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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Tuesday 23 May 2023

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Railways: Trans-Pennine Express
Question

2.37 pm

Asked by ***Baroness Taylor of Stevenage***

To ask His Majesty's Government what assessment they have made of the rate of cancellations of Trans-Pennine Express trains, and what criteria they are using to consider the renewal of the contract for Trans-Pennine Express.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, for many months we have made it clear to TPE's management that its services have been unacceptable. Passengers have faced significant disruption and the northern economy has not had the reliable railway it needs. To allow for the reset that passengers need and expect, the Secretary of State has confirmed that TPE will be brought under the DfT's operator of last resort when the current contract expires on 28 May.

Baroness Taylor of Stevenage (Lab): My Lords, I thank the Minister for her Answer, which was so prompt that it was given on 17 May, before I had a chance to ask the Question. The appalling service that customers received from TPE highlights again the lack of co-ordination across the privatised rail service—problems that were supposed to be resolved through the implementation of Great British Railways. Now that the Prime Minister has announced that Great British Railways has been scrapped, can the Minister tell us whether industry reports that £52 million has already been spent on it are correct? Is that money now wasted if GBR has been scrapped?

Baroness Vere of Norbiton (Con): I must have missed the Prime Minister scrapping GBR, because the Secretary of State has set out his ambition for a customer-focused, commercially led industry. The creation of GBR is, of course, the guiding mind for the sector, but it is true that we can get many of the benefits now. The programme is simplifying and rolling out single-leg pricing across the LNER network, and trialling demand-based pricing to ensure that passenger demand is more evenly spread between services. Of course, the GBR transition team is working on the long-term strategy for rail, which will simplify industry practices and explore new opportunities for the private sector.

Baroness Randerson (LD): My Lords, TransPennine Express is the fourth train operator to be taken over by the Government in the face of prolonged failure. Although the Minister has outlined some work that can be done in the face of the current situation, Great British Railways in all its aspects cannot be created without full legislation. I understand that the Bill to create GBR is largely drafted, and is short and straightforward. Why do the Government not just get on with it? If they do not, what do they plan to do instead to deal with the current decline of our railways?

Baroness Vere of Norbiton (Con): I have already outlined to the noble Baroness some of the things that can be achieved now. The creation of Great British Railways in full does require legislation, which we will progress when parliamentary time allows.

Lord Clark of Windermere (Lab): My Lords, why do the Government not face up to the reality that TransPennine Express is a small player compared with the problem of cancellations on the west coast main line, especially by Avanti? I understand that there were three yesterday morning alone. When can we have a proper mainline service on the west coast?

Baroness Vere of Norbiton (Con): I am not aware of the reasons for those cancellations, but I remind all noble Lords that sometimes cancellations have to happen that are not the fault of the train operating companies. We have worked very closely with Avanti, and we know that the proportion of Avanti-caused cancellations fell from an average of 13.2% in early January to just 1.4% at the end of March. Occasionally, it is not Avanti's fault, and it is right that it does not take the blame in those circumstances.

Lord Birt (CB): My Lords, disruption on our national rail system is now commonplace. Only yesterday, I took a train to reach Parliament that was exactly 60 minutes late. Recently, my wife and I spent a delightful three weeks holidaying in Japan. We criss-crossed every part of Japan on the Shinkansen, the regional network and the local network, and on every single occasion bar none the train arrived precisely, to the minute, as advertised, and deposited us at our destination exactly to the minute. When will we be able to achieve Japanese levels of reliability on our national rail network?

A noble Lord: Never!

Baroness Vere of Norbiton (Con): My Lords, I hope to take a trip to Japan soon to go and see those fantastic railways. Of course, they are incredible, but they were not built quite at the time that our railways were built. The Government are very focused: reliability is the Secretary of State's number one priority, aside from safety. That is why we are investing £44.1 billion in our railways in the next control period. Network Rail published its strategic business plans a few days ago, and they are now with the independent regulator, the Office of Rail and Road, for further scrutiny.

Lord McLoughlin (Con): My Lords, I draw attention to my interest in the register as chairman of Transport for the North. While I welcome what the Secretary of State has brought forward, which takes effect next Monday—the operator of TPE being the operator of last resort from next week—does my noble friend

[Lord McLoughlin]
agree that it will not necessarily be a silver bullet? Until industrial relations are brought back to reality and a good working relationship with train drivers is accepted, we will still have disrupted services—and the huge amount of money that is presently being spent on the trans-Pennine upgrade.

Baroness Vere of Norbiton (Con): I absolutely agree with my noble friend. The railways are in a very poor financial place at the moment, with revenues between £50 million and £130 million less than they were before. That is why we must see reform of the railways if they are to have a viable future. That reform can happen only if we get the co-operation of the unions, which I am sure want to ensure a long-term future for their workers. I am grateful for all the work that my noble friend does in the north. The Secretary of State has asked officials to review services across the north to look for performance improvements and delivery certainty, and is looking to work with northern mayors and other stakeholders to make those improvements.

Lord Watts (Lab): My Lords, before the strikes took place, the railway was still a shambles. Can the Minister tell us why every European nation seems to be able to run a train service, while Britain cannot? Is it because the dogma that runs this Government means that they will not look at privatisation and bringing the railway system back into public ownership, like many other countries?

Baroness Vere of Norbiton (Con): I am not wholly sure where the noble Lord gets that evidence from. Certainly, if he goes back to look at the period before industrial action really took hold, he will see that many of the train operating companies were working exactly to contract and better, and therefore getting performance fees. I want to point out as well—I think it is important—that while I absolutely note that some noble Lords will have had trouble travelling recently, those noble Lords who have not, such as me, will not say that they actually had a very good service. But I have had a fantastic service on LNER, on South Western Railway and on Avanti.

Lord Cormack (Con): Following what my noble friend has just said, could I just put in a good word for LNER, and encourage noble Lords in all parts of the House to come and explore the glories of Lincoln? They will almost certainly get there on time, and get back on time, unless there is a strike.

Baroness Vere of Norbiton (Con): My noble friend has hit the nail on the head. It is likely that any noble Lord will get there and get back on time, unless there is a strike.

Lord Wallace of Saltaire (LD): My Lords, could the Minister persuade the Prime Minister to use the railways himself a little bit more often? We know that he flies around the country rather a lot. I think if he were to do so, particularly in visiting his constituency, then services to Northallerton and Thirsk would improve very considerably.

Baroness Vere of Norbiton (Con): I am sure that the Prime Minister is well aware of what is going on on our railways, because one of the key priorities of the Department for Transport is to make sure that they run reliably, and that in the future we have a reformed railway which services all passengers, not just the Prime Minister.

Lord Inglewood (Non-Afl): Does the Minister agree that probably the single thing that could best bring forward levelling up to the north of England would be to get a decent railway system in place, operating so that people can travel on it with confidence?

Baroness Vere of Norbiton (Con): Obviously, there are many strands to what is a broad levelling-up ambition, but I agree that we must focus on investing in our railways in the north. That is why HS2 is proceeding and why we are spending £44.1 billion on the traditional infrastructure. It is very important that we maintain what we have to make sure that reliability, to the north and indeed all parts of the UK, is good.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, what is the purpose of Transport Ministers? All they seem to do is read out the excuses from the railway companies, then shovel lots of money into them, and then cancel their contracts because they are not performing. Is it not about time that Transport Ministers did what they ought to do and take control of the railways—take it into public ownership?

Baroness Vere of Norbiton (Con): Nationalisation is a soundbite; it is not a solution. One would be left with the same infrastructure, the same workforce, and the same challenges that the railways currently face. It is absolutely important that Transport Ministers—all Transport Ministers, including the Rail Minister, which is not me—have good relationships with the train operating companies, and allow that engagement to happen with the unions so that we can take our railways forward.

Iranian Islamic Revolutionary Guard Corps

Question

2.48 pm

Asked by ***Lord Walney***

To ask His Majesty's Government whether they intend to proscribe the Iranian Islamic Revolutionary Guard Corps.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, the Government take the threat of the IRGC very seriously, and continue to condemn its actions. The Government will always consider the full range of powers available, including our robust counterterrorism powers, such as the proscription tool, where appropriate, to address the threat posed by Iran and the IRGC.

Lord Walney (CB): I thank the Minister for that Answer. It is now more than four months since the House of Commons passed a resolution universally in favour of the proscription of the IRGC. This is an organisation which is committed to armed resistance against Israel—exactly the same grounds on which the Government have proscribed Hezbollah. Our intelligence services are clear that it is committed to kidnappings and killings on UK soil. There must be an argument within government not to do this. Can the Minister enlighten the House on what that is? It seems very obvious to many Members across both Houses that it should be proscribed.

Lord Sharpe of Epsom (Con): It might help if I explain what has been done. Over 300 Iranian individuals and entities have been sanctioned for activities, such as human rights violations, including 70 since October of last year. Other activities include nuclear proliferation, support to Russia and various regional activities. As an entity, the IRGC was designated in its entirety under the Sanctions and Anti-Money Laundering Act 2018. More than 30 new designations of IRGC-related organisations and officials have been made by the FCDO since October 2022. The Government keep the list of proscribed organisations under review, but I go back to my earlier answer: while considering the range of available powers, we will continue to make use of the robust counterterrorism powers, including the proscription tool, where appropriate.

Lord Collins of Highbury (Lab): My Lords, that answer is simply not good enough. We have had Ministers and Prime Ministers support the objective of banning this organisation, which as the noble Lord said is a threat not only to the citizens of Iran but to citizens in this country. We have had commitments. I want to ask the Minister a more explicit question: what discussions has his department had with the FCDO on this matter? What discussions have been had with our allies who have proscribed this organisation? It is about time we acted, rather than just talked.

Lord Sharpe of Epsom (Con): The Home Office has a long-standing policy of not commenting externally on proscription matters. As noble Lords will be aware, that position is informed by many considerations, including to avoid creating expectations that the Government will proscribe certain organisation, to reduce the risk that an organisation will take evasive action before a potential proscription order comes into force, to manage the risk that subsequent decisions are vulnerable to challenge on procedural grounds, and so on. As for conversations with international partners, of course we work with them. The UK's approach to Iran is conducted in close co-ordination with key partners, including the EU and the US.

Lord Pickles (Con): My Lords, I draw the attention of the House to my declaration of interests, particularly those relating to friendship towards to Israel. Does my noble friend understand that there is a certain feeling of Groundhog Day about his answers? We seem to be going round the houses, time and again. As Members have suggested, this is an organisation that pays people who send missiles into residential areas in Israel and use children as human shields, and that pays for organisations that have murdered a British mother and her children. What more does the IRGC need to do for the Government to proscribe it? All the reasons read out by my noble friend are examples of why we should proscribe it. Why not get on and just do it?

Lord Sharpe of Epsom (Con): As I say, it remains under active consideration. I go back to what I said earlier: over 300 Iranian individuals and entities have been sanctioned for various activities, including those mentioned by my noble friend.

Lord Harris of Haringey (Lab): The Minister has evaded the questions from the noble Lords, Lord Walney and Lord Pickles, and from my noble friend. There is clearly a huge row going on in Government—we all know that. The Foreign, Commonwealth and Development Office seems somehow to be able to veto what the rest of government think is appropriate, which is to proscribe this organisation. Can the Minister confirm that? This shilly-shallying will produce the effect he described as being so dangerous—that of giving due warning to the organisation that proscription may be on the way.

Lord Sharpe of Epsom (Con): My Lords, I do not believe that it is shilly-shallying. As I said, it remains under active discussion among many departments in government.

Lord German (LD): My Lords, I want to take the Minister's view on what active consideration means. On 26 March, it was reported that Tom Tugendhat, the Minister, met campaigners for proscription and told them that there would be proscription—that the Government were going to proscribe—but that he could not give them a date upon which that proscription was going to take place. Has such a conversation taken place? Have the Government taken a decision but are not yet ready to tell us?

Lord Sharpe of Epsom (Con): I am familiar with the meeting referred to by the noble Lord. Mr Beheshti met the Security Minister on 29 March, following which Mr Beheshti uploaded a video recording of the meeting and stated, as the noble Lord has just outlined, that the Government are intending to do this. The formal read-out from the meeting confirmed that, unfortunately, Mr Beheshti had misinterpreted the content of the meeting.

The Lord Bishop of Chelmsford: My Lords, in a recently published joint annual report by Article 18 and other Christian organisations, the IRGC's increasing involvement in the crackdown against peaceful Christian activities in Iran was highlighted for the second year in a row. Other religious minorities and peaceful protesters also report violent treatment during arrest and detention, as well as the interference of the IRGC's intelligence branch in court proceedings to ensure harsher sentences against those who are accused. I absolutely agree with the noble Lords who are pressing for proscription, but given all of this, does the Minister agree that we can

[The Lord Bishop of Chelmsford]
and should do more, beyond proscription of the IRGC? Will the Government consider offering a safe route scheme for those from Iran who have suffered persecution in the form of arrest and imprisonment on account of their faith?

Lord Sharpe of Epsom (Con): I thank the right reverend Prelate for her question; she raised some interesting points. I remind noble Lords that the National Security Bill, currently progressing through your Lordships' House, will provide another significant toolkit in the fight against individuals working for state entities like the IRGC in this country—the Bill will criminalise a wide range of hostile activities. I totally accept the right reverend Prelate's points. I cannot comment on safe routes for Iranian individuals, but I will make sure that her views are taken back.

Lord Alton of Liverpool (CB): My Lords, nothing happens inside Iran without the active complicity and knowledge of the IRGC. Will the Minister take the opportunity to condemn the "horrific wave" of executions, as described by United Nations special rapporteurs on Friday, including those of Majid Kazemi, Saeed Yaghoubi and Saleh Mirhashemi that day, after they were reportedly subjected to torture in prison? Does not this bloodlust and the IRGC go hand in hand? As the noble Lord, Lord Pickles, said, what more has to happen before there is proscription?

Lord Sharpe of Epsom (Con): I absolutely join the UN rapporteur in condemning those executions.

Lord Wolfson of Tredegar (Con): My Lords, I am grateful that the Government are keeping this matter under active consideration because otherwise there would be a real risk of a delay in a decision.

Noble Lords: Oh!

Lord Wolfson of Tredegar (Con): The fact is that the Minister who answered the debate in the other place on 12 January this year was unable to identify a single reason why the IRGC should not be proscribed. My noble friend the Minister is also unable to find a reason, and that is because there is none. I respectfully urge my noble friend and the Government to take the only decision available to them, and to take it soon.

Lord Sharpe of Epsom (Con): I thank my noble friend for his analysis.

Viscount Hailsham (Con): My Lords, what is the practical effect of proscription in the case of the guard corps?

Lord Sharpe of Epsom (Con): That is a very good question. I am not entirely sure exactly what else it would do above and beyond what we have already done with the sanctions and so on.

Lord Watts (Lab): My Lords, something very strange is going on in government. Most organisations have meetings to discuss problems, and then come to a conclusion and make a decision. It seems that the Government have those meetings and discussions but make no decision—why is that?

Lord Sharpe of Epsom (Con): I do not accept that characterisation. As I said, the discussions of course continue, and as soon as there is something more to say I am sure that we will be back to say it.

Lord Grocott (Lab): The exchanges we have heard are predictable and understandable, but is it not important that, in all of these kinds of discussions, we recognise the wider context in which violence takes place in the Middle East, as it does relentlessly and remorselessly? The wider context is the complete absence of any significant development in the peace process between the Israelis and the Palestinians. Until such time as that is at least moving and there is some prospect of a two-state solution—whatever the rights and wrongs of it—this kind of violence will continue.

Lord Sharpe of Epsom (Con): I am sure that the noble Lord is right, and I am more than happy to condemn all violence in the Middle East, wherever it comes from.

Children in Care: *Gone Too Far* Report

Question

2.59 pm

Asked by ***Lord Watson of Invergowrie***

To ask His Majesty's Government what assessment they have made of the findings of the report *Gone Too Far*, published in April 2023 by the charity Become, that the number of children in care moved more than 20 miles from home increased each year between 2012 and 2021, and that more than 800 children under the care of local authorities in England were moved to Scotland or Wales during 2022.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, the Government recognise the importance of most looked-after children being placed near to their homes. Local authorities have a statutory duty to ensure sufficient provision for those children within their boundary. We are aware that, particularly in more complex cases, an increasing number of children are being placed over 20 miles from their home. Through our implementation strategy, *Stable Homes, Built on Love*, we are driving forward improvements to increase efficiency and reduce out-of-area placements.

Lord Watson of Invergowrie (Lab): I thank the Minister for that reply, but the Become report highlights some of the effects on children of being moved away from home, such as isolation and stigma. The Government's children's social care strategy, to which the Minister just referred, emphasises rightly the need to put strong, loving relationships at the heart of being a child in care. How does that square with the inevitable negative effects of children being sent far away from home on their relationships with the people who matter most to them—their family and friends?

Baroness Barran (Con): The noble Lord is right. I acknowledged some of those impacts that he has eloquently described about isolation, stigma and resilience. That is why we are investing in a number of major initiatives, including £259 million to support local authorities with capital funding to expand both open and secure children's homes and, crucially, £27 million over the next two years to deliver a fostering recruitment and retention programme so that children can live close to their roots.

Lord Laming (CB): My Lords, the Minister has already mentioned the importance of retaining some stability in the lives of these children. Things that are familiar are all the more important for children who have the least, and these children have had very disturbed upbringings. These numbers are disturbing, to say the least, and while it is understandable that children might be sent to a specialist facility that is better placed to meet their needs, sending them to Scotland does not fit into that arrangement. Does she agree that the time has come to put pressure on local authorities to provide proper provision in their area? They have parental responsibility for these children, and this must be done, and quickly.

Baroness Barran (Con): I agree with the noble Lord, although I add that the number of children going to Scotland is, happily, very small. He is right that we need to put pressure on local authorities, but I think he would also agree that it is not just about pressure: it is about reforming the way in which we approach provision. We are doing that through the foster care strategy, and the support we are giving to kinship carers but also, crucially, the establishment of regional care co-operatives, which will really change the way that we commission and deliver these placements in future.

Baroness Humphreys (LD): My Lords, as reported by the Become charity, there is a substantial lack of data on children from ethnic backgrounds who are placed in care facilities miles from home. Compared to 1% of white children, there is a lack of data on the placement of one-third of Asian children, more than 20% of black African-Caribbean children, and 72% of children from other ethnic backgrounds. We also do not know how these figures interplay with other exacerbating factors, such as the number of placement changes. What provisions will the Government make to improve the quality and availability of data on the placement of children from ethnic minorities?

