcom can hold a parent and subsidiary company jointly responsible for the actions of a company if the parent company has sufficient control over the subsidiary. Under Amendment 219, the provider would be liable regardless of whether it has control over the service in question. That would impose an unreasonable burden on businesses and cause confusion regarding which companies are required to comply with the duties in the Bill.

The second group of amendments, in the name of my noble friend Lord Bethell, are Amendments 220A to 220C, which address the timing, nature and content of guidance that Ofcom must produce on its approach to enforcement. This guidance is important to ensure that companies are clear about Ofcom's processes. The amendments would prescribe the details that Ofcom should contain in the guidance. To ensure the guidance is effective, Ofcom must retain the discretion to include the information which it considers relevant, drawing on its long experience as a regulator. As I say, we will come to debate later the business disruption measures for which Ofcom will be given the power to apply to the courts.

Finally, government Amendment 284B is a technical amendment providing extraterritorial application for the enforcement of civil proceedings in relation to a requirement on providers to publish details of enforcement actions. Together, the Bill's suite of targeted, proportionate enforcement powers, further strengthened by the government amendments to which I have just spoken, will ensure that companies are held accountable. I hope that that brings a bit of clarity to noble Lords. I commend the amendment standing in my name and invite noble Lords not to press theirs.

Lord Knight of Weymouth (Lab): My Lords, this discussion has been very useful. The noble Baroness, Lady Fox, as ever, made an interesting and thoughtful philosophical rumination. I hope that what she has just heard from the Minister around it applying to quite specific child safety duties gave her some comfort that this was not some kind of sweep-all measure that would result in lots of people being banged up.

The government amendments are tighter than those in the name of the noble Lord, Lord Bethell. In the end, that is the judgment that we all have to make between now and when we finish our consideration of the Bill. I agree with the noble Baroness, Lady Fox, that there are dangers attached to this: that platforms will choose just to exclude children altogether and that that may infringe on some of their rights. That is why we have to get this balance right. It ultimately has to be proportionate.

We have to develop trust in Ofcom to use its powers flexibly and proportionately. I have previously said some of the things that I think are needed in order to build our trust in Ofcom, in respect of transparency and parliamentary scrutiny and so on. I think that the noble Lord, Lord Curry, is right, from his experience, that the noble Lord, Lord Grade, and his colleagues will need to be quick, decisive and tough in using those powers proportionately in order to make these platforms, particularly the large, well-resourced and powerful ones, respond. Listening to the noble Baroness, Lady Harding, I reflected on when I was a senior executive of a largeish corporation a few years ago. I was in post when the anti-bribery and corruption Act, the Data Protection Act and the gender pay gap regulations all came in, and they made the senior executives—of the company I was in, anyway—sit up, take notice and change some behaviours. These things allow corporations to act according to the public interest and to adjust behaviour, but without it being proportionate.

[Lord Knight of Weymouth]

I say to the Minister that the fact that, for example, under the Bribery Act you could be imprisoned on the basis of decisions made in your supply chain was significant. We had to be mindful of our whole supply chain to ensure that there was no corruption going on throughout, which is very different to the judgment the Minister is making on the supply chain in this system. I was grateful to the noble Lord, Lord Clement-Jones, for reminding us of the masterful Mastodon briefing; the way in which that technology is showing different ways in which things can be done to avoid aspects of regulation is another reason to think further about the spirit of Amendment 219 as we move to Report.

9.45 pm

When we come to Part 10 and the enforcement section—or perhaps before then privately—it would be really useful, for my sake if for no one else's, to clarify who the senior manager is. Does the senior manager have to be UK-based for these powers to be used? What happens with all the US companies and those based in parts of eastern Europe that do not have assets or people here, yet the harm extends to users here? How does senior manager liability work in that context? With that, I am happy to withdraw Amendment 33 and look forward to where we go next.

Amendment 33 withdrawn.

Amendment 33A not moved.

Amendment 33B

Moved by ***Lord McNally***

33B: After Clause 11, insert the following new Clause—

"Adult risk assessment duties

(1) This section sets out the duties about adult risk assessments which apply in relation to all Category 1 services.

(2) A duty to carry out a suitable and sufficient assessment of the risk of an adult user encountering by means of the service content which is harmful to adults taking into account any relevant risk profile and to keep that assessment up to date, including when OFCOM make any significant change to a risk profile that relates to services of the kind in question, or before making any significant change to any aspect of a service's design or operation including changes to any user empowerment tools."

Member's explanatory statement

This amendment requires Category 1 services to assess the risk of harm to adults arising from the operation of their services.

Lord McNally (LD): My Lords, as a former Deputy Leader of this House, if I were sitting on the Front Bench, I would have more gumption than to try to start a debate only 10 minutes before closing time. But I realise that the wheels grind on—perhaps things are no longer as flexible as they were in my day—so noble Lords will get my speech. The noble Lord, Lord Grade, who is at his post—it is very encouraging to see the chair of Ofcom listening to this debate—and I share a love of music hall. He will remember Eric Morecambe saying that one slot was like the last slot at the Glasgow Empire on a Friday night. That is how I feel now.

A number of references have been made to those who served on the Joint Committee and what an important factor it has been in their thinking. I have said on many occasions that one of the most fulfilling times of my parliamentary life was serving on the Joint Committee for the Communications Act 2003. The interesting thing was that we had no real idea of what was coming down the track as far as the internet was concerned, but we did set up Ofcom. At that time, a lot of the pundits and observers were saying, "Murdoch's lawyers will have these government regulators for breakfast". Well, they did not. Ofcom has turned into a regulator for which—at some stages this has slightly worried me—for almost any problem facing the Government, they say, "We'll give it to Ofcom". It has certainly proved that it can regulate across a vast area and with great skill. I have every confidence that the noble Lord, Lord Grade, will take that forward.

Perhaps it is to do with the generation I come from, but I do not have this fear of regulation or government intervention. In some ways, the story of my life is that of government intervention. If I am anybody's child, I am Attlee's child—not just because of the reforms of the Labour Party, but the reforms of the coalition Government, the Butler Education Act and the bringing in of the welfare state. So I am not afraid of government and Parliament taking responsibility in addressing real dangers.