Baroness Barran (Con): We need accurate data on the placement of all children, whatever their ethnicity. Indeed, I thought the noble Baroness might have referred also to special educational needs. She will remember that, both in our children's social care strategy and in our SEND delivery plans, we have talked about much better data dashboards, the prototypes of which are being developed at the moment.

Lord Wigley (PC): My Lords, does the Minister appreciate that, during the period in question, several dozen children from Wales with critical needs were transferred to England to find the necessary help? Does she appreciate that there is a particular need for those children to be closer to home, for educational as well as social and family reasons? In these circumstances, is there any way of developing a co-ordinatory mechanism that can ensure a placement close to home in the appropriate type of support for all such children, both in England and in Wales?

Baroness Barran (Con): As I said in my initial response, it is the responsibility of local authorities to provide sufficiency within their boundaries. Of course there are exceptional cases, and I have touched, for example, on children who are gang-involved and need to be moved further from home for their safety, but the kind of co-ordination the noble Lord talked about is exactly what we want in practice.

Baroness Butler-Sloss (CB): My Lords, as we have heard, because these children are disturbed and many of them have suffered trauma, which is why they have been taken into care, there seems to be some urgency in this matter. They should be put, where possible, reasonably close to home. Can this not be speeded up?

Baroness Barran (Con): We are going as fast as possible in this. Obviously, our foster caring strategy has had a very significant investment, and there is the additional £9 million we are putting into kinship care. The latter is building on some very successful pilots, so we want to speed up the things that work but make sure that we understand that they work first of all.

Baroness Twycross (Lab): My Lords, the report *Gone Too Far* highlights that almost four out of five children's home places in England were provided by the private sector. Children's homes are not proportionately spread out over the country, due to the homes often being built where it costs less to build them. This means that almost a quarter of children's homes are in the north-west and just 6% in London. It is not enough to blame local authorities; what more are the Government going to do to address the scale of the problem and what more support will they give to local authorities to address this?

Baroness Barran (Con): I really hope I did not sound to the House as if I was blaming local authorities. There needs to be reform of the system and we need to provide additional funding. We are providing funding through the £250 million capital funding and securing reform through the commissioning structure of the regional care co-operatives. Specifically on the noble Baroness's question, I say that we are anticipating two new builds to complete by the end of 2026, one in London for 24 secure places and four step-down placements, and 18 secure placements and two step-downs in the West Midlands, areas where there has been none of that provision recently.

Baroness Blackwood of North Oxford (Con): My Lords, good-quality in-patient provision for autistic people and those with learning disabilities is very hard to come by, so it is often far from home. Both the long-term plan and the autism strategy set out long

[Baroness Blackwood of North Oxford]
overdue commitments to provide more support for those people in the community. There has been some progress since January and in-patient numbers have fallen by 30% since 2015, but this is much lower than the 50% commitment and there is as yet no funded autism strategy implementation plan for this year. Can the Minister please say how she plans to work with colleagues in the DHSC and DfE to deliver on this really important objective?

Baroness Barran (Con): Some of our aspirations in relation to children with autism—I think my noble friend's question might have been a little broader than just children—is set out in our new SEND strategy, both looking at how we can support children with autism where it is appropriate for them to remain in mainstream schooling, but also making sure that there is enough specialist provision. We are making a very significant investment in that area at the moment.

Lord Russell of Liverpool (CB): My Lords, I declare my governorship of Coram, the children's charity. The Minister said earlier that not very many children were being sent to Wales and Scotland. In 2022, more than 800 were sent. I think that is rather a lot; I do not know whether she would agree. Will she also focus on the fact that the cost of sending a child so far away is roughly double the cost of placing them in a home much nearer? At a time when local government is starved of funds, it seems particularly stupid that this should be the practice, so please will she and her department focus on trying to stop that as soon as possible?

Baroness Barran (Con): I have tried to set out what the department is doing to address those points. A number of the most distant placements are for very specialist provision, and I appreciate that there can be some additional costs but, overall, those residential care placements are broadly similar in cost when looking both at local authority and at private and voluntary provision.

Water Companies: Customer Bills

Question

3.10 pm

Asked by ***Lord Sikka***

To ask His Majesty's Government what assessment they have made of water companies' plans to increase customer bills to fund investment.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, it is Ofwat, the independent regulator, and not the Government that assesses water companies' business plans and sets the overall price cap that each company may recover from its customers. As part of that process, Ofwat balances the interests of consumers with the ability of companies to fund their services. Companies are preparing their plans for 2025 to 2030, which will be submitted to Ofwat in October 2023. Ofwat will make final decisions on investment and bills by December 2024.

Lord Sikka (Lab): My Lords, the Minister sidestepped the issues here, so let me lay down some facts for him. Since the water companies were privatised, water bills have soared by 40% in real terms, investment has declined by 17% and £72 billion has been paid in dividends, with another £15 billion possibly by the end this decade. Now, the companies are saying that they will make investment if they can increase water bills by another £100. I hope that the Minister will exercise his considerable powers of persuasion on the water industry and insist that shareholders fund the investment and not customers, who have already been fleeced for the last 34 years.

Lord Benyon (Con): I fear the noble Lord and I are working off different facts. Capital investment by water companies is 84% higher than it was before the sector was privatised. I have seen independently assessed evidence that water bills would have been higher if we had not privatised the industry. Some £190 billion has been spent by water companies, paid for out of customers' bills, for investment in water. My noble friend Lady Vere said earlier that nationalisation was a soundbite, not a solution. I could not agree more.

Lord Kirkhope of Harrogate (Con): My Lords, I refer to my interests in the register. I want to ask my noble a bit more about Ofwat. The Government are getting criticised a lot in relation to water bills, but am I not right in saying that the regulator, looking at this matter in an independent fashion, has got pretty well the final say on who has to find the money for the developments that we are talking about?

Lord Benyon (Con): My noble friend is right to a point. The Government give direction to Ofwat and have given it very clear direction in terms of resolving issues in relation to sewage overflows into rivers. We have a system where, like all utilities, it is extremely attractive, not least to pension companies—which are the recipients of dividend payments—that invest in our water industry. Having that balance between making sure we are being fair to bill payers, and how much they pay, and getting that investment is absolutely crucial. That is why we work regularly with Ofwat to achieve it.

The Duke of Wellington (CB): My Lords, none of us underestimates the complexity and magnitude of this problem. We have had years of underinvestment in our sewage disposal and treatment systems. Such is the size of the problem today that I think we must all accept that the strain will have to be taken by a combination of higher bills for the consumer, shareholders receiving smaller dividends and—I know that it is difficult for politicians to even contemplate—general taxation, with the Treasury sharing part of this burden.

Lord Benyon (Con): I thank the noble Duke for his continued interest in this issue. Undoubtedly, we could resolve the situation by spending somewhere between £120 billion and £600 billion separating clean water from dirty water, retrofitting an entirely new sewerage system and creating additional storage equivalent to

40,000 Olympic swimming pools, but that would add between £271 and £817 per annum to bills. It is important that we are honest with customers—with the people who get water into, and have sewage taken out of, their homes every day—that this comes at a price. Some of the promises being made that this is a simple solution are entirely fallacious. We have to be honest with the people who pay these bills.

Baroness Jones of Moulsecoomb (GP): My Lords, for the past 30 years, we customers have paid the water companies all the money they needed to do their job properly. Their statutory duty was to build, operate and maintain sewerage systems capable of effectively dealing with the contents of sewers. We have paid the money for them to do that; the fact that they are not doing it means that we are surely owed a refund, rather than paying more bills.

Lord Benyon (Con): First, the noble Baroness suggests that there was no sewage going into rivers before water companies came along. Underinvestment when they were nationalised businesses was at historic levels, and our bathing waters were much worse than they are today. I am not saying for a moment that there are not serious problems. This Government are—if I can steal a soundbite—tough on sewage in rivers and tough on the causes of sewage in rivers. We want to be absolutely clear that everything that happens comes at a price. We want companies to be able to pay out dividends, because that is what encourages investment in our water sector. It is about getting that balance right.

Viscount Hailsham (Con): Would it not be appropriate for executive bonuses to be linked to challenging reductions in pollution?

Lord Benyon (Con): My noble friend makes a very good point. Water is the only utility business where the regulator does link reward for company executives and dividend payments to performance. It is the only sector of privatised utilities where that link is made.

Baroness Hayman of Ullock (Lab): My Lords, while we are on soundbites, can I just say that I think levelling up is a bit of a soundbite rather than a solution? The National Infrastructure Commission has warned that

"there does not appear to be a comprehensive and consistent understanding of asset condition across the sector and how this may change in the future".

We know that asset replacement rates need to be significantly higher, so does the Minister agree with the commission that Ofwat should take a leadership role in developing consistent, forward-looking metrics for defining and measuring asset health across England? If not, what does he consider to be the alternative to achieve this?

Lord Benyon (Con): I do not agree that levelling up is a soundbite—it is really happening. I do agree that we need to make sure that we are supporting water companies and, through the regulator, making sure that they are taking a longer-term view on this. Each price round is five years, and the investment decisions we want them to take look way into the future, ahead of that. We want to make sure that we are working with the industry to create a long-term solution and that we are doing that with customers in mind. Some of the promises being bandied around about ending all sewage outflows by 2030, and those making them, really need to be challenged, because that will have a very big impact on households that are struggling to pay other bills at the moment.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, the first three CEOs of water companies to waive this year's bonus due to sewage pollution were from Yorkshire Water, South West Water and Thames Water, followed by those from Welsh Water and, lastly, Southern Water. The campaign waged both inside and outside this Chamber to influence water companies has begun to have an effect. Does the Minister believe that the measures which have recently been announced by water companies are sufficient to achieve the desired outcome?

Lord Benyon (Con): The noble Baroness makes a good point, because the activities within Parliament and outside it on this issue have really struck home, and people are, rightly, demanding that we take into account the impact of development and growing populations on the health of our rivers. It is not just water companies; it is agriculture and the connections we all make from our sewers and septic tanks that are causing problems for our rivers. So she is absolutely right: we need to ensure that we are tackling those things, and it is right that the water companies are recognising that. Those four companies should be applauded for doing it, but we want to see much more investment from them, and that is what the Government are driving.

Baroness Blower (Lab): My Lords, water companies have borrowed £56 billion, even though investment has declined in real terms. Water bills include about £80 to cover interest payments. However, much of the debt is actually intra-group and is used to shift profits and dodge corporate tax. That much was acknowledged by Michael Gove in a speech on 1 March 2018. Can the Minister explain why the Government have failed to curb customer and tax abuses by water companies?

Lord Benyon (Con): I am concerned about making sure that water companies spend money on infrastructure that is needed to clean up our rivers and environment. We have to ask ourselves what the best model is of doing that, and one that encourages investment into this country from sovereign wealth funds and other countries around the world as well as pension funds and investments based here is surely a good way of doing it. The model is right. The alternative would mean that the water companies would have to sit outside the Chancellor of the Exchequer's office in a queue behind the health service, the police and the Armed Forces. Does the noble Baroness honestly believe that there would be more investment through a system of public sector borrowing, rather than getting this kind of investment flowing into our infrastructure?

Non-Domestic Rating Bill
First Reading

3.21 pm

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

Levelling-Up and Regeneration Bill
Order of Commitment

3.21 pm

Moved by ***Baroness Williams of Trafford***

That the Bill be reported from the Committee of the Whole House in respect of proceedings up to and including Monday 22 May 2023; and that the order of commitment of 17 January 2023 be discharged and the remainder of the Bill be committed to a Grand Committee; and that the instruction to the Committee of the Whole House of 17 January 2023 shall also be an instruction to the Grand Committee.

Motion agreed.

Police, Crime, Sentencing and Courts Act 2022 (Extraction of information from electronic devices) (Amendment of Schedule 3) Regulations 2023
Motion to Approve

3.22 pm

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

That the draft Regulations laid before the House on 17 April be approved.

Considered in Grand Committee on 22 May.

Motion agreed.

Neonatal Care (Leave and Pay) Bill
Third Reading

3.23 pm

Motion

Moved by ***Baroness Wyld***

That the Bill be now read a third time.

Baroness Williams of Trafford (Con): My Lords, I have it in command from His Majesty the King to acquaint the House that His Majesty, having been informed of the purport of the Neonatal Care (Leave and Pay) Bill, has consented to place his interest, so far as it is affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

3.23 pm

Bill passed.

Northern Ireland (Interim Arrangements) Bill
Committee (and remaining stages)

3.24 pm

Clause 1 agreed.

Clause 2: Advice and information on options for raising public revenue

Amendment 1

Moved by ***Lord Morrow***

1: Clause 2, page 2, line 15, at end insert "such as providing advice in relation to the Northern Ireland Fiscal Council 2023 Report 'Updated estimate of the relative need for public spending in Northern Ireland' in the light of the precedent arising from the December 2016 'Agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework'"

Lord Morrow (DUP): My Lords, Amendment 1 is in my name and that of my noble friend Lord Dodds of Duncairn.

Clause 2 of the Bill is concerned with:

"Advice and information on options for raising public revenue".

My amendment requires that the advice should be expressly required to cover the Northern Ireland Fiscal Council report, *Updated Estimate of the Relative Need for Public Spending in Northern Ireland*, published on 2 May this year, and the precedent arising from the December 2016 agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework.

Some might suggest that all relevant things can and should be taken into account and it is not necessary to specify these two documents. However, they are of such central importance to the situation in which Northern Ireland finds itself that it would be a dereliction of duty not to put them front and centre of advice and information on options for raising public finance. I will consider both, starting with the agreement with the Welsh Government.

In 2007, the new Welsh Government's programme for government identified the need to address the problems relating to the Barnett squeeze on the funding available for services for UK citizens living in Wales. To understand this, it is important to remember that before 1979, when the Barnett formula was introduced, the union was treated as a unit and funding allocations were made within that unit on a basis that was alive to need. The reason for considering a change in the funding formula at that time was devolution, which the then Government hoped would be delivered by referendum that year.

The initial proposal was that the funding formula should be needs-based. Treating England as 100, the Treasury claimed that on the basis of need, Northern Ireland should be rated at 131, Scotland at 116 and Wales at 109. However, a decision was made to delay

the introduction of this new system and to use instead a simple interim model that allocated monies to Scotland, Wales and Northern Ireland based on their relative populations as a proportion of that of England. This temporary formula came to be known as the Barnett formula. Here we are 44 years later, and it remains in place, notwithstanding the 2009 report of the House of Lords Select Committee on the Barnett Formula, which called for its replacement with a needs-based formula, and a number of robust exhortations to the same end from your Lordships' Constitution Committee.

When the Barnett formula was first applied, it was to a pre-existing level of spend that had been cognisant of need and thus with more money per head going to Northern Ireland, Scotland and Wales than to England. However, the challenge remains that all subsequent increments in funding from the introduction of the Barnett formula have not been based on need in Wales, Scotland and Northern Ireland, but have simply been the appropriate and proportionate fair share of what had been spent in England. Mindful of the populations of Wales, Scotland and Northern Ireland, that means that although incomes keep increasing, funding does not increase as much as it would if monies were allocated from the centre on the basis of need—as if the UK operated on a UK-wide rather than just an England-wide notion of need.

The spending differential between Northern Ireland, Scotland and Wales, on the one hand, and England, on the other, has reduced, and in the absence of correction, there would ultimately come a time of convergence, when spend per head in Wales, Scotland and Northern Ireland would be far below need. This downward pressure towards convergence is called the "Barnett squeeze".

3.30 pm

The first part of the UK to really feel the Barnett squeeze was Wales. As a result of the 2007 Welsh Government coalition agreement, Professor Gerald Holtham and other experts were appointed to form the Holtham commission to examine the impact of the Barnett squeeze on Wales and to make recommendations. The Holtham commission performed two critical tasks: first, it showed the clear negative impact of the Barnett squeeze on Welsh funding from the advent of devolution in 1999 until the time of this research in 2009; secondly, the Holtham commission devised a means of assessing how much money per head of the population Wales should receive in order for needs to be met to the same standard as in England.

The findings demonstrated that spending per head of the population in Wales actually fell below need in the financial year 2009-10. The commission made two key observations: first, this meant that Wales was being underfunded and that the UK Government should intervene to restore the level of spend, so that it would secure the same level of services afforded to England on a comparable basis—namely, £115 per head; secondly, the impact of the Barnett squeeze was such that, if spending patterns continued as they had in the 1990s, the problem would become progressively more acute over time, as Welsh spend per head of population fell further relative to that of England. The commission recommended the introduction of what it called the "Barnett floor"—a spending floor of £115 per head of population, below which spending should not be allowed to fall, so funding could never be below need. The UK Government responded positively.

In the 2011 Budget, the UK Government stated that they were

> "committed to fair and accountable funding for Wales, including taking forward discussions on all aspects of the final Holtham report".

The 2015 spending review accepted the Holtham formula's definition of need, stating:

> "The government is introducing a floor in the level of relative funding provided to the Welsh Government at 115% of comparable spending per head in England."

This was followed by the Agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's Fiscal Framework, cited in my amendment. I have a copy of that agreement with me and it contains two key Barnett components: first, the provision of a transitory uplift for the purpose of slowing the Barnett squeeze; and, secondly, at the point at which spend per head falls to the nearest 0.1% below 115.05%, the provision of a full needs adjustment so that spend per head never falls below need.

At present, the block grant transparency document shows that Welsh spend per head is £120, compared to the Holtham formula definition of need at £115, so spending per head is above need now. In this context, Wales benefits from the 5% needs adjustment that is designed to slow down the journey of spend per head to £115, from which place the full £115 needs adjustment takes over.

This is hugely important for Northern Ireland because, on 2 May this year, the Northern Ireland Fiscal Council published a report that used the Holtham formula to assess needs for Northern Ireland on exactly the same basis that was applied to Wales. This is the other critical report cited by my amendment, the *Updated Estimate of the Relative Need for Public Spending in NI*. Again, I have a copy of it with me. The document demonstrates how the application of the Holtham formula to Northern Ireland results in a need figure of £124 per head. This is hugely consequential, because the block grant transparency document shows that spending per head in Northern Ireland for the current spending review, 2022-25, is just £121 per head.

To put this in context, the crisis that Wales faced, which resulted in the UK Government agreeing to intervene to ensure spend per head could never again fall below need, involved going £2 per head below need in 2009-10, £113 rather than £115. By contrast, in Northern Ireland, we were £3 below need last year, are £3 below need this year and will be £3 below need next year. If the Barnett crisis that Wales faced merited government intervention to ensure spend per head never again fell below need in the aftermath of it having fallen below need for one year by £2, how much more so Northern Ireland which has already experienced one year of funding that was £3 per head below need, is now experiencing the same this year and will on the basis of current spending commitments do the same next year?

It is therefore no surprise that Northern Ireland is currently in the midst of a very serious funding crisis with Stormont departments having to make cuts left,

[Lord Morrow]
right and centre. Today, Northern Ireland is the only part of the UK to be in receipt of below-need funding. In this context, it is extraordinary for the Northern Ireland Office to be asking, through this Bill, how it can raise additional local taxes in Northern Ireland. The UK Government never did that to Wales when it briefly went £2 below need. It is quite extraordinary that the Secretary of State should have contemplated doing this. The reason why Northern Ireland is facing a funding crisis is structure, and it is a problem for not the Stormont Executive but the Treasury, which receives Northern Ireland's tax receipts. In this context, the key question to ask is not one for Stormont but for the UK Government, Downing Street, the Treasury and the NIO. It is quite simply: what are the UK Government going to do to fix the funding crisis in Northern Ireland resulting from the block grant dysfunction arising from the Barnett squeeze?

If the Government had not responded to Wales in the manner that they did, the Minister's response to my Second Reading speech would have been a little easier to understand, but in that context it was unsustainable. It cannot be the policy of a unionist Government to favour one part of the union with a special intervention to ensure that its funding per head never falls below need while they insist that funding for another part of the union goes below need. The current situation is quite simply completely indefensible.

The Government must stop trying to put the blame on our rates system. That is a simple distraction. As the Fiscal Council observes, Northern Ireland average rates are well below council tax levels for some parts of England and even if one were to increase them by 107% this would yield only a 5% increase in the overall budget. The real problem is the impact of the Barnett squeeze on the block grant.

In this context, there is now an argument for the need to intervene to provide the requisite needs adjustment, backdating it to the beginning of 2022-23 when our level of spend fell below need. The cost of that needs adjustment over the three years of the spending review is, according to the Fiscal Council, a little over £1.2 billion. Put another way, Northern Ireland is currently being asked to function at £1.2 billion below need. This cannot continue a moment longer. I beg to move.

Baroness Ritchie of Downpatrick (Lab): My Lords, first, I apologise to your Lordships' House for not being present last Thursday at Second Reading of this Bill; I was otherwise engaged in Northern Ireland at the local government elections.

The Bill deals with interim funding arrangements for Northern Ireland during the absence of an Executive and Assembly. In many ways it continues indirect rule and, I suppose, it gives civil servants limited powers. Before we move to the amendment itself, I want to ask the Minister whether the Bill itself might not be a recipe for judicial review and legal quagmires, centred on the issue of political power versus the extent of the authority of civil servants. Where does that power and control begin for civil servants and where does it end? In what circumstances can they act, and has Clause 2 of the Bill been tested for legal resilience in this respect?

Notwithstanding that, I have sympathy with the amendment brought forward by the noble Lords, Lord Morrow and Lord Dodds, because I believe that the Barnett formula should be based on the principle of need. We have already seen what has happened in Wales. The recent work of Holtham and the Northern Ireland Fiscal Council highlighted that, in Wales, funding is £124 per head of population while in Northern Ireland it is £121.

We know about the funding crisis in the Department of Health and in education and infrastructure; and only today, we learned about the shortage of special educational needs places. Earlier today, I met the chief executive of Women's Aid in Northern Ireland and her chief operating officer. They are facing a funding crisis. At the end of the day, they need financial assistance to help women who have been impacted by abuse—abuse that has been persistent and prevalent for many years.

I do not disagree with the amendment and I have sympathy with it, but I honestly feel that the best place for this debate, and for action, is in a restored Northern Ireland Executive and Assembly where local MLAs and Ministers who are best placed to identify the needs of the local population in Northern Ireland can specify and outline those needs. They could then prepare a report and seek a delegation meeting with the Secretary of State for Northern Ireland, the Chancellor of the Exchequer and the Treasury ministerial team to make a case for a review of the Barnett formula and the necessity of a needs-based assessment.

If anything, we need our own local government in Northern Ireland. We need all the institutions of the Good Friday agreement to be restored as quickly as possible.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I rise to support the amendment in the name of my noble friends Lord Dodds and Lord Morrow. Reflecting on the comments of the noble Baroness, Lady Ritchie, we absolutely do need to see our Executive up and running again on a sustainable and fair basis. Of course, that was also the case in 2017, when Sinn Féin collapsed the Executive for not one, not two, but three years.

During those three years, which should have been spent reforming our National Health Service after a very expensive report was brought forward in the name of Rafael Bengoa, that report sat on the shelf, because the then Health Minister Michelle O'Neill, along with her colleagues, decided to come out of government. As a result of that, we have seen the sustainability issues in Northern Ireland get worse over time. I say that as, along with my noble friend Lord Dodds, a former Finance Minister in Northern Ireland.

3.45 pm

The reason why I strongly support the amendment is that, as the Minister will know, the Government strongly desired to see the Fiscal Council happen because they had concerns about the sustainability and greater transparency of Northern Ireland's public finances—and so they should, because during the time when Sinn Féin held the finance portfolio, not once did we have a budget, and they held it for a number of years. We did not have a budget in 2017, nor before the Executive collapsed in 2022.

So it is right that the Fiscal Council was put in place after *New Decade, New Approach* came forward. We should therefore listen carefully to what that council has to say. It was put there for a reason, and its latest report is very instructive in relation to the public finances of Northern Ireland. I hope the Minister will address the issues of the Barnett floor, which our colleagues in Wales have done, as well as the issue of the Fiscal Council. It was put in place for a reason.

I accept what the noble Baroness, Lady Ritchie, says about having the Executive to deal with these issues. Regrettably, when the Executive was in place, the issues were not dealt with because, as I have indicated, the Finance Ministers of the day did not bring forward budgets. So it is important to listen to the independent voice in Northern Ireland, and that is the Fiscal Council. I hope the Minister will take that on board in his response.

Baroness Hoey (Non-Afl): My Lords, I strongly support this amendment in the names of the noble Lords, Lord Morrow and Lord Dodds. I agree very much with what has been said by everyone who has spoken so far, although obviously I disagree with the noble Baroness, Lady Ritchie, that somehow the only way in which this can be dealt with is by getting the Executive back. There is no reason for that, given that the Fiscal Council said what it did, and the Minister knows that Northern Ireland is not being fully funded because the Barnett squeeze is getting greater. Surely if the Government know that that is happening to a part of the UK, they should be able to act without waiting for an Assembly or an Executive, which, given what has been said, is very unlikely to come back in the near future. I urge the Minister not to treat this as some kind of bargaining point with politicians in Northern Ireland; that is not the way to deal with this serious financial situation.

It is important that the point about consultation be included in the Bill. Being realistic, there are things in Northern Ireland that—forgetting the whole issue of the Barnett formula and the overall funding—could raise more money. That has always been difficult because controversial decisions are very difficult to take between the two mainstream political parties and the two factions —or perhaps three factions—in Northern Ireland. There are some things that are not the same as in the rest of the UK but should be. No doubt I would be slated by the media in Northern Ireland for saying this, but I genuinely think we should be looking at prescription costs. There is a huge amount of waste due to the fact that prescriptions are free for everyone in Northern Ireland. That is just one small thing, but I am certain that, if the public were properly consulted on it, talked about it and understood it, there would be support in many areas for that way of raising extra funds.

There are other such issues but I will not go into any of those. I know the Minister is particularly knowledgeable about and supportive of Northern Ireland, but he may not have a Secretary of State who is necessarily quite so knowledgeable and supportive, so it is important that the Secretary of State listens to what people who understand Northern Ireland are saying.

As we are on finance, I will ask the Minister about policing in Northern Ireland, which is in a particularly difficult situation over its funding. Morale among the Police Federation there is very low. Are the United Kingdom Government giving extra money to the police to make up for the huge amount that it cost to have the very short visit of President Biden and all the other dignitaries who flew in and flew out again as quickly as possible, having joined in the commemoration of the Belfast/Good Friday agreement? It cost a huge amount of money to bring over police officers from Great Britain. Have the Government given any extra money for that? If not, why not?

We had a wide-ranging debate at Second Reading, so there is no point going over all the arguments again; we cannot in a debate on an amendment anyway. But let us not forget that we are here discussing the Bill only because we have no Executive, and we have no Executive because this Government—our Government—have decided that Northern Ireland is to be treated differently. We are being left under EU trading rules, which have set us apart and will set us further apart as time goes on. That is the really important issue that noble Lords need to remember.

Lord Dodds of Duncairn (DUP): My Lords, I too am sorry that I was not able to be present, along with other noble Lords and noble Baronesses who have spoken, for the Second Reading of the Bill last Thursday because of other commitments in Northern Ireland. I put it on record that it was somewhat strange that the Second Reading was scheduled for the day of the local government elections in Northern Ireland. If nobody in the Government realised that, it tells us a lot about competence; if they did realise it and scheduled it anyway, it tells you a lot about their regard for Northern Ireland. I would like to know what actually happened that such a thing should be scheduled in that way.

I am glad that we have the opportunity to debate the amendment in the names of my noble friend Lord Morrow and me. It raises an important issue because, despite what is constantly said about the restoration of the Executive and the Assembly, if they were back tomorrow that would not make the slightest difference to the underfunding of Northern Ireland. In fact, Ministers—newly installed Ministers—would have to go about the business of slashing public services in health, education, policing and so on to an unprecedented degree. I do not agree with the idea that we should wait for the Executive and the Assembly to be restored. The need is here and now. The underfunding is taking place as a result of decisions taken here, in Whitehall and Westminster, by the Treasury.

It used to be the case over many years that the Northern Ireland Office was the advocate for Northern Ireland vis-à-vis central government and the Treasury, but it now appears that the current Secretary of State's position is to become an advocate for the Treasury against the interests of Northern Ireland. He came on the other day to say that there would be no problem finding £100 million for a sports stadium. That is somewhat controversial in Northern Ireland but he was saying, "No problem at all—we'll find the money if the bid's successful". But he cannot find an extra penny piece to deal with extraordinarily long waiting lists in the health service, education underfunding, police underfunding and the rest.

[Lord Dodds of Duncairn]

That sort of glib response to the crisis in Northern Ireland by the current Secretary of State, married to the refusal in this Bill to bring forward powers to give direction to civil servants, is an absolute abdication of responsibility by government Ministers who will no doubt respond and say, "Well, you should get into the Executive". But they themselves are responsible for the current position in Northern Ireland by their refusal to restore the power of the Northern Ireland Assembly to make laws over 300 areas. Right across the economy of Northern Ireland, there are powers that do not reside in Belfast or here at Westminster or in Whitehall; they reside in Brussels with the European Commission—unaccountable and unanswerable. The Government need to recognise the current situation as it exists.

My noble friend Lord Morrow has very ably and in considerable detail set out the arguments behind our amendment. The Government may respond by saying that for many years they have funded Northern Ireland considerably well; the Minister referred to this at Second Reading. But whatever the past, what we are dealing with is now. As a result of government decisions taken by the Treasury, Northern Ireland is more below need on a funding-per-head basis than has ever been the case in any constituent part of the United Kingdom in the last 40 years. That is unacceptable and should not continue a moment longer. They cannot justify underfunding today on the basis of past settlements. Today's budgetary position in Northern Ireland means social, economic and political dislocation. That is agreed and assented to by all the political parties in Northern Ireland across the board. It cannot be justified by looking backwards to previous financial settlements.

We will no doubt be told that Northern Ireland receives 20% per head more than the UK average spend. But, as we have heard, the true measure is spending against need. In Wales, steps were taken despite spending per head there being above the UK average. This is a question of asking not for favours or a privileged position but that the funding is structured so that services for the people of Northern Ireland meet the level of need, as is the case elsewhere in the United Kingdom. It is a quest not for privilege but for a level playing field. It is not a question of comparing Northern Ireland spending per head against England; it is about comparing Northern Ireland spending against need.

Of course, many people in Northern Ireland suspect the real game that the Northern Ireland Office is playing. I do not include in this the Minister answering on the Front Bench today, who has displayed time and again a willingness to fight Northern Ireland's corner and stand up for the union. There are people within the NIO who no doubt believe that, by imposing this kind of budget and underfunding Northern Ireland both in the short term and going back some years, we will fix all this or come forward with a package if only the Executive and Assembly are restored and unionists operate the Northern Ireland protocol/Windsor Framework. That would entail operating measures that are injurious to the union and breach the Belfast agreement, the Acts of Union and the *New Decade, New Approach* document—the basis on which Northern Ireland devolution was restored in January 2020.

We have to face the reality that the failure of the Government to restore Northern Ireland's place within the United Kingdom—subjecting it to arrangements that undermine democracy and are a breach of the agreements—is the fundamental problem we are grappling with. Unless that issue is tackled, we will continue to have a lack of devolved government in Northern Ireland. We have to accept the fundamental reasons why we are in the present position. Of course we do not want to see legislation having to be passed in this place to deal with the situation and would far rather have the Executive and the Assembly restored, but we have to have it back on the basis that we have powers to make the laws that affect and govern the economy of Northern Ireland. That cannot be avoided, and the fact is that the restoration of devolution lies in the Government's hands.

The DUP stood on a manifesto in which we made it clear that the Northern Ireland protocol—the Windsor Framework—needs replacing

"with an arrangement that passes our seven tests",

including getting rid of the Irish Sea border. It means restoring democracy and giving us the power to formulate and pass laws over our own economy, which seems very simple, straightforward and basic in terms of equal citizenship for all citizens of the United Kingdom. We are asking for something that would be seen as a matter of fact and common sense in every other part of the United Kingdom. Indeed, those who advocate different arrangements would never accept it for one minute for their own constituency, region or country in the United Kingdom.

4 pm

If the Government refuse to negotiate the restoration of democracy in Northern Ireland with the European Union, or they refuse to legislate to do that, the responsibility for the current situation will be on their own head. Rather than leaving civil servants to try to run the place in Northern Ireland—they have been placed in an incredibly invidious position—Ministers, whether in Northern Ireland or here, should be the ones who take those decisions.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I too support the amendment in the name of my noble friends Lord Dodds and Lord Morrow. I also apologise for not being able to be present at Second Reading last Thursday. I am sure that it does not escape the notice of noble Lords that there was a council election on that day. Everyone knew about it, including the Government, yet they had a Second Reading debate on a Northern Ireland Bill in this House.

Like the Minister when he spoke on that occasion, I too regret the fact that we are debating the legislation in the absence of an Executive at Stormont, but the Government have known for over 13 months that a functioning Northern Ireland Assembly and Executive could not continue until the genuine concerns expressed by the unionist elected representatives were adequately addressed. One can bury one's head in the sand or face reality. We have found out in recent days that burying one's head in the sand does not do anything; therefore, you have to face reality.

The Northern Ireland protocol and the Windsor Framework were forced on the Northern Ireland people without consent. We all know that the Belfast agreement was built on the very foundation of cross-community consent, but, sadly, the constitutional position of Northern Ireland within the United Kingdom was compromised to appease Europe during the withdrawal arrangements and at the behest of the Irish Republic.

In last week's debate, the Minister stated that the 25th anniversary of the Belfast agreement is

"an opportunity for all of us to recommit to building an even brighter future for Northern Ireland. Now is the time to decide how we want to move forward together, to create a better future for and deliver on the priorities of the people of Northern Ireland. That includes a more prosperous economy and better, more sustainable public finances and services".—[*Official Report*, 18/5/23; col. 381.]

No one could disagree with the sentiments so ably expressed by the Minister, who I think genuinely believed in them. But, in reality, that is all that they were: sentiments.

As we all know, since we last met in the House to discuss Northern Ireland business, there has been an election. Over recent months, the people of Northern Ireland, especially unionist voters, have been bombarded with endless anti-DUP propaganda, much to the delight of some and the dismay of others—so there has been a process of brainwashing the public. Not only was that fuelled by political opponents within republicanism or nationalism but so-called independent observers and commentators—cheered, aided and abetted by the so-called great and good in society—joined in to blame every ill in society on the DUP, including the smallest pothole in some back laneway and the serious, long and grievous waiting lists in the health service.

Of course, none of that happened and those accusations were not made when Sinn Féin boycotted the other place, and Stormont and the Northern Ireland Executive for three years. In fact, I remember debates in this very House when we were told that we were all to grow up and do something to get us out of the situation. In actual fact, it was Sinn Féin that had stepped aside from the Executive and from Stormont, but Members of this House did not have the courage to name Sinn Féin. No: everyone was to blame. We were supposed to be to blame for the actions of Sinn Féin. They pointed the finger and chided us, telling us to return to the Northern Ireland Executive. So here we are today.

After all the brainwashing, the unionist community took a principled stand, as did its elected representatives, on our constitutional rights and demanded to be treated as equal citizens within the United Kingdom. Of course, we are now told that the answer to every ill will be to return to Stormont. Many in this House hoped that, with all the brainwashing process in operation, they would witness the demise, or least the humiliation, of the DUP in the election and the elevation of the Alliance Party as the up-and-coming, as they saw it, central bloc to challenge the DUP. That did not happen. Indeed, Members of this House must face the reality that we have not gone away, you know.

There has been a lot of talk since the election about Sinn Féin's political tsunami at the election. In reality, the DUP faced a political tsunami of criticism and bile before the election but, through the ballot box, we now know that the unionist people expect their politicians, at a critical moment, to honour their election manifesto pledges, no matter how hard the road will be, and we will.

It is true that Sinn Féin has increased its representation and become the largest party within local government by practically wiping out the SDLP, but was the political tsunami as it has been told to us? In actual fact, Members have perhaps not realised that Sinn Féin went down 20,000 votes in the council elections from the last test one year ago, the Assembly election. The Alliance Party went down by 17,000 votes, the Ulster Unionists by 15,000 votes and the SDLP by 13,000 votes. The party that went down least in votes since that last test was the DUP. I know that this is very hard for some to swallow. Indeed, commentators nearly choked admitting it, and the media outlets found it extremely hard to acknowledge that the DUP did not lose one seat at the Northern Ireland council elections.

So we faced political brainwashing, which failed, but we now face and confront what is, in my book, political blackmail. Part of the Bill's provisions relate to decision-making for the Northern Ireland Civil Service. Recently, the Government set a budget and, according to the Northern Ireland Fiscal Council, civil servants will be expected to find £800 million in cuts and revenue-raising measures. The cuts demanded are harsher than any facing other Whitehall departments, but it is hoped that, when they begin to hit the community, the DUP will be blamed again.