In bringing forward this amendment, along with my colleague the noble Lord, Lord Lipsey, who cannot be here today, I am referring to legislation that is 20 years old. That is a warning to newcomers; it could be another 20 years before parliamentary time is found for a Bill of this complexity, so we want to be sure that we get its scope right.

The Minister said recently that the Bill is primarily a child safety Bill, but it did not start off that way. Five years ago, the online harms White Paper was seen as a pathfinder and trailblazer for broader legislation. Before we accept the argument that the Bill is now narrowed down to more specific terms, we should think about whether there are other areas that still need to be covered.

These amendments are in the same spirit as those in the names of the noble Baronesses, Lady Stowell, Lady Bull, and Lady Featherstone. We seek to reinstate an adult risk assessment duty because we fear that the change in title signals a reduction in scope and a retreat from the protections which earlier versions of the Bill intended to provide.

It was in this spirit, and to enable us to get ahead of the game, that in 2016 I proposed a Private Member's Bill on this subject: the Online Harms Reduction Regulator (Report) Bill, which asked Ofcom to publish, in advance of the anticipated legislation, assessments of what action was needed to reduce harm to users and wider society from social networks. I think we can all agree that, if that work had been done in advance of the main legislation, such evidence would be very useful now.

I am well aware that there are those who, in the cause of some absolute concepts of freedom, believe that to seek to broaden the scope of the Bill takes us into the realms of the nanny state. But part of the social contract which enables us to survive in this

increasingly complex world is that the ordinary citizen, who is busy struggling with the day-to-day challenges of normal life, does trust his Government and Parliament to keep an anticipatory weather eye on what is coming down the track and what dangers lie therein for the ordinary citizen.

When there have been game-changing advances in technology in the past, it has often taken a long time for societies to adapt and adjust. The noble Lord, Lord Moylan, referred to the invention of the printing press. That caused the Reformation, the Industrial Revolution and around 300 years of war, so we have to be careful how we handle these technological changes. Instagram was founded in 2010, and the iPhone 4 was released then too. One eminent social psychologist wrote:

"The arrival of smartphones rewired social life."

It is not surprising that liberal democracies, with their essentially 18th-century construct of democracy, struggle to keep up.

The record of big tech in the last 20 years has, yes, been an amazing leap in access to information. However, that quantum leap has come with a social cost in almost every aspect of our lives. Nevertheless, I refuse to accept the premise that these technologies are too global and too powerful in their operation for them not to come within the reach of any single jurisdiction or the rule of law. I am more impressed by efforts by big tech companies to identify and deal with real harms than I am by threats to quit this or that jurisdiction if they do not get the light-touch regulation they want so as to be able to profit maximise.

We know by their actions that some companies and individuals simply do not care about their social responsibilities or the impact of what they sell and how they sell it on individuals and society as a whole. That is why the social contract in our liberal democracies means a central role for Parliament and government in bringing order and accountability into what would otherwise become a jungle. That is why, over the last 200 years, Parliament has protected its citizens from the bad behaviour of employers, banks, loan sharks, dodgy salesmen, insanitary food, danger at work and so on. In this new age, we know that companies large and small, British and foreign, can, through negligence, indifference or malice, drive innocent people into harmful situations. The risks that people face are complex and interlocking; they cannot be reduced to a simple list, as the Government seek to do in Clause 12.

When I sat on the pre-legislative committee in 2003, we could be forgiven for not fully anticipating the tsunami of change that the internet, the world wide web and the iPhone were about to bring to our societies. That legislation did, as I said, establish Ofcom with a responsibility to promote media literacy, which it has only belatedly begun to take seriously. We now have no excuse for inaction or for drawing up legislation so narrowly that it fails to deal with the wide risks that might befall adults in the synthetic world of social media.

We have tabled our amendments not because they will solve every problem or avert every danger but because they would be a step in the right direction and so make this a better Bill.

Baroness Stowell of Beeston (Con): I am very grateful to the noble Lord, Lord McNally, for namechecking me and the amendments I have tabled with the support of the noble Baronesses, Lady Featherstone and Lady Bull, although I regret to inform him that they are not in this group. I understand where the confusion has come from. They were originally in this group, but as it developed I felt that my amendments were no longer in the right place. They are now in the freedom of expression group, which we will get to next week. What he has just said has helped, because the amendments I am bringing forward are not similar to the ones he has tabled. They have a very different purpose. I will not pre-empt the debate we will have when we get to freedom of expression, but I think it is only proper that I make that clear. I am very grateful to the noble Lord for the trail.

Debate on Amendment 33B adjourned.

House resumed.

House adjourned at 9.59 pm.

Grand Committee

Tuesday 2 May 2023

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, as is usual at the beginning of a Grand Committee, I should advise the Grand Committee that if there is a Division in the Chamber while we are sitting, which I am told is unlikely, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Register of Overseas Entities (Definition of Foreign Limited Partner, Protection and Rectification) Regulations 2023

Considered in Grand Committee

3.45 pm

Moved by ***The Earl of Minto***

That the Grand Committee do consider the Register of Overseas Entities (Definition of Foreign Limited Partner, Protection and Rectification) Regulations 2023.

The Minister of State, Department for Business and Trade (The Earl of Minto) (Con): My Lords, I beg to move that these regulations, which were laid before the House on 15 March 2023, be considered. These regulations form part of a series of secondary legislation needed to effectively implement the register of overseas entities, which I will refer to as the register.

The register was created under Part 1 of the Economic Crime (Transparency and Enforcement) Act, which gained Royal Assent last year. The register will help to crack down on dirty Russian money in the UK and corrupt foreign elites abusing the openness of our economy. It requires overseas entities owning or buying property in the UK to give information about their beneficial owners or managing officers to Companies House, and provides greater information for law enforcement officers to help them track down those using UK property as a vehicle for money laundering.