Civil servants now want to meet the political parties in Northern Ireland to guide them where to make the cuts and to slash services. That is what the new Executive are supposed to do. Because of this budget, we are told that 300 fewer nurses will be trained this year while the health service is already understaffed. To pay the nurses a proper wage, as negotiated on the mainland, more cuts will have to come. That is at a time when the Government here in London boast that they plan to train thousands more nurses and doctors.

Under *New Decade, New Approach*, we were promised that police numbers would be 7,500, but while in England the Government boast of recruiting 20,000 new police officers, our chief constable tells us that we are to reduce our numbers of police officers, which are now down to 6,500.

My noble friend Lord Morrow outlined that, compared to Scotland and Wales, our budget has been underfunded by £1.2 billion. In my honest opinion, this underfunding and unfair budget for Northern Ireland is not by chance but by design. Those in authority know well that these cuts, when they come, will hurt the sick, children, the vulnerable, the elderly and the weakest in society, but they believe that this would be a price worth paying to force the Assembly and the Executive to get up and running.

The Government have already told us that the black hole in our finances was because of the Executive and that Assembly decisions and the crisis in the health service, infrastructure and education happened under the stewardship of this Executive. What can the Executive do to alleviate the problems facing society

[Lord McCrea of Magherafelt and Cookstown] when they are told that they will have to make cuts, and more cuts? I am reminded of when I was in the other place and the Labour Government were leaving office, and a certain Minister wrote a famous note that said, "There's no money left". We are told that there have to be cuts, but we all know that this is to be used to endeavour to blackmail the DUP to get back into the Executive, with a nod and a wink that money will follow if they do—in other words, the money tree will magically blossom again. But that would be at the cost of tramping over every genuine promise made to the unionist electorate that we would stand firm until the Government granted us equal rights within the United Kingdom. Some will say, "Isn't that what most parties do—break their promises?"

As I conclude, I have no doubt that the Government, facing the reality posed by recent elections, will seek to cobble something together, hoping to satisfy some with meaningless words, but that will not do. Unionists as well as nationalists have faced difficult days because of the 30 years of the IRA campaign but, with resolve and belief in the right of our cause, we must prevail. I trust that the party in government, which prides itself on being named the Conservative and Unionist Party, will honour the pledge it made to the people of Northern Ireland to respect all parts of this United Kingdom, and thereby rid us of the undemocratic protocol and Windsor Framework and allocate the necessary funds to make life more comfortable for the less well-off. I support the amendment.

Baroness Suttie (LD): My Lords, I will endeavour to be fairly brief. I have quite a lot of sympathy with the DUP amendment. Indeed, I raised similar points at Second Reading last week, and it is similar to an amendment tabled in the House of Commons by my friend Stephen Farry MP.

There is no doubt that Northern Ireland faces an extremely challenging situation as regards future public financing, but I am afraid that I completely agree with the noble Baroness, Lady Ritchie: surely the place for this to be debated is the Northern Ireland Assembly. I am under no illusions that a fully functioning Assembly and Executive would immediately be able to resolve these complex issues, but they would provide one strong voice to lobby the Treasury—a voice that is much closer to the people affected by these issues.

I have to say to the noble Lord, Lord McCrea, that I am a democrat—a Liberal Democrat—and someone who believes in the union and believes strongly in democracy. Both the House of Lords and the House of Commons have overwhelmingly supported the Windsor Framework agreement. I hear what noble Lords have said; I understand there is still a strong feeling about this issue. I sincerely hope the Assembly and Executive will be fully functioning as soon as possible but, listening to the debate this afternoon, I am perhaps less optimistic than I was before the debate. Can the Minister say, if it is not fully functioning again, how these issues will be dealt with in terms of parliamentary oversight? I presume, as ever, he will consult and involve all the political parties on this, as a Bill has to come forward, but this is just a plea to the Minister to make sure that all parties are consulted. Could he say a few words about how parliamentary oversight could be properly achieved? I plea, one more time, to the noble Lords opposite: surely a fully functioning Assembly and Executive is the best way forward, to have their voice heard loud and clear.

4.15 pm

Lord Murphy of Torfaen (Lab): My Lords, here we are. I have been either asking or answering questions on the Barnett formula for something like 32 years. It started off as a formula, and then you add a floor, and now you have a Barnett squeeze. Some of your Lordships may remember that Lord Joel Barnett, himself, who invented this, towards the end of his life completely denounced it and said that it was not suitable any more. Indeed, it probably is not. We lived with it for the last 20 or 30 years because there was no real alternative, but the world has changed since then, certainly in terms of Wales, Scotland and Northern Ireland.

The noble Lord, Lord Morrow, put a convincing case for a very serious look at the situation at the moment. I can tell him and Members of your Lordships' House that, when I was the Secretary of State for Wales, I did not persuade my colleagues in the Treasury that there was a need for a change. I tried, but when you are a territorial Secretary of State, you are always battling with the Treasury, the Chancellor of the Exchequer and the Chief Secretary to the Treasury. You are in the same team. Sometimes you win, and sometimes you lose. But the key to the success of what happened in Wales, with the Holtham commission, was that it was in fact conceived by the Assembly, set up by the Government of Wales, and had cross-party support when the commission reported. That meant that there was a seriousness about that report which impressed the Treasury. It was convinced, after all this discussion and all these commissions, that things had to change, but I could not do it on my own. It had to be done with the Assembly, the Welsh Government and Holtham and his commission, which spread over a couple of years. That is how it was achieved.

The same thing is going to happen in Northern Ireland. There has to be a concerted effort by all political parties in Northern Ireland to be able to persuade the Government that there is a serious case for equating Wales and Northern Ireland—I leave Scotland out at the moment, as that is an even more complicated case. But that is only reasonably sure of success if it is not simply left to the Secretary of State for Northern Ireland. There has to be this pressure internally, from those who have been elected and thus are there in that Assembly, elected by the people of Northern Ireland to take issues like this up.

I know there is a meeting in the next week or two with the head of the Northern Ireland Civil Service. She has quite rightly asked political parties for some guidance as to what to do. A budget is not simply adding up and taking away figures; a budget is about priorities of government. What do you put first? What do you put last? Where do you put this money and that money? You do that on the basis of proper consultation, not only with Members of the Assembly but with all the political parties. That can best be done only in the context of a democratic Assembly and government.

There is no question that there is some merit in discussing these issues in your Lordships' House, but we are not here to run Northern Ireland; we have not been elected to do that—we have not been elected to do anything but certainly not to do that. When that meeting is held in the next week or two, I hope that the parties in Northern Ireland will impress upon the head of the Northern Ireland Civil Service the importance of trying to work out what those priorities would be and how to do it. Rather her than me—it is a terribly difficult thing to do if you are not an elected politician. The decisions are so tough and so harsh, and in some ways so impossible, that they can be made only by people who are answerable in a democracy to the electorate. That is not the case at the moment.

Yes, there is a very strong case for looking at change, and a strong case for asking officials to do what they did in Wales, but that can best be achieved only if the Assembly and the Executive are both restored.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, before replying to the debate that we have just had, I would like to make a very brief statement on legislative consent. Clearly, the reason we are here is that there is neither a functioning Executive nor a functioning Assembly in Northern Ireland. It has therefore not been possible to seek a legislative consent Motion.

I thank the Committee for the constructive debate that we have had this afternoon. I am very grateful to all noble Lords who have spoken to the amendment. I thank the noble Lords, Lord Morrow and Lord McCrea, for their time this morning, coming in to discuss this issue with me in the Northern Ireland Office.

Amendment 1, tabled in the names of the noble Lords, Lord Morrow and Lord Dodds, provides an example of the advice or information that the Secretary of State could request from the Northern Ireland Civil Service under Clause 2 of the Bill. Specifically, the amendment references the Northern Ireland Fiscal Council's 2023 report—referred to by a number of noble Lords this afternoon—entitled *Updated Estimate of the Relative Need for Public Spending in Northern Ireland*. I join noble Lords in thanking the Northern Ireland Fiscal Council for its work, and have noted its report on the updated estimate of the relative need for public spending in Northern Ireland. The noble Baroness, the former First Minister of Northern Ireland, was right to refer to His Majesty's Government's role in the establishment of the Northern Ireland Fiscal Council, following both the fresh start agreement in 2015 and *New Decade, New Approach* in 2020. The Secretary of State, my right honourable friend Chris Heaton-Harris, met the chair of the council, Robert Chote, two weeks ago to go through the report's findings. I assure the Committee that we will have further such meetings with him.

As noble Lords will be aware, there are clearly many different ways to assess need, as the Northern Ireland Fiscal Council itself acknowledges in its report. However, the report indicates that funding is currently broadly in line with relative need, through a combination of the Barnett-based block grant, locally generated revenue and additional UK Government funding packages. In that context, I refer noble Lords to the penultimate bullet point on page 3 of the report and the penultimate paragraph on page 21 of the report.

I should add that the report also makes clear that locally accountable leadership—to echo the comments of a number of noble Lords this afternoon—is urgently required to ensure that Northern Ireland has a stable and flourishing economy.

For many years, the Government have recognised the unique challenges that Northern Ireland faces. The argument that it has been systematically underfunded by the Government simply does not hold water, in my view. In the 2021 spending review, the Government announced that the block grant for Northern Ireland would be £15 billion per year, on average, over the next three years, representing the largest settlement since the restoration of devolution in 1998-99. We have provided around £7 billion in additional funding to Northern Ireland since 2014, on top of the Barnett-based block grant. As a number of noble Lords pointed out, the Northern Ireland budget per person is around 20% higher than the equivalent UK government spending in other parts of the United Kingdom, and it is set to rise to around 25% by 2024-25.

In 2013, shortly before we brought the G8 summit to Northern Ireland, we made available £300 million in additional borrowing power and funding top-ups through the building a prosperous and united community package. We made available almost £2 billion in additional spending power for Northern Ireland as a result of the Stormont House agreement in 2014, a further £500 million through the fresh start agreement in 2015, and £2.5 billion of financial support and flexibility through the confidence and supply agreement in 2017.

In more recent years, we have invested over £3.5 billion in Northern Ireland through the £400 million new deal for Northern Ireland, £617 million for four city and growth deals covering all of Northern Ireland, £730 million through PEACE PLUS, and £2 billion in funding and a Barnett investment guarantee in the *New Decade, New Approach* financial package, following the restoration of the Executive in January 2020. Noble Lords will recall that the priorities committed to by the Northern Ireland Executive within *New Decade, New Approach* specifically included £245 million earmarked for the transformation of the health service and wider public sector. The UK Government are also investing over £250 million in Northern Ireland through the levelling up fund, the UK shared prosperity fund and the community ownership fund.

Despite these significant levels of investment from the UK Government, over and above the Barnett-based block grant, the Northern Ireland Executive have consistently been unable to allocate this funding to deliver the much-needed transformation of public services. In that context, I acknowledge the comments made by the noble Baroness, the former First Minister, regarding the period from 2017 to 2020. Consequently, the £200 million health transformation funding provided through the confidence and supply agreement, and the £245 million of funding for public service transformation allocated through *New Decade, New Approach*, have primarily been used for short-term funding pressures, not to deliver genuine reform.

[Lord Caine]

I gently echo the point made by the noble Lord, Lord Murphy of Torfaen, at Second Reading—and to some extent repeated this afternoon—when making comparisons with Wales on this issue. It is important to underline that that arrangement was negotiated between the Welsh Government, the Welsh Assembly and the Treasury. As the noble Lord, Lord Murphy, reminded us, the Holtham commission was established in 2008 and negotiations took place over the next seven years. That seven-year period is crucial to today's debate because it underlines that this is not an issue that could be solved overnight, even with the best will in the world.

As was pointed out by a number of noble Lords, particularly the noble Baroness, Lady Suttie, and the noble Lord, Lord Murphy of Torfaen, it would be far more powerful if the case made by noble Lords on the Benches behind me were made from a functioning Stormont. It will not surprise anyone in this Committee to hear me say that this is an issue best addressed in the context of a restored Executive and Assembly in Northern Ireland, in discussions with the Treasury. I agree entirely with the noble Baroness and the noble Lord on those points.

More broadly, in the absence of an Executive the UK Government will be able to commission advice from the Northern Ireland Civil Service—I mentioned this at the outset—on how current funding can be used more efficiently to the benefit of the people of Northern Ireland. However, it would not be right for me to commit the Secretary of State to exploring certain defined options—that would be the effect of this amendment—in advance of commissioning Northern Ireland departments for advice on options for budget sustainability.

The noble Baroness, Lady Suttie, asked about parliamentary oversight. She and other noble Lords will be aware that, in the continuing absence of an Executive, we will need to bring forward a budget Bill, which will be debated in your Lordships' House.

I am of course willing to continue to engage with noble Lords, particularly those who brought this amendment—as I referred to earlier, I did so this morning—on these important issues. In that spirit, I invite the noble Lord to withdraw the amendment.

4.30 pm

Lord Morrow (DUP): My Lords, I thank everyone who has contributed to the debate. If there is one striking note, it is that I did not hear anyone say they oppose what we are trying to do, so I will take that as a positive and welcome it. Some, of course, have said, "If we had an Executive" or if we had this or that, but I have always found in life that you are better off moving from where you are, rather than where you would like to be. That is the only way we are going to move forward. If, one day, there is an Executive—I can say with some degree of confidence that it is not going to be tomorrow—they will no doubt deal with those issues.

I was struck by one thing the Minister said when he summed up. He said that we extended additional powers for borrowing some £300 million. In my experience, any time I borrowed money I always had to repay it and sometimes, the pain of repaying it was nearly as great as the pain of asking for it. Incidentally, I never had to borrow £300 million; that just would not have happened. The Members who spoke highlighted different issues; for example, that our health service is where it is, and that we have monumental waiting lists. However, we had those when we had the Executive. There are three of us here—the noble Baroness, Lady Foster, my noble friend Lord Dodds and I—who have at different times served in that Executive. I nearly forgot—how could I?—the noble Baroness, Lady Ritchie, also served in it. We are not antagonistic to devolution. We know there are merits in it but, for goodness' sake, can those who see our salvation entirely in a restored Executive please take on board that that will not happen at present because we do not have a level playing field? When we get to that stage, we will all be enthusiastic and break down the gates of Stormont to get in, but that is not where we are, so I ask noble Lords to take cognisance of that.

What happens when devolution is not functioning? Is it not the responsibility of government to step in and accept responsibility, as a government, and keep things moving forward? That, surely, has to be right. I do not doubt for a moment the Minister's sincerity—no one has—but we say to the Government, "You have responsibility; let's get on with it." The noble Lord, Lord Murphy, quickly corrected himself and reminded us that none of us here is elected, but the other place is elected. Is that not their responsibility, or do they just throw up their hands and say, "Oh well, we can't do anything here"? They cannot do that. Let no one underestimate the difficulties there will always be in keeping devolution afloat. Those will always be there, but the Government have a responsibility to ensure that when things break down back home, they do not shirk their responsibility to do some of the heavy lifting here to encourage the people of Northern Ireland and ensure that they do not suffer.

My Lords, I will stop there. I beg leave to withdraw my amendment, which was intended more as a probing amendment.

Amendment 1 withdrawn.

Clause 2 agreed.

Clauses 3 to 7 agreed.

House resumed. Bill reported without amendment. Report and Third Reading agreed without debate. Bill passed.

Online Safety Bill

Committee (8th Day)

4.36 pm

Relevant documents: 28th Report from the Delegated Powers Committee

Clause 38: Procedure for issuing codes of practice

Amendment 110

Moved by ***Lord Stevenson of Balmacara***

110: Clause 38, page 38, line 24, leave out subsections (2) to (8) and insert—

"(2) Upon receiving the draft code of practice from OFCOM, the Secretary of State must—

(a) make a statement confirming they have received the draft code of practice, and

(b) lay the draft code of practice before Parliament.

(3) Unless the Secretary of State intends to give a direction to OFCOM under section 39(1) in relation to the draft, regulations giving effect to the code of practice may not be laid before Parliament unless the Secretary of State has—

(a) consulted each devolved authority on the content of the draft code of practice;

(b) produced an impact assessment including, but not limited to, an assessment of the impact of the proposed regulations on—

(i) human rights and equalities,

(ii) freedom of expression, and

(iii) employment and labour; and

(c) produced an assessment of the impact of the proposed regulations on children and vulnerable adults.

(4) The Secretary of State may not make regulations under this section until any select committee charged by the relevant House of Parliament with scrutinising regulations made under this section has—

(a) completed its consideration of the draft code of practice and the impact assessments referred to in subsection (3)(b) and (c), and

(b) reported on its deliberation to the relevant House; and

the report of the committee has been debated in that House, or the period of six weeks beginning on the day on which the committee reported has elapsed.

(5) The Secretary of State may not lay regulations under this section until they are satisfied that—

(a) issues raised by a devolved authority have been resolved, or

(b) if they have not been resolved, the Secretary of State has informed Parliament of the steps they intend to take in response to the issues raised."

Member's explanatory statement

This amendment, which replaces most of the current Clause 38, would require the Secretary of State to publish draft codes of conduct from OFCOM for consideration by relevant committees of both Houses of Parliament.

Lord Stevenson of Balmacara (Lab): My Lords, I rise to move Amendment 110 in my name and thank the noble Lord, Lord Clement-Jones, for his support. This is a complex group of amendments but they are about very significant powers that are supposed to be granted to the Secretary of State in this Bill. We believe that this part of the Bill must be significantly amended before it leaves this House, and while we await the Government's response to the amendments in my name and that of the noble Baroness, Lady Stowell, I want to make it clear that if we do not see some significant movement from the Government we will return to these issues on Report. As it looks as though we will be having another long hiatus before Report, there is plenty of time for discussion and agreement.

Two House of Lords committees—the Communications and Digital Committee and the Delegated Powers and Regulatory Reform Committee—have called on the Government to remove or amend a number of the clauses engaged by these amendments, and a third, the Constitution Committee, has noted the concerns raised. I think it fair to say that these issues concern all parties and all groups in the House and urgently need addressing. The noble Baroness, Lady Stowell, in her capacity as chair of the Communications and Digital Committee, has a number of amendments very similar to mine to which I and others have signed up, and which I know she will go through in detail. I support the line she and the committee are taking, although I make some additional suggestions in some areas.

The amendments from the noble Lord, Lord Moylan —who I am sad to see is not in his place and who will not therefore be able to participate in this debate—broadly support the thrust of the amendments in this group. Perhaps they do not go quite as far as ours do, but it is certainly nice to have him on our side—for a change. I do not want to delay the Committee as I know many of us will want to discuss the points which will be raised in detail by the noble Baroness, Lady Stowell, so I think the best thing is for me to talk more generally about where we think the Government need to change approach, and I hope my remarks will open up the debate.

Before I do that, I thank the Carnegie Trust—I know a number of noble Lords have received documentation from it—for its detailed work in this area in particular, but it has covered the Bill comprehensively. It has been invaluable and we have also received support from the All-Party Digital Regulation Group, which has been pushing information around as well.

We have mentioned in the past the difficulty of amending the Bill because of the structures and the different way it treats the various types of company likely to be in scope. But, in essence, my amendments would ensure that Ofcom is able to operate as an independent regulator, delivering what is required of it under the Bill, and is not subject to instruction or direction by the Secretary of State except in exceptional circumstances. We are told that these will be restricted mainly to national security issues or public safety, though precisely what those issues are going to be needs spelling out in the Bill.

The Secretary of State should not be able to give Ofcom direction. In the broadcasting regime, there are no equivalent powers. Our press is not regulated in that way. We believe that the right approach is that the Secretary of State should, if he or she wishes, write to Ofcom with non-binding observations when it is thought necessary to do so. It would be for Ofcom to have regard to such letters, but there should be no requirement to act, provided that it operates within its powers as set out in the Bill. It follows that the powers taken by the Secretary of State in Clause 156 to issue directions to Ofcom in special circumstances, in Clause 157 to issue detailed tactical guidance to Ofcom in the exercise of its functions, and in Clause 153, which allows the Secretary of State to make a statement of strategic priorities relating to online safety, are significant threats to the independence of Ofcom, and we believe that they should be deleted. In addition, Clauses 38 and 39 need to be revised.

The independence of media regulators is important and must be preserved as it is at present. That is the norm in most developed democracies. The UK has signed many international statements in this vein, including, as recently as in April 2022 at the Council of Europe, a statement saying that

"media and communication governance should be independent and impartial to avoid undue influence on policy making, discriminatory treatment and preferential treatment of powerful groups, including those with significant political or economic power".

[Lord Stevenson of Balmacara]

I hope that when he comes to respond to the debate, the Minister will confirm that he stands by that international agreement that his Government have signed up to.

My second point deals with the other powers given to the Secretary of State in the Online Safety Bill—for example, to specify in regulations the primary priority content harmful to children and priority content harmful to children in Clause 54; to amend the duties on fraudulent advertising in Clause 191; to change the exemption to the regime in Clause 192; and to amend the list of terrorism offences, CSEA offences and other priority offences in Clause 194. Appropriate procedures for the exercise of these powers—ensuring that they are in line with the approach of this group of amendments—need to be set out in the Bill, because the present drafting is, in our view, inadequate. The reliance on conventional secondary legislation approval mechanisms will not be sufficient given the scale and impact of what is in contemplation.

At Second Reading, the Minister said,

"we remain committed to ensuring that Ofcom maintains its regulatory independence, which is vital to the success of this framework … We intend to bring forward two changes to the existing power: first, replacing the 'public policy' wording with a defined list of reasons that a direction can be made; and secondly, making it clear that this element of the power can only be used in exceptional circumstances … the framework ensures that Parliament will always have the final say on codes of practice, and that strong safeguards are in place to ensure that the use of this power is transparent and proportionate".—[*Official Report*, 1/2/23; cols. 691-2.]

Those are fine words but, unfortunately, we have not yet seen the draft amendments that would give credence to that statement. Can the Minister give us any hint on the timetable?

My third point is that we are also not convinced that the processes currently specified for the approval of the high volume of secondary legislation pursuant to the Bill, including the codes of practice, engage sufficiently with Parliament. As my noble friend Lady Merron said at Second Reading, in our view the Bill suffers from an imbalance around what role Parliament should have in scrutinising the new regime and how changes to the statutory functions will be accommodated in future years. We can all agree that there will certainly be many more such occasions and more legislation in this area in future years.

This is, of course, a skeleton Bill, requiring significant amounts of secondary legislation before it begins to bite. How should Parliament be involved, both in the necessary scrutiny of those codes of practice, which put the regime into practice and define the way in which the regulated companies are to operate, and in anticipating changes that will be required as technology develops? It is to answer this question that I have put down a number of amendments aimed at carving out a role for the Select Committees of the two Houses—or perhaps a new Joint Committee, if that were to be the decision of Parliament. Indeed, that was a recommendation of the pre-legislative scrutiny committee and the Communications and Digital Committee in previous reports.

My Amendment 290, after Clause 197, tries to gather together the instances of powers exercisable by the Secretary of State and provide an additional parliamentary stage each time those powers are exercised. This would require that:

"The Secretary of State may not exercise the powers"

granted under the Bill unless and until

"any select committee charged by the relevant House of Parliament with scrutinising such regulations has … completed its consideration of the draft regulations and … reported on their deliberation to the relevant House".

I appreciate that this is a major step. Introducing parliamentary scrutiny of this type may mean it takes more time to achieve results in what is already a complex process. Maybe this should be introduced in stages so as not to delay further the measures in the Bill.

4.45 pm

The idea of engaging the Select Committees of Parliament is not unprecedented. It was introduced in a similar form as the Grimstone rule, using an agreed statement from the Dispatch Box setting out a commitment by the Government for the procedure for Select Committee consideration of trade agreements in both Houses under the international trade Bill. Similar issues have been raised recently in other Bills this Session. Do we like the sound of a parallel Parkinson rule? The noble Lord smiled—he must be pleased.

At heart, I recognise that this is in principle no more than ensuring that the expertise and knowledge of those who have served in an appropriate parliamentary Select Committee are grafted on to the normal affirmative or negative approval mechanisms for secondary legislation, but I also think it opens up a substantial new way of doing what has, on many occasions, been merely a rubber-stamping of what can be rather significant policy changes. It also gives a good opportunity to bring Parliament and parliamentarians into the policy delivery mechanism in what seems to me to be a satisfying way. It makes sense to do this for a complex new regime in a fast-changing technological environment such as the one that the Bill is ushering in, but it might have other applications, particularly consideration of other legislation that is currently in the pipeline. I beg to move.

Baroness Stowell of Beeston (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Stevenson. I am grateful to him, the noble Lord, Lord Clement-Jones, and the noble Viscount, Lord Colville of Culross, for their support for my amendments, which I will come to in a moment. Before I do, I know that my noble friend Lord Moylan will be very disappointed not to be here for the start of this debate. From the conversation I had with him last week when we were deliberating the Bill, I know that he is detained on committee business away from the House. That is what is keeping him today; I hope he may join us a bit later.

Before I get into the detail of my amendments, I want to take a step back and look at the bigger picture. I remind noble Lords that on the first day in Committee, when we discussed the purpose of the Bill, one of the points I made was that, in my view, the Bill is about increasing big tech's accountability to the public. For too long, and I am not saying anything that is new or novel here, it has enjoyed power beyond anything that other media organisations have enjoyed—including the broadcasters, which, as we know, have been subject to regulation for a long time now. I say that because, in my mind, the fundamental problem

this legislation seeks to address is the lack of accountability of social media and tech platforms to citizens and users for the power and influence they have over our lives and society, as well as their economic impact. The latter will be addressed via the Digital Markets, Competition and Consumers Bill.

I emphasise "if that is the problem", because when we talk about this bit of the Bill and the amendments we have tabled, we have started—and I am as guilty of this as anyone else—to frame it very much as if the problem is around the powers for the Secretary of State. In my view, we need to think about why they are not, in the way they are currently proposed, the right solution to the problem that I have outlined.

I do not think what we should be doing, as some of what is proposed in the Bill tends to do, is shift the democratic deficit from big tech to the regulator, although, of course, like all regulators, Ofcom must serve the public interest as a whole, which means taking everyone's expectations seriously in the way in which it goes about its work.

That kind of analysis of the problem is probably behind some of what the Government are proposing by way of greater powers for the Secretary of State for oversight and direction of the regulator in what is, as we have heard, a novel regulatory space. I think that the problem with some, although not all, of the new powers proposed for the Secretary of State is that they would undermine the independence of Ofcom and therefore dilute the regulator's authority over the social media and tech platforms, and that is in addition to what the noble Lord, Lord Stevenson, has already said, which is that there is a fundamental principle about the independence of media regulators in the western world that we also need to uphold and to which the Government have already subscribed.

If that is the bigger picture, my amendments would redress the balance between the regulator and the Executive, but there remains the vital role of Parliament, which I will come back to in a moment and which the noble Lord, Lord Stevenson, has already touched on, because that is where we need to beef up oversight of regulators.

Before I get into the detail, I should also add that my amendments have the full authority of your Lordships' Communications and Digital Select Committee, which I have the great honour of chairing. In January, we took evidence from my noble friend Minister and his colleague, Paul Scully, and our amendments are the result of their evidence. I have to say that my noble friend on the Front Bench is someone for whom I have huge respect and admiration, but on that day when the Ministers were before us, we found as a committee that the Government's evidence in respect of the powers that they were proposing for the Secretary of State was not that convincing.

I shall outline the amendments, starting with Amendments 113, 114, and 115. I am grateful to other noble Lords who have signed them, which demonstrates support from around the House. The Bill allows the Secretary of State to direct Ofcom to change its codes of practice on regulating social media firms for reasons of public policy. While it is legitimate for the Government to set strategic direction, this goes further and amounts to direct and unnecessary interference. The Government have suggested clarifying this clause, as we have heard, with a list of issues such as security, foreign policy, economic policy and burden to business, but it is our view as a committee that the list of items is so vague and expansive that almost anything could be included in it. Nor does it recognise the fact that the Government should respect the separation of powers between Executive and regulator in the first place, as I have already described. These amendments would therefore remove the Secretary of State's power to direct Ofcom for reasons of public policy. Instead, the Secretary of State may write to Ofcom with non-binding observations on issues of security and child safety to which it must have regard. It is worth noting that under Clause 156 the Secretary of State still has powers to direct Ofcom in special circumstances to address threats to public health, safety and security, so the Government will not be left toothless, although I note that the noble Lord, Lord Stevenson, is proposing to remove Clause 156. Just to be clear, the committee is not proposing removing Clause 156; that is a place where the noble Lord and I propose different remedies.

Amendments 117 and 118 are about limiting the risk of infinite ping-pong. As part of its implementation work, Ofcom will have to develop codes of practice, but the Government can reject those proposals infinitely if they disagree with them. At the moment that would all happen behind closed doors. In theory, this process could go on for ever, with no parliamentary oversight. The Select Committee and I struggle to understand why the Government see this power as necessary, so our amendments would remove the Secretary of State's power to issue unlimited directions to Ofcom on a draft code of practice, replacing it with a maximum of two exchanges of letters.

Amendment 120, also supported by the noble Lords I referred to earlier, is closely related to previous amendments. It is designed to improve parliamentary oversight of Ofcom's draft codes of practice. Given the novel nature of the proposals to regulate the online world, we need to ensure that the Government and Ofcom have the space and flexibility to develop and adapt their proposals accordingly, but there needs to be a role for Parliament in scrutinising that work and being able to hold the Executive and regulator to account where needed. The amendment would ensure that the affirmative procedure, and not the negative procedure currently proposed in the Bill, was used to approve Ofcom's codes of practice if they had been subject to attempts by the Secretary of State to introduce changes. This amendment is also supported by the Delegated Powers and Regulatory Reform Committee in its report.

Finally, Amendment 257 would remove paragraph (a) from Clause 157(1). This is closely related to previous amendments regarding the Secretary of State's powers. The clause currently provides powers to provide wide-ranging guidance to Ofcom about how it carries out its work. This is expansive and poorly defined, and the committee again struggled to see the necessity for it. The Secretary of State already has extensive powers to set strategic priorities for Ofcom, establish expert advisory committees, direct action in special circumstances, direct Ofcom about its codes or just write to it if my

[Baroness Stowell of Beeston]
amendments are accepted, give guidance to Ofcom about its media literacy work, change definitions, and require Ofcom to review its codes and undertake a comprehensive review of the entire online safety regime. Including yet another power to give unlimited guidance to Ofcom about how it should carry out its work seems unnecessary and intrusive, so this amendment would remove it, by removing paragraph (a) of Clause 157(1).

I hope noble Lords can see that, even after taking account of the amendments that the committee is proposing, the Secretary of State would be left with substantial and suitable powers to discharge their responsibilities properly.

Perhaps I may comment on some of the amendments to which I have not added my name. Amendment 110 from the noble Lords, Lord Stevenson and Lord Clement-Jones, and Amendment 290 from the noble Lord, Lord Stevenson, are about parliamentary oversight by Select Committees. I do not support the detail of these amendments nor the procedures proposed, because I believe they are potentially too cumbersome and could cause too much delay to various processes. As I have already said, and as the noble Lord, Lord Stevenson, said in opening, the Select Committee and I are concerned to ensure that there is adequate parliamentary oversight of Ofcom as it implements this legislation over the next few years. My committee clearly has a role in this, alongside the new DSIT Select Committee in the House of Commons and perhaps others, but we need to guard against duplication and fragmentation.

5 pm

There are bigger questions about the parliamentary oversight of regulators in the wider digital field, as none of this is sector-specific and it also affects the CMA—we will see that magnified when we get to the digital markets Bill—so I do not think parliamentary oversight is something that we can just ignore. It is an issue of growing importance when it comes to regulators, particularly those that are regulating in areas that are new and different and require a different kind of approach by those regulators. As I said at the start, we need to get the distribution of power right between big tech, the regulators, the Government and Parliament if we are to achieve what I think is our ultimate aim and purpose: greater accountability to the public at large for the technology that has so much power at so many levels of our individual and national life.

In reply to my letter to the Secretary of State in January—with my committee hat on—which is available on the committee's website, the Minister here and Paul Scully, the Minister in the other place, indicated a willingness to discuss my amendments after Committee. I hope my noble friend and his colleagues will honour that commitment and the Government will accept my amendments. While there are other amendments in this group that would provide interesting solutions—as the noble Lord, Lord Stevenson, has said, some of them go a bit further than those that I am proposing—what the committee is proposing represents a measured and appropriate approach, and I hope the Government take it seriously. I look forward to discussing that further with the Minister.

I also hope that the Government support Parliament in enhancing its oversight of the regulators in which so much power is being vested. However expert, independent and professional they may be—I note that my noble friend Lord Grade is not in the Chamber today, as I believe he is overseas this week, but no one respects and admires my noble friend more than I do, and I am not concerned in any way about the expertise and professionalism of Ofcom—none the less we are in a situation where they are being vested with a huge amount of power and we need to make sure that the oversight of them is right. Even if I do not support that which is specifically put forward by the noble Lord, Lord Stevenson, this is an area where we need to move forward but we need the Government to support us in doing so if we are going to make it happen. I look forward to what my noble friend has to say in response to this group.

Viscount Colville of Culross (CB): My Lords, I have put my name to Amendments 113, 114, 117, 118, 120 and 257. As the noble Baroness, Lady Stowell, has said, it is crucial that Ofcom both has and is seen to have complete independence from political interference when exercising its duty as a regulator.

On Ofcom's website there is an article titled "Why Independence Matters in Regulating TV and Radio"—for the purposes of the Bill, I suggest that we add "Online". It states:

> "We investigate following our published procedures which contain clear, transparent and fair processes. It's vital that our decisions are always reached independently and impartially".

I am sure there are few Members of the Committee who would disagree with that statement. That sentiment is supported by a recent UNESCO conference to create global guidance for online safety regulation, whose concluding statement said that

> "an independent authority is better placed to act impartially in the public interest and to avoid undue influence from political or industry interests".

As the noble Baroness, Lady Stowell, has said, that is what successive Governments have striven to do with Ofcom's regulation of broadcast and radio. Now the Government and Parliament must succeed in doing the same by setting up this Bill to ensure absolute independence for Ofcom in regulating the digital space.

The codes of practice drawn up by Ofcom will be central to the guidance for the parameters set out by the media regulator for the tech companies, so it is essential that the regulator, when setting them up, can act independently from political interference. In my view and that of many local Lords, Clause 39 does not provide that level of independence from political interference. No impartial observer can think that the clause as drafted allows Ofcom the independence that it needs to shape the limits of the tech platforms' content. In my view, this is a danger to freedom of expression in our country by giving permission for the Secretary of State to interfere continually and persistently in Ofcom's work.

Amendments 114 and 115 would ensure a badly needed reinforcement of the regulator's independence. I see why the Minister would want a Secretary of State to have the right to direct the regulator, but I ask him to bear in mind that it will not always be a Minister he supports who is doing the directing. In those circumstances,

surely he would prefer a Secretary of State to observe or have regard to the views on the draft codes of practice. Likewise, the endless ping-pong envisaged by Clause 39(7) and (9) allows huge political pressure and interference to be placed on the regulator. This would not be allowed in broadcast regulation, so why is it allowed for online regulation, which is already the dominant medium and can get only more dominant and more important?

Amendment 114 is crucial. Clause 39(1)(a), allowing the Minister's direction to cover public policy, covers almost everything and is impossibly broad and vague. If the Government want an independent regulator, can the Minister explain how this power would facilitate that goal? I am unsure of how the Government will approach this issue, but I am told that they want to recognise the concerns about an overmighty Secretary of State by bringing forward their own amendment, limiting the powers of direction to specific policy areas. Can the Minister confirm that he is looking at using the same areas as in the Communications Act 2003, which are

"national security … relations with the government of a country … compliance with international obligations of the United Kingdom … the safety of the public or of public health"?

I worry about any government amendment which might go further and cover economic policy and burden to business. I understand that the Government would want to respond to the concerns that this Bill might create a burden on business and therefore could direct Ofcom to ease regulations in these areas. However, if this area is to be included, surely it will create a lobbyists' charter. We all know how effective the big tech companies have been at lobbying the Government and slowing down the process of shaping this Bill. The Minister has only to talk to some of the Members who have helped to shape the Bill to know the determination and influence of those lobbying companies.

To allow the DCMS Secretary of State to direct Ofcom continuously to modify the codes of practice until they are no longer a burden to business would dramatically dilute the power and independence of the UK's world-respected media regulator. Surely this is not what the people of Britain would want; the Minister should not want it either. The words "vague" and "broad" are used repeatedly by freedom of speech campaigners when looking at the powers of political interference in the Bill.