The register went live on 1 August 2022 and the deadline for registration was set at 31 January this year. There has been a high rate of compliance, with over 27,500 overseas entities registering to date. A further 700 have provided details to Companies House, having disposed of all their interests in land before the end of the transitional period. This means that over 28,000 entities have complied with the requirements. While that likely leaves a few thousand entities still to register, some of these are believed to have been dissolved or struck off while others have not kept their address details up to date with the Land Registry. Companies House continues to work to increase compliance even further; it is now also assessing cases for compliance action.

Noble Lords will recall my noble friend Lord Callanan introducing the first tranche of regulations last year. These included the Register of Overseas Entities (Delivery, Protection and Trust Services) Regulations, the Register of Overseas Entities (Verification and Provision of Information) Regulations, and the Land Registration (Amendment) Rules. The subject of today's debate is the first regulations in the latest tranche that is subject to the affirmative resolution procedure. Other instruments are being prepared to ensure that the register can function even more effectively.

I turn to the details of this instrument. These regulations are laid under the powers of the Economic Crime (Transparency and Enforcement) Act 2022, which I will refer to as the Act. They deal with three main elements: first, prescribing the characteristics of a foreign limited partner for the purposes of the Act; secondly, allowing for information held within the register to be removed on application under circumstances; and, thirdly, amending the protection elements of the Register of Overseas Entities (Delivery, Protection and Trust Services) Regulations 2022.

The first part of this instrument sets out the characteristics of a foreign limited partner for the purposes of the register. These regulations provide that such individuals participate in a foreign limited partnership as a limited liability participant or hold shares or a right, either directly or indirectly, in a legal entity that participates in a foreign limited partnership as a limited liability participant. The regulations also define exactly what is meant by a foreign limited partnership and how a person would qualify as a limited liability participant in such a partnership. These provisions will assist overseas entities in identifying registerable beneficial owners under the legislation for the register.

As regards the measure on rectification, Regulation 4 sets out the grounds for rectifying the register. There may be occasions when information submitted to and visible on the register is factually inaccurate, forged, or has been submitted without the consent of the overseas entity. This regulation therefore allows for the register to be rectified by removing such information.

Regulation 5 of the instrument establishes the criteria for those entitled to receive notice of an application for rectification. It also specifies the information that must be included in the notice.

Accordingly, Regulation 6 lays down the grounds for interested parties objecting to such an application while confirming how objections should be made and the time limit for making them. Regulation 6 also sets out how the register is to determine whether to accept an application for rectification where an objection has been received.

Without these regulations, it would not be possible for a person to apply for the removal of inaccurate or forged information from the register. These measures therefore strengthen the accuracy and utility of the register.

On the third measure, on protection, Regulation 7 sets out details of an amendment to the existing protection regime. The regime deals with the protection of personal information from public inspection; "protection" means that information is not displayed

[The Earl of Minto]
by Companies House on the public register, although protected information must be provided to Companies House and is available to law enforcement. As it stands, protection can be granted only on an application subject to strict criteria. Applicants must provide evidence that they are, or a person living with them is, at risk of serious violence or intimidation if their details are publicly disclosed. Such a disclosure must result directly from their link with the overseas entity.

The amending provision will remove the requirement to demonstrate the risk of violence or intimidation arising directly from the individual's association with the overseas entity. The measure will subsequently allow applications for protection that are needed because an individual is at serious risk. They would still need to demonstrate that risk before protection is granted but the risk would no longer need to be linked to the overseas entity.

The amendment will also allow for relevant individuals' usual residential addresses to be protected if, for example, an individual provides a usual residential address as a service address without realising that it will be displayed on the public register. The person will then have to provide an alternative address to protect their usual residential address. These changes are necessary because it has become apparent that the current criteria lack flexibility. Without these changes, there is a real risk that, by publicly disclosing their details, some people will be in danger of serious violence or intimidation due to the ease with which a link could be made to their residential address.

To sum up, the measures in these regulations are crucial for the effective operation of the register of overseas entities. I hope that noble Lords will support these measures and their objectives. I commend these draft regulations to the Committee.

Lord Wallace of Saltaire (LD): My Lords, we welcome this small adjustment to last year's Act. I think we all approach it from the angle of the Committee on this year's economic crime Bill, and the Minister is well aware that the largest concern coming out of its successive sittings is about how serious the Government are on enforcement. That question will continue all the way through our consideration of that Bill and it relates to this SI a little.

We are aware of the problem we have with properties in London owned by foreign companies, particularly where it is not clear who owns them, and, to a more limited extent, with land across the UK. We are conscious that this leads to a loss of tax revenue because, if you cannot identify the owner, you cannot get the rates paid or whatever. I have not yet seen an assessment of how much revenue is being lost to local councils and others from this hole, but it must be considerable.

I was told that 40% of properties in the Nine Elms development around Battersea Power Station have been sold to people from outside the UK. That is a large amount, and we know that there are a considerable number of areas, including Belgravia, where the lights are off.

Over the weekend, I was quite surprised to get some interesting statistics from an organisation with which I was not previously familiar called Open Ownership. I note that Transparency International is one of the entities that funds and supports this new body. It gave me some very interesting figures including that, of the beneficial owners personally registered, some 70 appear to be under the age of 12, one appears to have been born in 1897, which makes him 126 now, and another was born in 1907, which makes him 116. There are possibly one or two inaccuracies in what is being reported. Perhaps the Minister will say a little about how checks will be made on what comes in, so that rectification can take place.

I was even more interested to discover that the overwhelming majority of individuals identified as beneficial owners so far were British, by both nationality and residence. I had expected more to be from Asia—Hong Kong, mainland China and Singapore—and areas of eastern Europe, Cyprus and elsewhere. The large majority of companies mentioned as beneficial owners were registered in either the UK or the three Crown dependencies. If what I have received is accurate, it suggests a considerable amount of a different sort of economic crime under way here, which is called tax evasion. There may be a substantial loss of revenue to the United Kingdom that, as we proceed further down this line, we might at last begin to tackle.

While I welcome this small step forward, we have a long way to go. There are a lot of questions about what we do with this information as we gather it and if this information is correct. One of the questions raised in the Committee on the Bill was how much capacity Companies House will have to go through this and trigger action on it, and with which agencies the Government will then pursue that action.