When the draft Bill came out, I was appalled by the extraordinary powers that it gave the Secretary of State to modify the content covered by "legal but harmful", and I am grateful to the Government for responding to the Joint Committee and many other people's concerns about this potentially authoritarian power. Clause 39 is not in the same league, but for all of us who want to ensure that Ministers do not have the power to interfere in the independence of Ofcom, I ask the Minister to accept the well-thought-through solutions represented by these amendments and supported by all Benches. I also support the request made by the noble Baroness, Lady Stowell, that Parliament should be involved in the oversight of Ofcom. I ask the Minister to respond to these widely supported amendments, either by accepting them or by tabling amendments of his own which guarantee the independence of the regulator.

Baroness Fox of Buckley (Non-Afl): My Lords, I broadly support all these amendments in spirit, since, as we have heard, they tackle excessive levels of influence that any Secretary of State is awarding themselves to shape the strategic priorities and codes of conduct of Ofcom. I will speak to Amendments 254 and 260, tabled by the noble Lord, Lord Moylan, who I am glad to see in his place. He will see in *Hansard* that he was about to be much missed. I cannot do him credit, but I will carry on regardless because I support his amendments.

The main difference between Amendment 254 and other similar amendments is that it requires that any guidance issued to Ofcom—under Clause 157, for example—is

"approved by resolution of each House of Parliament"

rather than by committees. However, the spirit of it, which is to remove the Secretary of State's power to give wide-ranging guidance or instructions about Ofcom's functions, and the concerns that we have about that, is broadly in line with everything else we have heard.

It is important to ask whether it is appropriate for our right to freedom of expression to be curtailed by secondary legislation, which cannot be amended, which has little parliamentary oversight and on which challenges are very often reduced to nothing more than rhetorical whinges in this House. That would mean that the power exercised by the Secretary of State would bypass the full democratic process.

In fact, it also weakens our capacity to hold Ofcom to account. One thing that has become apparent throughout our Committee deliberations is that—as I think the noble Baroness, Lady Stowell, indicated—Ofcom will be an uber-regulator. It is itself very powerful, as I have raised, with respect to potentially policing and controlling what UK citizens see, read and have access to online, what they are allowed to search, private messaging and so on. In some ways, I want Ofcom to have much more scrutiny and be accountable to Parliament, elected politicians and the public realm. But that is not the same as saying that Ofcom should be accountable and answerable to the Secretary of State; that would be a whole different ball game. It could be said that the Secretary of State will be elected, but we know that that is a sleight of hand.

I want more accountability and scrutiny of Ofcom by individual users of online services; we even talked about that, the other day, in relation to complaints. I want more democratic scrutiny, but the Bill does the opposite of that by allowing the Government a huge amount of executive power to shape the proposed system of online speech moderation and even influence political discourse in the public square.

I want to move on to that issue. Under the Bill, the Secretary of State will have the power to set Ofcom's strategic priorities, direct Ofcom to modify its code of practice through secondary legislation, set criteria for platform categorisation and designate priority illegal offences. They will be able to change codes of practice for "reasons of public policy", which is as vague a phrase as you will ever get. I fear that, frankly, that level of discretion is likely to lead to a highly politicised and—my dread—censorship-heavy approach to regulation.

[Baroness Fox of Buckley]

The Secretary of State could come under extreme pressure to respond to each individual concerning case of digital content—whatever happens to be in the news this week—with an ever-expanding list of areas to be dealt with. I dread that this will inevitably be exploited by highly political lobbyists and organisations, who will say, "You must act on this. This is hate speech. You've got to do something about this". That is a completely arbitrary way to behave.

According to the Bill, Ofcom has no choice but to comply, and that obviously leads to the dangers of politicisation. I do not think it is scaremongering to say that this is politicisation and could compromise the independence of Ofcom. The Secretary of State's power of direction could mean that the Government are given the ability to shape the permissibility of categories of online content, based on the political mood of the day, and the political whims of a specific Secretary of State to satisfy a short-term moral panic on a particular issue.

One question for the Minister, and the Government, is: should you ever create powers that you would not want to see your political opponents exercising? The Secretary of State today will not always be the Secretary of State tomorrow; they will not always be in the same image. Awarding such overwhelming powers, and the potential politicising of policing speech, might feel comfortable for the Government today; it might be less comfortable when you look at the way that some people view, for example, the tenets of Conservatism.

In recent weeks, since a "National Conservatism" conference was held up the road, I have heard members of opposition parties describe the contents of Conservatism as "Trumpist", "far-right" and "fascist" hate speech. I am worried—on behalf of the Government—that some of those people might end up as a Secretary of State and it could all blow up in their face as it were, metaphorically.

In all seriousness, because I am really not interested in the fate of either the Opposition or the Government in terms of their parties, I am trying to say that it is too arbitrary. In a situation where we have such weak commitments to freedom of conscience, thought or speech in this Bill, I really do not want to give the Secretary of State the power to broaden out the targets that might be victim to it.

Finally—and I apologise to the noble Lord, Lord Moylan, who would have been much more professional, specific and hard-hitting on his amendment—from what I have heard, I hope that all the tablers of the amendments from all parties might well have got together by Report and come up with satisfactory amendments that will deal with this. I think we all agree, for once, that something needs to be done to curtail power. I look forward to supporting that later in the process.

5.15 pm

Baroness Kidron (CB): My Lords, I rise very briefly to support the amendments in the name of the noble Baroness, Lady Stowell, and the noble Lord, Lord Stevenson. Like other speakers, I put on record my support for the regulator being offered independence and Parliament having a role.

However, I want to say one very brief and minor thing about timing—I feel somewhat embarrassed after the big vision of the noble Baroness, Lady Stowell. Having had quite a lot of experience of code making over the last three years, I experienced the amount of time that the department was able to take in responding to the regulator as being a point of power, a point of lobbying, as others have said, and a point of huge distraction. For those of us who have followed the Bill for five years and as many Secretaries of State, we should be concerned that none of the amendments has quite tackled the question of time.

The idea of acting within a timeframe is not without precedent; the National Security and Investment Act 2021 is just one recent example. What was interesting about that Act was that the reason given for the Secretary of State's powers being necessary was as a matter of national security—that is, they were okay and what we all agree should happen—but the reason for the time restriction was for business stability. I put it to the Committee that the real prospect of children and other users being harmed requires the same consideration as business stability. Without a time limit, it is possible that inaction can be used to control or simply fritter away.

Lord Allan of Hallam (LD): My Lords, I will make a short contribution on this substantive question of whether concerns about ministerial overreach are legitimate. Based on a decade of being on the receiving end of representations from Ministers, the short answer is yes. I want to expand on that with some examples.

My experience of working on the other side, inside a company, was that you often got what I call the cycle of outrage: something is shared on social media that upsets people; the media write a front-page story about it; government Ministers and other politicians get involved; that then feeds back into the media and the cycle spins up to a point where something must be done. The "something" is typically that the Minister summons people, such as me in my old job, and brings them into an office. That itself often becomes a major TV moment, where you are brought in, browbeaten and sent out again with your tail between your legs, and the Minister has instructed you to do something. That entire process takes place in the political rather than the regulatory domain.

I readily concede that, in many cases, something of substance needed to be addressed and there was a genuine problem. It is not that this was illegitimate, but these amendments are talking about the process for what we should do when that outrage is happening. I agree entirely with the tablers of the amendments that, to the extent that that process can be encapsulated within the regulator rather than a Minister acting on an ad hoc basis, it would be a significant improvement.

I also note that this is certainly not UK-specific, and it would happen in many countries with varying degrees of threat. I remember being summoned to the Ministry of the Interior in Italy to meet a gentleman who has now sadly passed. He brought me into his office, sat me down, pointed to his desk and said "You see that desk? That was Mussolini's desk". He was a nice guy and I left with a CD of his rhythm and blues band, but it was clear that I was not supposed

to say no to him. He made a very clear and explicit political direction about content that was on the platform.

One big advantage of this Bill is that it has the potential to move beyond that world. It could move from individual people in companies—the noble Baroness, Lady Stowell of Beeston, made this point very powerfully—to changing the accountability model away from either platforms being entirely accountable themselves or platforms and others, including Ministers, somehow doing deals that will have an impact, as the noble Baroness, Lady Fox, and the noble Viscount, Lord Colville, said, on the freedom of expression of people across the country. We do not want that.

We want to move on in the Bill and I think we have a model which could work. The regulator will take on the outrage and go as far as it can under the powers granted in the Bill. If the regulator believes that it has insufficient powers, it will come back to Parliament and ask for more. That is the way in which the system can and should work. I think I referred to this at Second Reading; we have an opportunity to create clear accountability. Parliament instructs Ofcom, which instructs the platforms. The platforms do what Ofcom says, or Ofcom can sanction them. If Ofcom feels that its powers are deficient, it comes back to Parliament. The noble Lord, Lord Stevenson, and others made the point about scrutiny and us continually testing whether Ofcom has the powers and is exercising them correctly. Again, that is entirely beneficial and the Government should certainly be minded to accept those amendments.

With the Secretary of State powers, as drafted in the Bill and without the amendments we are considering today, we are effectively taking two steps forward and one step back on transparency and accountability. We have to ask: why take that step back when we are able to rely on Ofcom to do the job without these directions?

The noble Baroness, Lady Stowell of Beeston, made the point very clearly that there are other ways of doing this. The Secretary of State can express their view. I am sure that the Minister will be arguing that the Secretary of State's powers in the Bill are better than the status quo because at least what the Secretary of State says will be visible; it will not be a back-room deal. The noble Baroness, Lady Stowell of Beeston, has proposed a very good alternative, where the Secretary of State makes visible their intentions, but not in the form of an order—rather in the form of advice. The public—it is their speech we are talking about—then have the ability to see whether they agree with Ofcom, the companies or the Secretary of State if there is any dispute about what should happen.

It is certainly the case that visible instructions from the Secretary of State would be better, but the powers as they are still leave room for arm-twisting. I can imagine a future scenario in which future employees of these platforms are summoned to the Secretary of State. But now the Secretary of State would have a draft order sitting there. The draft order is Mussolini's desk. They say to the people from the platforms, "Look, you can do what I say, or I am going to send an order to Ofcom". That takes us back to this world in which the public are not seeing the kind of instructions being given.

I hope that the Government will accept that some amendment is needed here. All the ones that have been proposed suggest different ways of achieving the same objective. We are trying to protect future Secretaries of State from an unhealthy temptation to intervene in ways that they should not.

Baroness Harding of Winscombe (Con): My Lords, on day eight of Committee, I feel that we have all found our role. Each of us has spoken in a similar vein on a number of amendments, so I will try to be brief. As the noble Lord, Lord Allan, has spoken from his experience, I will once again reference my experience as the chief executive, for seven years, of a business regulated by Ofcom; as the chair of a regulator; and as someone who sat on the court of, arguably, the most independent of independent regulators, the Bank of England, for eight years.

I speak in support of the amendments in the name of my noble friend Lady Stowell, because, as a member of the Communications and Digital Committee, my experience, both of being regulated and as a regulator, is that independent regulators might be independent in name—they might even be independent in statute—but they exist in the political soup. It is tempting to think that they are a sort of granite island, completely immovable in the political soup, but they are more like a boat bobbing along in the turbulence of politics.

As the noble Lord, Lord Allan, has just described, they are influenced both overtly and subtly by the regulated companies themselves—I am sure we have both played that game—by politicians on all sides, and by the Government. We have played these roles a number of times in the last eight days; however, this is one of the most important groups of amendments, if we are to send the Bill back in a shape that will really make the difference that we want it to. This group of amendments challenges whether we have the right assignment of responsibility between Parliament, the regulator, government, the regulated and citizens.

It is interesting that we—every speaker so far—are all united that the Bill, as it currently stands, does not get that right. To explain why I think that, I will dwell on Amendment 114 in the name of my noble friend Lady Stowell. The amendment would remove the Secretary of State's ability to direct Ofcom to modify a draft of the code of practice "for reasons of public policy". It leaves open the ability to direct in the cases of terrorism, child sexual abuse, national security or public safety, but it stops the Secretary of State directing with regard to public policy. The reason I think that is so important is that, while tech companies are not wicked and evil, they have singularly failed to put internet safety, particularly child internet safety, high enough up their pecking order compared with delivering for their customers and shareholders. I do not see how a Secretary of State will be any better at that.

Arguably, the pressures on a Secretary of State are much greater than the pressures on the chief executives of tech companies. Secretaries of State will feel those pressures from the tech companies and their constituents lobbying them, and they will want to intervene and feel that they should. They will then push that bobbing boat of the independent regulator towards whichever shore they feel they need to in the moment—but that

[Baroness Harding of Winscombe]
is not the way you protect people. That is not the way that we treat health and safety in the physical world. We do not say, "Well, maybe economics is more important than building a building that's not going to fall down if we have a hurricane". We say that we need to build safe buildings. Some 200 years ago, we were having the same debates about the physical world in this place; we were debating whether you needed to protect children working in factories, and the consequences for the economics. Well, how awful it is to say that today. That is the reality of what we are saying in the Bill now: that we are giving the Secretary of State the power to claim that the economic priority is greater than protecting children online.

I am starting to sound very emotional because at the heart of this is the suggestion that we are not taking the harms seriously enough. If we really think that we should be giving the Secretary of State the freedom to direct the regulator in such a broad way, we are diminishing the seriousness of the Bill. That is why I wholeheartedly welcome the remark from the noble Lord, Lord Stevenson, that he intends to bring this back with the full force of all of us across all sides of the Committee, if we do not hear some encouraging words from my noble friend the Minister.

The Lord Bishop of Oxford: My Lords, it is pleasure to follow the noble Baroness, Lady Harding, whose very powerful speech took us to the heart of the principles behind these amendments. I will add my voice, very briefly, to support the amendments for all the key reasons given. The regulator needs to be independent of the Secretary of State and seen to be so. That is the understandable view of the regulator itself, Ofcom; it was the view of the scrutiny committee; and it appears to be the view of all sides and all speakers in this debate. I am also very supportive of the various points made in favour of the principle of proper parliamentary scrutiny of the regulator going forward.

One of the key hopes for the Bill, which I think we all share, is that it will help set the tone for the future global conversation about the regulation of social media and other channels. The Government's own impact assessment on the Bill details parallel laws under consideration in the EU, France, Australia, Germany and Ireland, and the noble Viscount, Lord Colville, referred to standards set by UNESCO. The standards set in the OSB at this point will therefore be a benchmark across the world. I urge the Government to set that benchmark at the highest possible level for the independence and parliamentary oversight of the regulator.

5.30 pm

Lord Bethell (Con): My Lords, I speak to support my noble friend Lady Stowell and the noble Lord, Lord Stevenson. I would like to share two insights: one a piece of experience from my role as a junior Minister, and one as it bears down on the Bill.

As a junior Health Minister responsible for innovation and life sciences, it was my responsibility to look after 22 arm's-length bodies, including the MHRA—an incredibly powerful regulator, possibly as powerful and important as Ofcom is, and certainly will be under this new Bill. As the junior Minister, you are under huge pressure from civil society, from the pharma industry and from noble Lords—some of whom I see in the Chamber today—who all have extremely strong opinions about the regulation of medicines. They also have, at times, very important insights about patients and what might be able to be done if certain innovative medicines could be accelerated. The great thing about being the Life Sciences Minister is that there is nothing you can do about it whatever. Your hands are tied. The MHRA obeys science and the regulation of science and not, I am pleased to say, Ministers, because Ministers are not good people to judge the efficacy and safety of medicines.

My advice to the Minister is to embrace the Bethell principle: that it is a huge relief not to be able to interfere in the day-to-day operations of your regulator. I remember speaking at a G7 meeting of Health Ministers to one of my compadres, who expressed huge envy for the British system because he had demonstrators and political donors on his back night and day, trying to get him to fix the regulations one way or the other. That is my point about the day-to-day management and implementation of policy.

When it comes to the objectives of the regulator, the Bill maybe leaves scope for some improvement. I thought my noble friend put it extremely well: it is where Parliament needs to have a voice. We have seen that on the subject of age verification for porn—a subject I feel very strongly about—where, at the moment, Parliament is leaving it to the regulator to consult industry, users of the internet and wider civic society to determine what the thresholds for age verification should be. That is a mistake; it is not the right way round to do things. It is where Parliament should have a voice, because these are mandatory population-wide impositions. We are imposing them on the population, and that is best done by Parliament, not the regulator. It needs the heft of Parliament when it comes to imposing and enforcing those regulations. If you do not have that parliamentary heft, the regulator may be on a granite island but it would be a very lonely island without the support it needs when taking on extremely powerful vested interests. That is why Parliament needs a reach into the system when it comes to objective setting.

Lord Clement-Jones (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Bethell, who is clearly passionate about this aspect. As the noble Baroness, Lady Harding, said, this is one of the most important groups of amendments that we have to debate on the Bill, even though we are on day eight of Committee. As she said, it is about the right assignment of responsibilities, so it is fundamental to the way that the Bill will operate.

My noble friend Lord Allan brilliantly summed up many of the arguments, and he has graphically described the problem of ministerial overreach, as did the noble Baroness, Lady Harding. We on these Benches strongly support the amendments put forward by the noble Lord, Lord Stevenson, and those put forward by the noble Baroness, Lady Stowell. Obviously, there is some difference of emphasis. They each follow the trail of the different committees of which their proposers were members, which is entirely understandable. I recall that the noble Lord, Lord Gilbert, was the hinge

between the two committees—and brilliantly he did that. I very much hope that, when we come back at the next stage, if the Minister has not moved very far, we will find a way to combine those two strands. I think they are extremely close—many noble Lords have set out where we are on accountability and oversight.

Strangely, we are not trying to get out of the frying pan of the Secretary of State being overbearing and move to where we have no parliamentary oversight. Both the noble Baroness, Lady Stowell, and the noble Lord, Lord Stevenson, are clearly in favour of greater oversight of Ofcom. The question is whether it is oversight of the codes and regulation or of Ofcom itself. I think we can find a way to combine those two strands. In that respect, I entirely agree with the noble Baroness, Lady Fox: it is all about making sure that we have the right kind of oversight.

I add my thanks to Carnegie UK. The noble Lord, Lord Stevenson, and the noble Baroness, Lady Stowell, set out the arguments, and we have the benefit of the noble Baroness's letter to the Secretary of State of 30 January, which she mentioned in her speech. They have set out very clearly where speakers in this debate unanimously want to go.

The Government have suggested some compromise on Clause 39. As the noble Lord, Lord Stevenson said, we have not seen any wording for that, but I think it is highly unlikely that that, by itself, will satisfy the House when we come to Report.