I apologise to the Minister for not having given notice of the questions I have just thrown at him, but I received this SI only two or three days ago. I welcome the regulations, but we still have a lot of other things to do in this large and complicated area in which the United Kingdom Government and, as we know from other areas of economic crime, British citizens lose a lot of money.

4 pm

Baroness Blake of Leeds (Lab): My Lords, I thank the Minister for his opening comments. I think he will be aware that several of us are spending quite a lot of our time on the Economic Crime and Corporate Transparency Bill, which is going through the House at the moment, and many of the issues in the statutory instrument we are discussing today are the subject of ongoing conversations.

We recognise that this is secondary legislation to amend the Act that went through last year. I welcome the Minister's comment that this is work in progress and that further revisions will be required because there are still some gaps that we may need to consider in future.

I preface my remarks by highlighting the scale of the problem that we are dealing with. I do not think any of us should shy away from the real problem we have in this country now as a result of not taking action sooner. It is a tragedy in many ways that it was the onset of the conflict in Ukraine that necessitated swift action, and it is regrettable that this problem, which had been highlighted before, had not come into our focus and received the attention necessary.

I welcome in the main the provisions in the statutory instrument, but I shall make a couple of comments and ask a couple of questions. I make it clear, as we have done throughout the discussions in this area, that we recognise that the vast majority of companies investing in the UK do so with good intentions and bring great benefit to the country and that we are concentrating on the actions of the relatively small number of bad actors. Sadly, their contribution to this is profound and has done an enormous amount to damage the reputation of the UK on the world stage. I hope that we are united across the Committee in making sure that we take every opportunity to improve the chances of our reputation being recovered and are seeking out problems as they arise.

My main hope is that those at serious risk if information is given out are protected. It is very important that we recognise that there are genuine cases where protection needs to be secured. By the same token, we have to avoid disproportionate burdens and make sure that legitimate investors are welcome to operate in our country.

I seek some clarification. There seems to be some concern that the Act still does not provide a complete definition of what a foreign limited partner is. The description in the Explanatory Memorandum seems rather abstract. I wonder whether this may lead to practical implications where the confusion continues to exist. Reassurance on this point would be gratefully received. Most of all, we want to make sure that the register is populated correctly and effectively. Throughout the discussions on this matters, transparency is paramount in the context of those who will need further protection, as the Minister outlined.

I thank the Minister for his comments about risk, but I want to understand if bringing this instrument forward has led to further thought on the definition of risk. Have we gone far enough? I would like to understand how this is demonstrated and whether there has been an assessment of how well this is working so far. As has been highlighted, the issue of the alternative address could still be problematic. I understand the need for flexibility, but is there a risk remaining? We would like to be confident of the success of this provision. Again, this links to the balance between protection and transparency.

The other area is—if you can describe it as this—cleaning up the register and recognising, as we have heard, that some of the information held is clearly not factually accurate or even worse, as we know there is certainly a measure of intent in some of the entries. Do we know the extent of this? On how many occasions is this going to be necessary? Do we have an estimate of how much of a problem this is and how regular it is? Most importantly—I think this runs through all the debates on the Bill itself—how will this work be resourced? Can we be reassured that there are adequate personnel and resources at our disposal to make sure that we get this done successfully?

What are the sanctions once a forgery or anything factually inaccurate has been identified? Are there punishments? Do we have any evidence of this? Can we have a general clarification around the deterrent factor to make sure that we do not have problems going forward? Obviously, with there being an equivalent provision in the Companies Act 2006, I would hope that we have learned from the experience of working on this. I wonder if there are examples of that that would help to inform the debate.

I understand the Minister's comments about the deadline of 31 January, but I have heard an estimate that 7,000 companies failed to register. Is that about the ballpark he is suggesting? Since January—we are now in May—has there been an understanding of how successful the action taken against the remaining numbers has been?

There are still other issues and I look forward to other measures coming forward to fill the loopholes. In conclusion, of course we welcome the provisions being made, but are seeking reassurance and confidence that concerns will be addressed, and the necessary changes will be made as we go forward.

The Earl of Minto (Con): I thank both noble Lords for their valuable contributions to the debate. The Government are committed to ensuring that the register of overseas entities is robust and effective at tackling the use of UK property to launder money. These regulations provide the mechanisms that ensure that the register of overseas entities operates effectively. A clear definition of "foreign limited partner" provides greater certainty concerning registrable beneficial owners of overseas entities; I have a full definition for the noble Baroness that I can share. Applicants will be able to identify registrable beneficial owners more easily with a definition that is recognisable across multiple jurisdictions.

The amendment to the protection regime will address the unintended consequences of the regulations as they stand, by removing the requirement to demonstrate the risk of violence or intimidation arising directly from the individual's association with the overseas entity. The measure on rectification ensures that errors on the register, whether deliberate or accidental, are identified and removed. The points raised by noble Lords highlight the necessity of the measures in these regulations, and I will answer some of them now.

The noble Lord, Lord Wallace, raised the question of accuracy—that is definitely ongoing. I do not think Companies House fully knows the number of inaccurate entries, but it still stands by the estimate it has used before of there being 32,000 registrable entities in total. We are up above 28,000 now. Although there will be some inaccuracies, I hope that by continuing to approach these organisations, Companies House will iron them out. I have not been involved in this sort of thing before but, despite the fact that it has taken some time to get there—it took the atrocious situation in Ukraine to bring this to the fore—it has certainly made some significant progress in getting that many people to register in such a short period of time. However, the point is well made that the accuracy of the register is paramount, including in terms of lost revenue.

On the younger people mentioned, I understand there are issues of family trusts, particularly with UK beneficial owners. That point, too, was well made. I could go through what is meant by the "foreign limited

[The Earl of Minto]
partner", but I would rather share that with the noble Baroness. I hope that answers some of the more direct questions, and I will write to noble Lords if there is anything that I have not answered.

Lord Wallace of Saltaire (LD): May I ask two questions, not to be answered now but perhaps in a letter? First, checking the accuracy of everybody's name on the register will not be easy. Particularly for those that are not registered in Britain—those relying on co-operation from foreign authorities—it raises a large number of questions about how we get other authorities to co-operate with us and what multilateral network there is to ensure that they provide accurate information. I would appreciate knowing more about that.