There are many amendments here which deal with the Secretary of State's powers, but I believe that the key ones are the product of both committees, which is about the Joint Committee. If noble Lords read the Government's response to our Joint Committee on the draft Bill, they will see that the arguments given by the Government are extremely weak. I think it was the noble Baroness, Lady Stowell, who used the phrase "democratic deficit". That is exactly what we are not seeking: we are trying to open this out and make sure we have better oversight and accountability. That is the goal of the amendments today. We have heard from the noble Viscount, Lord Colville, about the power of lobbying by companies. Equally, we have heard about how the Secretary of State can be overbearing. That is the risk we are trying to avoid. I very much hope that the Minister sees his way to taking on board at least some of whichever set of amendments he prefers.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the amendments concern the independence of Ofcom and the role of parliamentary scrutiny. They are therefore indeed an important group, as those things will be vital to the success of the regime that the Bill sets up. Introducing a new, ground-breaking regime means balancing the need for regulatory independence with a transparent system of checks and balances. The Bill therefore gives powers to the Secretary of State comprising a power to direct Ofcom to modify a code of practice, a power to issue a statement of strategic priorities and a power to issue non-binding guidance to the regulator.

These powers are important but not novel; they have precedent in the Communications Act 2003, which allows the Secretary of State to direct Ofcom in respect of its network and spectrum functions, and the Housing and Regeneration Act 2008, which allows the Secretary of State to make directions to the Regulator of Social Housing to amend its standards. At the same time, I agree that it is important that we have proportionate safeguards in place for the use of these powers, and I am very happy to continue to have discussions with noble Lords to make sure that we do.

Amendment 110, from the noble Lord, Lord Stevenson, seeks to introduce a lengthier process regarding parliamentary approval of codes of practice, requiring a number of additional steps before they are laid in Parliament. It proposes that each code may not come into force unless accompanied by an impact assessment covering a range of factors. Let me reassure noble Lords that Ofcom is already required to consider these factors; it is bound by the public sector equality duty under the Equality Act 2010 and the Human Rights Act 1998 and must ensure that the regime and the codes of practice are compliant with rights under the European Convention on Human Rights. It must also consult experts on matters of equality and human rights when producing its codes.

Amendment 110 also proposes that any designated Select Committee in either House has to report on each code and impact assessment before they can be made. Under the existing process, all codes must already undergo scrutiny by both Houses before coming into effect. The amendment would also introduce a new role for the devolved Administrations. Let me reassure noble Lords that the Government are working closely with them already and will continue to do so over the coming months. As set out in Schedule 5 to the Scotland Act 1998, however, telecommunications and thereby internet law and regulation is a reserved policy area, so input from the devolved Administrations may be more appropriately sought through other means.

Amendments 111, 113, 114, 115, and 117 to 120 seek to restrict or remove the ability of the Secretary of State to issue directions to Ofcom to modify draft codes of practice. Ofcom has great expertise as a regulator, as noble Lords noted in this debate, but there may be situations where a topic outside its remit needs to be reflected in a code of practice. In those situations, it is right for the Government to be able to direct Ofcom to modify a draft code. This could, for example, be to ensure that a code reflects advice from the security services, to which Ofcom does not have access. Indeed, it is particularly important that the Secretary of State be able to direct Ofcom on matters of national security and public safety, where the Government will have access to information which Ofcom will not.

I have, however, heard the concerns raised by many in your Lordships' House, both today and on previous occasions, that these powers could allow for too much executive control. I can assure your Lordships that His Majesty's Government are committed to protecting the regulatory independence of Ofcom, which is vital to the success of the framework. With this in mind, we have built a number of safeguards into the use of the powers, to ensure that they do not impinge on regulatory independence and are used only in limited circumstances and for the appropriate reasons.

[Lord Parkinson of Whitley Bay]

I have heard the strong feelings expressed that this power must not unduly restrict regulatory independence, and indeed share that feeling. In July, as noble Lords noted, the Government announced our intention to make substantive changes to the power; these changes will make it clear that the power is for use only in exceptional circumstances and will replace the "public policy" wording in Clause 39 with a defined list of reasons for which a direction can be made. I am happy to reiterate that commitment today, and to say that we will be making these changes on Report when, as the noble Lord, Lord Clement-Jones, rightly said, noble Lords will be able to see the wording and interrogate it properly.

Additionally, in light of the debate we have just had today—

Baroness Harding of Winscombe (Con): Can my noble friend the Minister clarify what he has just said? When he appeared in front of the Communications and Digital Committee, I think he might have been road-testing some of that language. In the specific words used, he would still have allowed the Secretary of State to direct Ofcom for economic reasons. Is that likely to remain the case? If it is, I feel it will not actually meet what I have heard is the will of the Committee.

5.45 pm

Lord Parkinson of Whitley Bay (Con): When we publish the wording, we will rightly have an opportunity to discuss it before the debate on Report. I will be happy to discuss it with noble Lords then. On the broader points about economic policy, that is a competency of His Majesty's Government, not an area of focus for Ofcom. If the Government had access to additional information that led them to believe that a code of practice as drafted could have a significant, disproportionate and adverse effect on the livelihoods of the British people or to the broader economy, and if it met the test for exceptional circumstances, taking action via a direction from the Secretary of State could be warranted. I will happily discuss that when my noble friend and others see the wording of the changes we will bring on Report. I am sure we will scrutinise that properly, as we should.

I was about to say that, in addition to the commitment we have already made, in the light of the debate today we will also consider whether transparency about the use of this power could be increased further, while retaining the important need for government oversight of issues that are genuinely beyond Ofcom's remit. I am conscious that, as my noble friend Lady Stowell politely said, I did not convince her or your Lordships' committee when I appeared before it with my honourable friend Paul Scully. I am happy to continue our discussions and I hope that we may reach some understanding on this important area.

Baroness Stowell of Beeston (Con): I am sorry to interrupt, but may I clarify what my noble friend just said? I think he said that, although he is open to increasing the transparency of the procedure, he does not concede a change—from direction to a letter about guidance which Ofcom should take account of. Is he willing to consider that as well?

Lord Parkinson of Whitley Bay (Con): I am happy to continue to discuss it, and I will say a bit more about the other amendments in this group, but I am not able to say much more at this point. I will happily follow this up in discussion with my noble friend, as I know it is an issue of interest to her and other members of your Lordships' committee.

The noble Lord, Lord Stevenson, asked about our international obligations. As noble Lords noted, the Government have recognised the importance of regulatory independence in our work with international partners, such as the Council of Europe's declaration on the independence of regulators. That is why we are bringing forward the amendments previously announced in another place. Ensuring that powers of direction can be issued only in exceptional circumstances and for a set of reasons defined in the Bill will ensure that the operational independence of Ofcom is not put at risk. That said, we must strike a balance between parliamentary oversight and being able to act quickly where necessary.

Regarding the amendment tabled by my noble friend Lady Stowell, which calls for all codes which have been altered by a direction to go through the affirmative procedure, as drafted, the negative procedure is used only if a direction is made to a code of practice relating to terrorism or child sexual exploitation or abuse, for reasons of national security or public safety. It is important that the parliamentary process be proportionate, particularly in cases involving national security or public safety, where a code might need to be amended quickly to protect people from harm. We therefore think that, in these cases, the negative procedure is more appropriate.

On timing, the Government are committed to ensuring that the framework is implemented quickly, and this includes ensuring that the codes of practice are in force. The threshold of exceptional circumstances for the power to direct can lead to a delay only in situations where there would otherwise be significant consequences for national security or public safety, or for the other reasons outlined today.

My noble friend Lord Moylan was not able to be here for the beginning of the debate on this group, but he is here now. Let me say a little about his Amendment 254. Under Clause 153, the Secretary of State can set out a statement of the Government's strategic priorities in relation to matters of online safety. This power is necessary, as future technological changes are likely to shape online harms, and the Government must be able to state their strategic priorities in relation to them. My noble friend's amendment would go beyond the existing precedent for the statement of strategic priorities in relation to telecommunications, management of the radio spectrum, and postal services outlined in the Communications Act. The Secretary of State must consult Ofcom and other appropriate persons when preparing this statement. This provides the opportunity for widespread scrutiny of a draft statement before it can be designated through a negative parliamentary procedure. We consider that the negative procedure is appropriate, in line with comparable existing arrangements.

Amendment 257 from the noble Lord, Lord Stevenson, seeks to remove the Secretary of State's power to issue guidance to Ofcom about the exercise of its online safety functions. Issuing guidance of this kind, with

appropriate safeguards, including consultation and limitations on its frequency, is an important part of future-proofing the regime. New information—for example, resulting from parliamentary scrutiny or technological developments—may require the Government to clarify the intent of the legislation.

Amendments 258 to 260 would require the guidance to be subject to the affirmative procedure in Parliament. Currently, Ofcom must be consulted, and any guidance must be laid before Parliament. The Bill does not subject the guidance to a parliamentary procedure because the guidance does not create any statutory requirements, and Ofcom is required only to have had regard to it. We think that remains the right approach.

The noble Lord, Lord Stevenson, has made clear his intention to question Clause 156, which grants the Secretary of State the power to direct Ofcom's media literacy activity only in special circumstances. This ensures that the regulatory framework is equipped to respond to significant future threats—for example, to the health or safety of the public, or to national security. I have already set out, in relation to other amendments, why we think it is right that the Secretary of State can direct Ofcom in these circumstances.

The delegated powers in the Bill are crucial to ensuring that the regulatory regime keeps pace with changes in this area. Amendment 290 from the noble Lord, Lord Stevenson, would go beyond the existing legislative process for these powers, by potentially providing for additional committees to be, in effect, inserted into the secondary legislative process. Established committees themselves are able to decide whether to scrutinise parts of a regime in more detail, so I do not think they need a Parkinson rule to do that.

Noble Lords have expressed a common desire to see this legislation implemented as swiftly as possible, so I hope they share our wariness of any amendments which could slow that process down. The process as envisaged in this amendment is an open-ended one, which could delay implementation. Of course, however, it is important that Parliament is able to scrutinise the work of the regulator. Like most other regulators, Ofcom is accountable to Parliament on how it exercises its functions. The Secretary of State is required to present its annual report and accounts before both Houses. Ministers from Scotland, Wales and Northern Ireland must also lay a copy of the report before their respective Parliament or Assembly. Moreover, the officers of Ofcom can be required to appear before Select Committees to answer questions about its operations on an annual basis. Parliament will also have a role in approving a number of aspects of the regulatory framework through its scrutiny of both the primary and secondary legislation. This will include the priority categories for harms and Ofcom's codes of practice.

More broadly, we want to ensure that this ground-breaking legislation has the impact we intend. Ongoing parliamentary scrutiny of it will be crucial to help to ensure that. There is so much expertise in both Houses, and it has already helped to improve this legislation, through the Joint Committee on the draft Bill, the DCMS Select Committee in another place and, of course, your Lordships' Communications and Digital Committee.

As my noble friend Lady Stowell said, we must guard against fragmentation and duplication, which we are very mindful of. Although we do not intend to legislate for a new committee—as I set out on previous occasions, including at Second Reading and before the Communications and Digital Committee—we remain happy to discuss possible mechanisms for oversight to ensure that we make best use of the expertise in both Houses of Parliament so that the Bill delivers what we want. With that, I hope that Members of the Committee will be happy to continue the discussions in this area and not press their amendments.

Lord Stevenson of Balmacara (Lab): I am grateful to the noble Lord for his comprehensive response and for the welcome change in tone and the openness to further debate and discussions. I thank all those who spoke in the debate. The noble Baroness, Lady Harding, was right: we are getting into a routine where we know roughly where our places are and, if we have contributions to make, we make them in the right order and make them comprehensive. We did our bit quite well, but I am afraid that the Minister's response made me a bit confused. As I said, I welcome the change of tone, the sense of engagement with some of the issues and the ability to meet to discuss ways forward in some of those areas. But he then systematically and rather depressingly shut off just about everything that I thought we were going to discuss. I may be overstating that, so I will read *Hansard* carefully to make sure that there are still chinks of light in his hitherto impenetrable armour. I really must stop using these metaphors—I thought that the noble Baroness, Lady Harding, had managed to get me off the hook with her question about whether we were an island of concrete rock, and about whether the boat was going to end up in the stormy sea that we were creating. I decided that I could not follow that, so I will not.

We ought to take forward and address three things, which I will briefly go through in the response. One that we did not nail down was the good point made by the noble Baroness, Lady Kidron, that we had focused on regulatory structures in the form of set bodies relating—or not relating—to parliamentary procedures and to Ministers and their operations. She pointed out that, actually, the whole system has a possible drag effect that we also need to think about. I note that good point because we probably need a bit of time to think about how that would work in the structures that come forward.

The noble Lord, Lord Allan, said that we are trying to look at the changing of the accountability model. I disagree with the word "changing" because we are not trying to change anything; we have a model that works, but the new factor that we are trying to accommodate is the intensity of interaction and, as we said, the amplification that comes from the internet. I worry that this was not being picked up enough in the Minister's response, but we will pick it up later and see if we can get through it.

The three points I wanted to make sure of were as follows. Following the line taken by the noble Baroness, Lady Stowell, one point is on trying to find a proper balance between the independence of the regulator; the Secretary of State's right, as an elected leader of

[Lord Stevenson of Balmacara]
this aspect of the Government, to make recommendations and proposals to that regulator on how the system can be better; and Parliament's ability to find a place in that structure, which is still eluding us a little, so we will need to spend more time on it. There is enough there to be reassured that we will find a way of balancing the independence of the regulator and the role of the Secretary of State. It does not need as many mentions in the legislation as it currently has. There is clearly a need for the Secretary of State to be able to issue direction in cases of national security et cetera—but it is the "et cetera" that I worry about: what are these instances? Until they are nailed down and in the Bill, there has to be a question about that.

6 pm

How Parliament relates to the process is not yet defined. There is a willingness to debate about that. We do not have to go down any of the models that have been discussed today, but there are interesting ways of trying to do that. I think there is a general sense around the Committee that we want Parliament to have a bigger role complementary to what is in the Bill but different from it in a way that will be helpful and supportive of what we are trying to do.

The noble Lord, Lord Bethell, was very good about his experiences as a Minister with a strong regulator. We should listen to him—as we must do on many other issues, of course. But on this one he makes a point that there is a strength to be gained by isolating the way in which Parliament, Ministers and the regulator operate. I hope very much we will get there. Are we a rock or are we a boat? I am not sure, but we want to have a good journey and I would like to look forward to having that in future. I beg leave to withdraw the amendment.

Amendment 110 withdrawn.

Amendments 111 and 112 not moved.

Clause 38 agreed.

Clause 39: Secretary of State's powers of direction

Amendments 113 to 119 not moved.

Clause 39 agreed.

Clause 40: Procedure for issuing codes of practice following direction under section 39

Amendment 120 not moved.

Clause 40 agreed.

Clauses 41 and 42 agreed.

Clause 43: Minor amendments of codes of practice

Amendment 121 not moved.

Clause 43 agreed.

Clause 44: Relationship between duties and codes of practice

Amendments 122 to 122ZB not moved.

Clause 44 agreed.

Clause 45 agreed.

Clause 46: Duties and the first codes of practice

Amendment 122ZC not moved.

Clause 46 agreed.

Clause 47: OFCOM's guidance about certain duties in Part 3

Amendment 122A

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

122A: Clause 47, page 46, line 10, after "29" insert ", except the duty set out in subsection (8A) of those sections"

Member's explanatory statement

This amendment ensures that OFCOM need not produce guidance about the new duties in clauses 19 and 29 to supply records of risk assessments to OFCOM.

Amendment 122A agreed.

Clause 47, as amended, agreed.

Clause 48: OFCOM's guidance: content that is harmful to children and user empowerment

Amendment 123 not moved.

Amendment 123A

Moved by ***Baroness Kidron***

123A: Clause 48, page 46, line 22, at end insert—

"(c) pornographic material that must be put behind age assurance as set out in section (Ofcom's guidance about age assurance).

Member's explanatory statement

This amendment ensures parity of age assurance between pornographic material on part 3 and part 5 services.

Baroness Kidron (CB): My Lords, it is a privilege to introduce Amendments 123A, 142, 161 and 184 in my name and those of the noble Lords, Lord Bethell and Lord Stevenson, and the right reverend Prelate the Bishop of Oxford. These amendments represent the very best of your Lordships' House and, indeed, the very best of Parliament and the third sector because they represent an extraordinary effort to reach consensus between colleagues across the House including both opposition parties, many of the Government's own Benches, a 40-plus group of Back-Bench Conservatives and the Opposition Front Bench in the other place. Importantly, they also enjoy the support of the commercial age check sector and a vast array of children's charities and, in that regard, I must mention the work of Barnardo's, CEASE and 5Rights, which have really led the charge.

I will spend the bulk of my time setting out in detail the amendments themselves, and I will leave my co-signatories and others to make the arguments for

them. Before I do, I once again acknowledge the work of the noble Baroness, Lady Benjamin, who has been fighting this fight for many years, and the noble Baroness, Lady Harding, whose characteristic pragmatism was midwife to the drafting process. I also acknowledge the time spent talking about this issue with the Secretary of State, the noble Lord the Minister and officials at DSIT. I thank them for their time and their level of engagement.

Let me first say a few words about age assurance and age verification. Age assurance is the collective term for all forms and levels of age verification, which means an exact age, and age estimation, which is an approximate or probable age. Age assurance is not a technology; it is any system that seeks to achieve a level of certainty about the age or age range of a person. Some services with restricted products and services have no choice but to have the very highest level of assurance or certainty—others less so.

To be clear at the outset, checking someone's age, whether by verification or estimation, is not the same as establishing identity. While it is absolutely the case that you can establish age as a subset of establishing someone's identity, the reverse is not necessarily true. Checking someone's age does not need to establish their identity.

Age assurance strategies are multifaceted. As the ICO's guidance in the age-appropriate design code explains, online services can deploy a range of methods to achieve the necessary level of certainty about age or age range. For example, self-verification, parental authentication, AI estimation and/or the use of passports and other hard identifiers may all play a role in a single age assurance strategy, or any one of them may be a mechanism in itself in other circumstances. This means that the service must consider its product and make sure that the level of age assurance meets the level of risk.

Since we first started debating these issues in the context of the Digital Economy Act 2017, the technology has been transformed. Today, age assurance might just as effectively be achieved by assessing the fluidity of movement of a child dancing in a virtual reality game as by collecting their passport. The former is over 94% accurate within five seconds and is specific to that particular child, while a passport may be absolute but less reliable in associating the check with a particular child. So, in the specific context of that dancing child, it is likely that the former gives the greater assurance. When a service's risk profile requires absolute or near absolute certainty—for example, any of the risks that are considered primary priority harms, including, but not limited to, pornography—having the highest possible level of assurance must be a precondition of access.