Secondly, we are all familiar with the cascade of companies that one often finds—you go to the first company, which is owned by two different companies in two different jurisdictions and so on. If we are serious about this, how are we going to work through that, given that we are dealing not simply with overseas territories officially under British sovereignty but with other offshore financial centres which do not have a good record of co-operating to provide accurate information?

The Earl of Minto (Con): Behind the noble Lord's question is the question of resource. Companies House has 120 full-time equivalent staff working on this and pursuing precisely what the noble Lord referred to. I hope that will continue to improve the situation as time moves on, but the point was very well made.

Baroness Blake of Leeds (Lab): Can I link that to the question I asked about what punishment or sanction there is? I apologise if the Minister is coming to that.

4.15 pm

The Earl of Minto (Con): At the moment, the main emphasis is trying to get the accuracy of the data. No punishment has been meted out yet, but there is power—both financial and legal—to punish as and when. Companies House is working hard to get those cases under way, but its main emphasis has been on trying to get the information as accurate as possible so that a lot of the anomalies that sit within it can be effectively eliminated. As the noble Lord said, some of these corporate structures are quite complicated, so it takes a while to get to the bottom of them. I promise that I will write.

The register of overseas entities provides sets of new global standards for transparency and levels the playing field with property owned by UK companies, which must already disclose their beneficial owners to Companies House. The register is a crucial part of the Government's fight against illicit finance. The Economic Crime and Corporate Transparency Bill, currently before Parliament, will feature substantial changes to UK economic and partnership law and complement the Economic Crime (Transparency and Enforcement) Act. The Bill will introduce amendments to the Act that provide further operational detail on the register of overseas entities. For example, new measures in the Bill will require more information about overseas entities, including the title numbers of the properties held by overseas entities. It also introduces minimum age limits for managing officers to ensure that details of a person over 16 years of age are always be provided.

The Bill will also make further provisions for registrable beneficial owners in cases involving trusts and includes an anti-avoidance mechanism to ensure that those in scope of the register at the time that the Act was first published as a Bill to Parliament cannot circumvent its requirements. The laying of these regulations will complement the measures in the Bill to ensure that the register is as effective as possible, and I commend them to the Committee.

Motion agreed.

Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023

Considered in Grand Committee

4.19 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023.

Relevant document: 36th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, this Government have a clear vision for financial services—that is, for an open, sustainable and technologically advanced financial services sector that is globally competitive and acts in the interests of communities and citizens by creating jobs, supporting businesses and powering growth across all four nations of the UK. The two statutory instruments that we are debating today complement some of the measures that are being delivered through the Financial Services and Markets Bill, which is currently before this House. I note that both statutory instruments were raised as instruments of interest by the Secondary Legislation Scrutiny Committee.

I turn first to the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023. In recent years, multiple reports from the Cryptoasset Taskforce and the Financial Conduct Authority have identified that misleading advertising and a lack of suitable information are key consumer protection issues in crypto asset markets. This statutory instrument seeks to address those issues by ensuring that crypto asset promotions are held to the same standards as broader financial services products carrying similar risk.

To do this, the SI expands the scope of the financial promotion restriction provided by the Financial Services and Markets Act 2000 by amending the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 to include financial promotions in respect of in-scope crypto assets. This will mean that businesses

that intend to make qualifying crypto asset promotions would need to have their promotions approved by an authorised person under the Financial Services and Markets Act if they are not FSMA-authorised persons or exempt.

At present, most crypto firms do not hold such FSMA authorisation in respect of their crypto activities under existing regulations, so the requirement to be authorised means that most crypto firms will not be able to communicate their own promotions, unlike other financial services firms. As set out in the February 2023 policy statement, there is also evidence of a lack of suitable FSMA-authorised persons in the market willing and able to approve crypto promotions.

In practice, the net effect of these issues would be to restrict significantly or amount to an effective ban on crypto asset financial promotions because there are unlikely to be FSMA-authorised persons willing to approve the promotions of unauthorised firms. To avoid the unintended consequence of an effective ban on crypto asset promotions, the SI introduces an exemption for crypto asset firms registered with the FCA under its anti-money laundering regime. This will enable qualifying firms to communicate their own crypto asset financial promotions without seeking approval from a FSMA-authorised person.

Crucially, the SI confers powers to the FCA to ensure that AML-registered crypto asset businesses relying on this exemption will still be subject to the same financial promotion rules as FSMA-authorised persons communicating equivalent promotions. Firms using this exemption will not be able to approve others' financial promotions or to communicate their own financial promotions in relation to other controlled investments.

The Government intend this AML exemption to be temporary in nature. It will be in place only until the proposed broader regulatory regime for crypto assets is established. The Government are preparing to bring stablecoins used for payment into the scope of regulation and are also consulting further on their regulatory approach to unbacked crypto assets.

When in force, the SI and the FCA rules will apply to all businesses making crypto asset promotions to UK-based consumers, whether from the UK or abroad. The SI provides for a four-month implementation period, which will commence when this SI is made and on the publication of the FCA's detailed rules subsequent to this SI. As set out in the policy statement published in February 2023, this period is intended to ensure that crypto asset firms have suitable time to understand and prepare for the financial promotions regime before it comes into force.

This SI will reduce a key risk to consumers, particularly that of consumers suffering unexpected or large losses without regulatory protection as a result of buying crypto asset products while being unaware of the associated risks. This complements and forms part of our wider, proportionate approach to regulation, harnessing the advantages of crypto technologies while mitigating the most significant risks.

Turning to the Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023, this second instrument reduces the burdens that firms face when determining their trading in commodity derivatives and emission allowances by requiring them to be authorised as an investment firm. Effective commodities markets regulation is key to ensuring that market speculation does not lead to economic harm. The regulator should be able effectively to regulate and supervise firms that trade commodity derivatives for investment purposes.

As well as financial services firms, a number of corporates trade on commodity markets to protect their business from market fluctuations. In regulation, this is referred to as trading that is ancillary to the main business. The regime that we have inherited from the EU uses something called the ancillary activities test to determine whether the activities of a firm trading commodity derivatives are primarily for investment purposes or only support the firm's commercial business. The ancillary activities test currently requires firms to undertake complex calculations; they are also required to notify the FCA about the outcome of these calculations on an annual basis.

Taken together, this regime is overly burdensome for firms. Prior to the implementation of the ancillary activities test in EU law, the UK had a simpler test for determining whether firms were trading in commodity derivatives or emission allowances as an ancillary activity. This regime was cheaper for firms to comply with and resulted in the same outcomes as the current regime.

In 2021, as part of the wholesale markets review, the Government consulted on reverting to a simpler regime while maintaining the same regulatory outcomes. The proposal was to remove the annual notification requirement and revert to a principles-based approach. Respondents to the consultation agreed with the proposed changes, stating that the current regime was onerous and complicated. Consequently, the Government committed to bringing forward these changes when they responded to the consultation last year.

This SI delivers on that commitment by removing the annual notification requirement and omitting references to the calculations, which are no longer needed in legislation. This will pave the way for the Financial Conduct Authority to adopt a simpler and more streamlined approach to determining whether firms need to be authorised, alongside this SI. To reflect the FCA's adoption of a simpler approach, this instrument also amends part of the regulated activities order, which exempts firms from having to perform the current calculations. As the FCA's new approach will be based on different information, this exemption is no longer relevant.

The SI will come into force on 1 January 2025. This will ensure that industry has sufficient time to reflect on the changes that the FCA will be making and to make the necessary system changes. I understand that the FCA plans to consult on these changes later this year.

Maintaining the ancillary activities test as it currently stands would impose continuing costs on both firms and the FCA, as evidenced by feedback received through the consultation process. The changes outlined will reduce costs for firms and make the UK a more attractive place to do business, while maintaining high regulatory standards. I beg to move.

Lord Sharkey (LD): My Lords, we support both of these instruments, with some reservations and a few questions.

I will speak first to the commodity derivatives and emission allowances order. As the Minister said, it proposes a very sensible reduction to regulatory burdens. I note that the procedure followed in this case was a kind of super-affirmative, as prescribed in Schedule 8 to the European Union (Withdrawal) Act 2018. The instrument was published in draft to enable recommendations to be made by a committee of either House; no such recommendations were made but some questions nevertheless arise.

Perhaps the key question is when we will see the FCA's new replacement regime, mentioned in paragraph 7.8 of the Explanatory Memorandum. Paragraph 10.2 of the EM notes that respondents to the consultation

"did not want to return to a wholly qualitative definition of 'ancillary trading'"

and

"were in favour of the FCA developing a simplified method to determine when an activity is ancillary"—

one that would give them the legal certainty that qualitative definitions would not. I think this means that, until January 2025, when the SI comes into force, the current rules continue to apply. If that is the case, and if the current regulatory burden is so obviously unnecessary, why do we have to wait so long for the new regime?

The EM also notes:

"HMT is committed … to ensuring that the FCA has the right powers to set any transitional provisions that may be necessary to deal with the situation in which a firm's trading activity can no longer be regarded as ancillary".

I take this to mean that the FCA does not currently have these powers. If that is the case, perhaps the Minister can say why the usual transitional powers article was not included in this SI.

I now turn to the financial promotion SI. I agree that that it is vital both to increase consumers' understanding of the risks associated with crypto assets and to ensure that the promotion of these assets is subject to the same standard of regulation as is the case for broader financial services; I welcome the proposed order. I am glad to see that the proposed implementation period has been reduced from six months to four months but I wonder whether this is still too long and invites an avalanche of unregulated promotion in those four months. Can the Minister explain why the four-month period was chosen and say what consideration was given to a shorter period? I would also be grateful for more explanation of the exemption mentioned in paragraph 6.4 of the EM—specifically why it is necessary and how long it will last—and for an assurance that it does not create any unhelpful loopholes.

4.30 pm

Paragraph 7.8 of the EM notes that the Government are

"preparing to bring stablecoins with propensity to be used for payment into the scope of regulation and is also consulting on its future regulatory approach to unbacked cryptoassets",

as the Minister pointed out. We welcome this but we would be grateful for an assurance that this current SI does not extend the reach of the FSCS and that extension—or not—of this reach will be a major consideration in the future regulatory approach. It would be very helpful if the Minister could give the Committee some indication of the timescale involved in this future extension to the regulation of crypto assets. The potential for significant customer losses is obviously high and we see the need for urgency in bringing new regulations into force.

Paragraph 6.8 of the EM makes explicit that this current SI does not extend to non-fungible tokens. This seems a curious omission. Until very recently, the Treasury was enthusiastic about NFTs, going so far as to commission the Royal Mint to produce a collection of them. However, a couple of weeks ago, the Treasury publicly abandoned the scheme. The timing seems rather odd, coming as it does at a time of strong growth in NFTs worldwide and in the trading of NFTs. In February, the NFT sales volume was just over $2 billion, up 117% from January. In the UK, the NFT segment was projected to reach $85 million this year and to grow annually at around 20%, rising to $184 million in 2027 according to Statista data. Also according to Statista, we can expect the number of UK users to reach 340,000 at around the same time.

This is obviously a fast-growing and unregulated sector, full of perils for incautious or uninformed purchasers—perhaps especially for younger investors. Will the Minister urgently reconsider the inclusion of NFTs in the new financial promotions regime? It would be easy to do and would provide some protection before the sector becomes damagingly large.

Finally, I shall make a more general observation about consumer protection. The SI before us will regulate promotion but will not educate, inform or warn. The FCA website tries to do those things. I would be interested know what the traffic to those FCA website pages is and how it measures their effectiveness. When I looked at them, they seemed to me to be a little overcomplicated and perhaps rather difficult to understand. It would be better to be more direct and, more importantly, to have an effective outreach and education campaign that does not chiefly rely on visits to the regulator's website. I am sure that the Minister has noticed that many tokens are obviously directed at young people, who are perhaps not the most natural or frequent visitors to the FCA's site and are probably most at risk in making token purchases. I would be grateful for the Minister's thoughts on the matter. Finally, I repeat that we support both the SIs we are discussing.

Lord Naseby (Con): My Lords, I am going to talk to the crypto assets SI only. This is a vital SI at this point in time. I am delighted that the objectives are,

"improving consumers' understanding of the risks associated … and ensuring that cryptoasset promotions are held to the same standards as for broader financial services".

The taskforce reported way back in 2018 and, my goodness, the world has changed dramatically since then. Paragraph 7.3 of the Explanatory Memorandum records what happened to the market a few months ago. Recent failures happened in November and, for all we know, there may be some just around the corner.

My noble friend and those who decide these things are absolutely right that the FCA should now be involved. However, I, too, question whether the four-month gap after the SI is passed is really necessary. In today's modern world, I would have thought three months would be the absolute maximum—if even that long is needed. We also know, as highlighted in paragraph 10.3, that since the publication of this SI, the Government have recognised

"that risks to consumers have increased"

and they are still increasing.

I am no longer involved in the world of advertising and promotion, but I was in a previous incarnation. People are extraordinarily creative when it comes to financial promotion. Direct mail, in all its varying forms, and telephonic communications, in all their current sophisticated manners, are a very difficult area to control and to have a regime for. Therefore, His Majesty's Government must look at this very carefully, take the best advice of those doing the communicating—I hope my noble friend has access to the genuine people who are communicating—and look at what developments are happening in communication. In paragraph 13.4 the Government quite rightly say that they do

"not have an estimate of the number of small or micro businesses in the UK that are liable to be affected by this measure".

I know from experience that number is growing. Therefore, this is needed urgently. Again, I emphasise that four months is a little too generous.

Finally, I see in paragraph 14.3 that the Minister with responsibility for small business, enterprise and employment has claimed that this SI does not need a review clause. If there is a market that really needs a review clause, this one is a wonderful case history. I cannot believe that we really believe that. It is up to His Majesty's Government to decide at what stage there should be a review, which is entirely right, but this is a market that needs to be kept in total focus, otherwise things will go wrong again.

Lord Tunnicliffe (Lab): My Lords, I am grateful to the Minister for introducing these orders. Let me also express thanks to the Secondary Legislation Scrutiny Committee for flagging the orders as instruments of interest in its 36th report of the Session. As the Minister outlined, the first order brings crypto assets into the regulatory regime for financial promotions. This is not the first time we have debated the risks associated with crypto assets, and I doubt it will be the last.

As the Explanatory Memorandum notes, crypto assets have been subject to severe market instability in recent years. Some assets have seen significant reductions in their value, and we have also witnessed the failure of several high-profile firms, including the bankruptcy of FTX late last year. With that instability in mind, we welcome any steps to reduce the risk posed to consumers, particularly through the misleading advertising which seems to have become commonplace as crypto popularity has soared.

However, this order is only one piece in an increasingly complex regulatory puzzle, with supplementary steps being taken through other vehicles, including the ongoing Financial Services and Markets Bill. I hope the Minister can provide assurance that the Treasury and the regulators are moving as quickly as they can in this area. Financial regulation is iterative and new measures need to be properly consulted on, but the Minister will understand concerns that remaining regulatory gaps will continue to be exploited. The implementation period for this measure has been shortened, which appears to be a sensible step. Can the Minister comment on the likely implementation period for related future measures?

The Explanatory Memorandum helpfully explains the exemptions granted to UK-based businesses on the FCA's anti-money laundering register. However, the SLSC's comments on the exemption raise an important question: if it is intended to be temporary, why has no end date been specified? I appreciate that this order is part of a bigger package but, in the interests of good legislating, can the Minister identify at what point a review of the exemption is likely to be carried out?

Finally on this topic, the Minister will be familiar with the suggestion that the Government regulate stablecoins in a similar way to bank deposits—that is, protect funds under the Financial Services Compensation Scheme. What consideration, if any, is the Treasury giving to that proposal? If the Government do not plan to take that approach, how will the Treasury and the FCA ensure that consumers are aware that their stablecoins holdings are not protected?

The second order relates to commodity derivatives and emission allowances, specifically when relevant firms will need to be authorised as investment firms. The Explanatory Memorandum promises

"a simpler and therefore lower cost regime",

with the EU-derived markets in financial legislation regulations rolled back in favour of a new principles-based approach, to be implemented by the FCA. Again, this is part of a broader reform package being undertaken by the Treasury, with part of that package contained in the Financial Services and Markets Bill.

We recognise that the current ancillary activities test is too complicated and burdensome. However, can the Minister outline the proposed timelines associated with these changes, with a particular focus on the FCA's creation of the new regime? As with crypto assets and many other areas of financial regulation, the FCA is being left to do a lot of heavy lifting but questions remain as to whether current parliamentary oversight of the financial regulators is sufficient. I realise that there are ongoing discussions on this subject between the Minister and interested colleagues across the House, but does she feel that we are getting any closer to a satisfactory outcome? While the risks associated with changes to these elements of financial regulation might be low, that should be as much a judgment for legislators as it is for Ministers and regulators. I hope that we will be able to achieve consensus on that matter as the aforesaid Bill proceeds to Report.

We support the passage of these orders but, as I am sure the Minister will acknowledge, they do not offer the final word on either subject. These are small pieces of a much bigger, more complicated puzzle. I hope that she will be able to speak to that bigger picture in her response and provide both answers and reassurance around some of the issues raised in this debate.

Baroness Penn (Con): My Lords, I thank noble Lords for participating in today's debate. I turn first to the changes to the financial promotions regime in respect of crypto assets. Several noble Lords asked about the exemption that applies to anti-money laundering regulated firms. I set out some of this in my opening speech but it is worth returning to it now. As set out in the policy statement published in February this year, the anti-money laundering exemption will exempt firms that are not FSMA-authorised but are included on the FCA's anti-money laundering register from the requirement to have their crypto asset promotion approved by a FSMA-authorised firm. This is subject to said promotions also complying with the same rules set by the FCA for equivalent promotions made by FSMA-authorised firms. The purpose of the AML exemption is to avoid the unintended consequence of an effective ban on crypto asset financial promotions as there are not currently sufficient numbers of FSMA-authorised firms in the crypto space.

4.45 pm

The decision to introduce the AML exemption reflects the FCA's rigorous process of assessing crypto asset businesses for registration under the AML/CFT regulations, in line with the Financial Action Task Force's agreed standards. The exemption is intended to be temporary, in that it will be in place only until the proposed broader regulatory regime for crypto assets is established. As noble Lords have noted, we are preparing to bring stablecoin used for payment into the scope of regulation; we are also consulting on our future regulatory approach to unbacked crypto assets. When in force, these regulatory regimes will enable more crypto asset firms to apply instead to become FSMA-authorised, removing the need for the AML exemption as, when FSMA-authorised, more firms could issue their own crypto promotions or approve suitable promotions for unauthorised firms. This approach balances enhancing consumer protection with continuing to promote responsible innovation.

To answer the noble Lord, Lord Tunnicliffe, on the temporary nature of this exemption, it is there until we have the broader regime in place for crypto asset regulation. When it will be replaced is not time-limited but policy-limited. The question of the noble Lord, Lord Sharkey, which I will address specifically, was perhaps on the most important point: does this create loopholes or a difference in treatment, apart from the fact that an AML authorisation can be used rather than a FSMA authorisation? We are clear that it will not and does not. It will apply the same standards to those promotions as would be expected without this exemption. That is very much the intention behind the policy.

I believe that both noble Lords asked about FSCS compensation in looking to extend the regime. They will know that this SI extends the scope of only the promotions regime. It would not be appropriate to extend the FSCS here, but the Government will continue to consider consumer protection measures as we develop a more comprehensive regime. On that regime, the Government have sought in our approach to crypto assets to look at the highest risk areas first and take swifter action in them, while also developing the more comprehensive approach that noble Lords can see in the consultation that is out at the moment on crypto assets. That is why we are tackling financial promotions in this SI, and why we have the provisions on stablecoins in the Financial Services and Markets Bill and the more comprehensive approach that we are also consulting on.

My noble friend Lord Naseby welcomed this change and asked what engagement we have had with industry. The Government and the FCA have engaged closely with industry throughout the policy development process. One outcome of this was that, in our 2022 consultation response, the Government announced a six-month transition period for the implementation of this regime. I think all noble Lords asked about the timelines for that. That six-month implementation period was introduced to allow industry suitable time to understand how the regime will be implemented practically and to prepare for it, with the aim of ensuring compliance across the industry.

However, we also recognise that crypto asset market instability continues to be a significant factor, underscoring the risk to consumers. We have seen that in recent market volatility, including the collapse of FTX. We have therefore reduced the implementation period to four months. We think that strikes the appropriate balance between providing industry with suitable time to prepare for compliance with the regime with ensuring that suitable consumer protections are in place.

The noble Lord, Lord Sharkey, asked about the extension of this regime to NFTs. A qualifying crypto asset is defined as

"any cryptographically secured digital representation of value or contractual rights"

which is fungible and transferable. For the purposes of this regime, the Government do not currently consider NFTs to be used primarily as investments, but we will continue to monitor the market when it comes to NFTs.

I turn to the SI on ancillary activities. There were a number of questions on the timing of this approach and how the FCA intends to take forward its rules under the SI. The Treasury consulted industry on the timeline, and we are keen to ensure that it has certainty about what the new regime will look like before making any changes to its internal systems. Delaying entry into force until 2025 is necessary to ensure that the FCA can consult this year on changes to the ancillary activities exemption and that industry can engage with this. then adapt its internal processes to take account of the future regime.

Although I accept the point made by the noble Lord, Lord Sharkey, about the burdens the current regime places on businesses, we have taken this approach in consultation with industry about the processes needed to transition to a new regime. The FCA has already been using its supervisory powers to waive the most bureaucratic requirements and therefore ease some of the burden. More broadly, the FCA already has the necessary powers to put in place the new regime. This SI paves the way for that by making consequential amendments to legislation for elements of the previous regime that were set out in legislation.

The noble Lord asked about the reference in the Explanatory Memorandum for the second order to

"transitional provisions that may be necessary to deal with the situation in which a firm's trading activity can no longer be regarded as ancillary under the terms of the test".

To explain what we mean by this, the regulated activities order included an exclusion that removed the need for firms to do the market threshold calculation, which formed part of the quantitative test, if there was no data available to perform that test. It also provided a firm with relief from the need to seek authorisation if it could meet the other components of the ancillary exemption. Feedback from firms suggests that this exemption gave them important legal certainty. This exclusion was based on EU data which is no longer produced and relates to the AAT, which is to be revoked. In any case, as we move towards a more proportionate approach, this exemption is no longer relevant. However, we want to ensure that the FCA can continue providing the legal certainty that firms need, and we are currently discussing this with the FCA.

On the question of how the FCA will carry out these changes more broadly, the FCA worked closely with what was then Her Majesty's Treasury on the wholesale markets review in 2021, and has been involved in subsequent discussions about what the ancillary activities exemption and test will look like once changed. The FCA will take the outcome of the consultation and follow-up discussions into account when progressing its work on the ancillary activities test. It will also be required to consult on specific changes, following its normal processes. As the noble Lord, Lord Sharkey, noted, maintaining this obligation as it currently stands would impose continuing costs on firms and the FCA. Therefore, we hope that this work happens with sufficient pace, but we have also allowed sufficient time for firms to put in the arrangements that they need to.

A number of detailed questions were asked on both the SIs that we have discussed. I have endeavoured to answer most of them, but I will read *Hansard* back to see whether there are any that I have missed out.

In terms of setting these statutory instruments in the context of the Financial Services and Markets Bill, which is before the House, and our future financial regulation process, in some respects the noble Lord, Lord Sharkey, noted how this area is different because we are still operating under the previous provisions, so we have had the SIs—or at least one of them—out for consultation. However, it shows us how some of this regulation will be taken forward; we can reflect on that as we continue to reflect on the Financial Services and Markets Bill. I will continue to engage with all noble Lords as we move towards Report on that Bill.

Motion agreed.

Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023

Considered in Grand Committee

4.55 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023.

Relevant document: 36th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Committee adjourned at 4.56 pm.