Age assurance can also be used to ensure that children who are old enough to use a service have an age-appropriate experience. This might mean disabling high-risk features such as hosting, livestreaming or private messaging for younger children, or targeting child users or certain age groups with additional safety, privacy and well-being interventions and information. These amendments, which I will get to shortly, are designed to ensure both. To achieve the levels of certainty and privacy which are widely and rightly demanded, the Bill must both reflect the current state of play and anticipate nascent and emerging technology that will soon be considered standard.

That was a long explanation, for which I apologise, but I hope it makes it clear that there is no single approach, but, rather, a need to clearly dictate a high bar of certainty for high-risk services. A mixed economy of approaches, all geared towards providing good outcomes for children, is what we should be promoting. Today we have the technology, the political will and the legislative mechanism to make good on our adult responsibilities to protect children online. While age assurance is eminently achievable, those responsible for implementing it and, even more importantly, those subject to it need clarity on standards; that is to say, rules of the road. In an era when data is a global currency, services have shown themselves unable to resist the temptation to repurpose information gleaned about the age of their users, or to facilitate the access to industrial amounts of harmful material for children for commercial gain. As with so many of tech's practices, this has eroded trust and heightens the need for absolute clarity on how services build their age-assurance systems and what they do—and do not do—with the information they gather, and the efficacy and security of the judgments they make.

Amendment 125A simply underlines the point made frequently in Committee by the noble Baroness, Lady Ritchie of Downpatrick, that the Bill should make it clear that pornography should not be judged by where it is found but by the nature of the material itself. It would allow Ofcom to provide guidance on pornographic material that should be behind an age gate, either in Part 3 or Part 5.

Amendment 142 seeks to insert a new clause setting out matters that Ofcom must reflect in its guidance for effective age assurance; these are the rules of the road. Age assurance must be secure and maintain the highest levels of privacy; this is paramount. I do not believe I need to give examples of the numerous data leaks but I note the excessive data harvesting undertaken by some of the major platforms. Age assurance must not be an excuse to collect users' personal and sensitive information unnecessarily, and it should not be sold, stored or used for other purposes, such as advertising, or offered to third parties.

Age assurance must be proportionate to the risk, as per the results of the child risk assessment, and let me say clearly that proportionality is not a route to allow a little bit of porn or a medium amount of self-harm, or indeed a lot of both, to a small number of children. In the proposed new clause, proportionality means that if a service is high-risk, it must have the highest levels of age assurance. Equally, if a service is low-risk or no-risk, it may be that no age assurance is necessary, or it should be unobtrusive in order to be proportionate. Age-assurance systems must provide mechanisms to challenge or change decisions to ensure that everyone can have confidence in their use, and they do not keep individuals—adults or children—out of spaces they have the right to be in. It must be inclusive and accessible so that children with specific accessibility needs are considered at the point of its design, and it must provide meaningful information so that users

[Baroness Kidron]
can understand the mode of operation. I note that the point about accessibility is of specific concern to the 5Rights young advisers. Systems must be effective. It sounds foolish to say so, but look at where we are now, when law in the US, Europe, the UK and beyond stipulates age restrictions and they are ignored to the tune of tens of millions of children.

Age assurance is not to rely solely on the user to provide information; a tick box confirming "I am 18" is not sufficient for any service that carries a modicum of risk. It must be compatible with the following laws: the Data Protection Act, the Human Rights Act, the Equality Act and the UNCRC. It must have regard to the risks and opportunities of interoperable age assurance, which, in the future, will see these systems seamlessly integrated into our services, just as opening your phone with your face, or using two-factor authentication when transferring funds, are already normalised. It must consult with the Information Commissioner and other persons relevant to technological expertise and an understanding of child development.

On that point, I am in full support of the proposal from the noble Lord, Lord Allan, to require Ofcom to produce regular reports on age-assurance technology, and see his amendment as a necessary companion piece to these amendments. Importantly, the amendment stipulates that the guidance should come forward in six months and that all systems of age assurance, whether estimated or verified, whether operated in-house or by third-party providers, and all technologies must adhere to the same principles. It allows Ofcom to point to technical standards in its guidance, which I know that the ISO and the IEEE are currently drafting with this very set of principles in mind.

6.15 pm

Amendment 161, which I promise I will get through a little more quickly, simply sets out the need for any regulated service to have an appropriate level of confidence in the age or age range of child relative to risk. It makes clear under what circumstances an age-assurance strategy is required and that any methodology is permitted provided it is adequate to the risk inherent in the service and meets Ofcom's guidance, which I have already spoken to. Paragraph 3 of the proposed new schedule specifies that the highest standard of age assurance is required for pornographic services covered by Part 5; that is, they must confirm beyond reasonable doubt that the user is not a child. It also makes provision for auditing systems that age-check children. Paragraph 4 deals expressly with pornography accessed via Part 3 services and, crucially, it requires the same high bar of age assurance to access pornography.

I pause for a moment to underline the fact that the impact on children from pornography, which I know other noble Lords will talk to, is not lessened by the route by which they access it it. Arguably, pornography that a child sees in the context of a Part 3 service of news, chatter and shopping is normalised by that context and, therefore, worse. So while we are clear that a Part 3 service must put material that reaches the definition of porn in Clause 70(2) behind an age gate, we are not, as some would suggest, age-gating the internet.

Paragraph 5 of the proposed new schedule makes it clear that a company must consider all parts of the service separately; for example, those that are high-risk may require a higher level of age-assurance than those that are not. Paragraph 3 makes it clear that existing users, as well as new users, should be given the benefit of the schedule. Paragraph 7 refers to the definition and Paragraph 8 is a commencement clause that requires this coming into effect within 12 months of the Act receiving Royal Assent, a subject to which I will return to in a moment.

Between them, Amendments 142 and 146 together and separately give the services, Ofcom and children the very best chance of introducing effective, privacy-preserving age-verification and estimation. There will be no more avoiding, no more excuses, no more using age checking as a data point for commercial purposes. While the Bill requires age assurance under certain circumstances, age checking as a concept is not brought in by this Bill. It is already widely demanded by US, EU and UK laws, but it is poorly done and largely unregulated, so we continue to see children in their millions accessing platforms they are too young to be on and children who are 13, but do not yet have adult capacity, being offered services designed for adults which do not account for their vulnerabilities.

That brings me to the idea of a commencement clause in both amendments. The failure to implement Part 3 of the DEA means there is simply no trust left in the community that the Government will do as they say or even that the Online Safety Act will do as it says. That is not helped by the repealing of Part 3 last week, hidden in a group of government amendments on devolution. Putting a time limit will, if history repeats itself, allow campaigners to go to the courts.

I am encouraged by indications that the Government will bring forward their own amendments and by their willingness to put some of this in the Bill; however, I must express a certain level of frustration at the tendency to reject what we have written in favour of something that clearly does less. I struggle to see why we need to argue that age assurance systems should be secure, that they should not use data for other purposes, that users should have a way of challenging age assurance decisions, or that they should be inclusive or accessible or take account of a child's need to access certain information. These are not aspirational; they are a critical intervention needed to make age assurance workable. They have had a great deal of expert input over many years, so much so that they have been adopted voluntarily by the commercial age check sector. More importantly, without a transparent and trusted system of age assurance, all the provisions in the Bill aimed at ensuring that children have heightened protections will fall down.

The bereaved parents of Olly, Molly, Breck, Frankie and Sophie have come to your Lordships' House to urge noble Lords to back these amendments. As they said when meeting Minister Scully, each of them had parental controls, each of them reported problems to companies, schools and/or the police—and still their children are dead. We need this regime for self-harm and pro-suicide material as much as we need it for pornography. If it were not against parliamentary rules, I would get down on my knees and beg the

Minister to go back to the department and say that these amendments must be passed with the full force of their meaning. This is robust, practical and much needed to make the Bill acceptable to adults and safe for children.

Amendment 184, also in my name, which seeks to establish the age of porn performers, will be spoken to by others at greater length, but I take the opportunity to tell your Lordships' House that this is already the case in the United States and it works very well. I suggest we follow suit. Finally, this group should be seen as a companion piece to the harms schedule put forward by the same group of noble Lords, and which has the full support of all those groups and people I mentioned at the outset. The scale and range of expertise that has gone into this package of amendments is astonishing and between them, they would go a very long way to ensure that companies do not profit from purveying harms to children. I beg to move.

Lord Bethell (Con): My Lords, it is a tremendous honour to speak after the noble Baroness, Lady Kidron. I think it fair to say that we would just not be here today if not for the advocacy she has performed on this issue and on the parallel issue of harms, over a great many years. I say to the Minister and to any in the Chamber who are thinking about being in the regulatory space in the years to come that they are going to have the noble Baroness on their back on these issues and it is very well worth listening to her words.

I echo the thanks and tributes the noble Baroness, Lady Kidron, has already paid, but I also want to single out the Minister and thank him for the leadership he has shown on these issues. I know he is very passionate about transforming our relationship in the digital world and the role the Bill can play, and we all recognise his commitment to making sure that the Bill gets over the line. I also thank those from another place who have passed us the Bill and are now closely watching our proceedings in this Chamber. We know that the Bill will be going back there and it is worth bearing in mind that these provisions have a lot of scrutiny and interest from Members of Parliament.

I am extremely concerned that for all the Bill's strengths—and it has a great many—the measures on age verification are ill-defined and require tightening up in five particular ways. As the noble Baroness, Lady Kidron, alluded to, I shall talk a little bit about the rationale for the amendments in my name and those of the noble Lord, Lord Stevenson, the right reverend Prelate the Bishop of Oxford and the noble Baroness, Lady Kidron, and also speak in support of amendments in the same group from the noble Baronesses, Lady Ritchie and Lady Benjamin, and the noble Lord, Lord Allan.

To summarise, I am concerned about a mindset that is in awe of and deeply concerned about a colossal tsunami of legal judicial reviews coming our way as a result of measures to put pornography behind age verification, and that somehow the route out of that is to go into the battlefield with a very loose set of arrangements defined in the Bill and to perform regulation by consultation. Consultations are invaluable when it comes to implementation but are not appropriate for setting objectives. I fear that too often in the Bill at the moment, it is the objectives that are going out to the public, to vested interests and to the industry to consult on, and that is why the amendment seeks to put some of those objectives in the Bill. We want to give a clear definition for age verification, to put in a clear timetable and to ensure that those consultations, which will be contested, can be clear and deliver clear value.

I want to talk about our effective age-assurance schedule; the introduction of a threshold of "beyond reasonable doubt"; the introduction of independent auditing of the performance of age-verification measures; and our wish to erase proportionality provisions for websites that carry pornographic content, to introduce a clear timetable and to protect underage performers. At present, the Bill gives the example of age verification as just one possible measure for protecting children from accessing pornography. However, nowhere in the Bill is a clear definition or standard set out that age verification should meet. The amendments seek to address that.

At the moment the Bill defines age assurance as

"measures designed to estimate or verify the age or age-range of users of a service".

That is just far too vague. There is no output-based performance standard. It leaves regulated services free to apply age-verification systems that at present have no clear oversight or quality control. We already know that some major platforms have a public position whereby apparently, they welcome child safety measures, but we also know that a great many pornography operators will resist implementing age verification to gain a competitive advantage or because they believe it will be detrimental to their business model. Leaving this wide-open gap for them to negotiate the operational efficiency of their age-verification measures is a big mistake.

That is why we have tabled Amendment 161, which would introduce an effective age-assurance schedule. That is an essential building block for the other amendments in this group, including the important Amendment 142. The effective age-assurance schedule would set out in the Bill the requirement for age checking about pornographic content to be of the absolute strongest kind. The amendment gives an indication of where the benchmark should be:

"'age verification' … beyond reasonable doubt".

The amendment also sets out the underlying principles of age-verification regimes: that they must be independently audited, effective and privacy-preserving. The amendment has with it a commencement date to ensure that other provisions for age-checking porn can happen as quickly as possible after Royal Assent of the Bill.

We all agree that verifying age should be based not on any particular technology but on an outcome threshold. That is why we have pushed so hard for the "beyond reasonable doubt" threshold. It is an effort to set a clear and high bar for access to pornography. If that does not happen, I fear that, under the cover of proportionality, Ofcom will accept that Part 3 services, the regular websites, will need only to apply estimation techniques rather than demanding an increased level of assurance to ensure that minors cannot access pornography wherever it is found.

[Lord Bethell]

We have had feedback from the Bill team that the phrase "beyond reasonable doubt" is more usually found in criminal proceedings than civil legislation. I am very open to a discussion about whether there is a better or alternative phrase. If the Minister would like to address that point from the Dispatch Box, that would be very welcome.

On independent auditing, a number of noble Lords in this Committee have noted their concerns about internet companies marking their own homework. My noble friend Lady Wyld mentioned that and made a comparison with her own daughter's homework provisions on an earlier day in Committee.

6.30 pm

The fear is that many of the large pornography companies are establishing their own age-verification companies. I admire their enthusiasm but doubt their intentions. It is incumbent on the Government to ensure that the tools they produce and implement meet the requirements of the legislation. For Ofcom to verify the effectiveness of a particular app or piece of software is neither intrusive nor a business restraint; it is simply about giving confidence to parents that the technology is robust and trustworthy. Therefore, we would look for this aspect of the amendment to be built into any age-verification system.

We need to be very clear about what we mean by "proportionate". We need to make it crystal clear that any pornographic content that meets the Bill's definition of pornography must always require verification at the outcome standard—we suggest "beyond reasonable doubt". The Gambling Commission does not apply any proportionality test to age restrictions, and nor do Soho nightclubs or the sellers of pornographic magazines. We have made it clear that the worst content should always meet this bar.

As drafted, the Bill creates a substantial loophole for social media, which my noble friend Lady Harding alluded to. While I appreciate the Minister's attempts to answer these questions during previous debates, it would be extremely helpful if he could address this point in his comments.

The timetable for these measures is a very significant issue. The noble Baroness, Lady Kidron, made this point extremely well. The Bill leaves the timetable for implementation completely open-ended. There is no clear road map from Ofcom for implementation and there is the opportunity for repeated delays. These measures have an enormous amount of public support and have the attention of both Houses. It is not reasonable to put forward legislation with an uncapped timetable attached.

Age verification is already in place in other countries. In the UK, video-on-demand platforms are already subject to age verification. The pornography industry was already preparing to implement AV in 2019 and therefore is ready to start implementing the changes quickly after measures are enacted. When the regulator and the legislature moved in Louisiana, the pornographic industry was able to bring in an implementation programme extremely quickly indeed.

On this issue, the Minister's words on timing at Second Reading did not provide any hard dates, sequences or an implementation programme. The Minister said that the Government intend

"to have the regime operational as soon as possible after Royal Assent".—[*Official Report*, 1/2/23; col. 774.]

As with Part 3 of the Digital Economy Act, which did not have a statutory deadline, there will always be a tendency to let the best be the enemy of the good, or to fear some kind of backlash from the industry that might delay commencement. That is why Amendment 142, in my name and those of the noble Baroness, Lady Kidron, the noble Lord, Lord Stevenson, and the right reverend Prelate the Bishop of Oxford, would direct Ofcom to prepare and issue a code of practice within six months of Royal Assent.

The issue of age verification and consent for performers is one I feel particularly strongly about. It is absolutely unconscionable that we do not have age verification and consent checks for anyone featured in pornographic content. We heard extremely powerful testimony at Second Reading from those who found that videos of themselves when they were underage were repeatedly featured on pornographic channels. It is impossible for them to take down that material or to reverse any decision they made to take part in one of these productions. It is absolutely our responsibility to change that with this Bill.

This was addressed in the House of Commons by Amendment 33 from Dame Diana Johnson. At that time, the Secretary of State, Jeremy Wright, claimed that the proposals were unworkable. I do not accept those points. There are many industries where the publishers establish the provenance of material, intellectual property ownership and the identity of participants. The music, film, gaming and software industries all have very good examples of good practice.

Many pornography sites already have measures in place to achieve these standards; for instance, OnlyFans, one of the largest players, has made steps in that direction. The pornography industry, often the originator of technology innovation, can surely find mechanisms to address this point—that is my view, and that of over 80% of the UK public. I very much hope that my noble friend the Minister will address this point, which is in Amendment 184, based on the Commons amendment from Dame Diana Johnson.

The measures in this group are not meant to stifle innovation or to hold back the industry—quite the opposite. My noble friend Lady Harding alluded to the Industrial Revolution; taking children out of the pits led to a great investment in, and the growth of, the coal mining industry. Setting clear tracks for progress and putting in place humane provisions create the conditions under which industries can flourish. I fear that, if we do not get this one right, we will be tripping over ourselves; the pornographic industry will become grit in the gears of industry for years to come. By being clearer and more emphatic in these measures, the Bill can be an agent for innovation and encourage a great flourishing of these very important industries.

Baroness Benjamin (LD): My Lords, I support everything that was said by the intrepid noble Baroness, Lady Kidron, and the noble Lord, Lord Bethell. I will speak to Amendment 185, which is in my name and is supported by the noble Lord, Lord Farmer. My amendment seeks to bring the regime for online pornography content in line with what exists offline.

The Video Recordings Act 1984 makes it a criminal offence to have prohibited content offline or to supply any unclassified work. Under this regulation, the BBFC will not classify any pornographic content that is illegal or material that is potentially harmful. That includes material that depicts or promotes child sex abuse, incest, trafficking, torture and harmful sexual acts. This content would not be considered R18, and so would be prohibited for DVD and Blu-ray. This also applies, under the Communications Act 2003, to a wide range of services that are regulated by Ofcom, from large providers such as ITVX or Disney+, to smaller providers including those that produce or provide pornographic content.

However, in the wild west of the online world, there is no equivalent regulation. Online pornography so far has been left to evolve without boundaries or limitations. Devastatingly, this has had a disastrous impact on child protection. Content that would be prohibited offline is widely available on mainstream pornographic websites. This includes material that promotes violent sexual activity, including strangulation; pornography that depicts incest, including that between father and daughters or brothers and sisters; and content that depicts sexual activity with adult actors made to look like children. This content uses petite, young-looking adult performers, who are made to look underage through props such as stuffed toys, lollipops and children's clothing. This blurring of the depiction of sexual activity with adult actors who are pretending to be underage makes it so much harder to spot illegal child sex abuse material.

According to research by Dr Vera-Gray and Professor McGlynn, incest pornography is rife. Online, all of this can be accessed at the click of a button; offline, it would not be sold in sex shops. Surely this Bill should bring an end to such disparities. This content is extremely harmful: promoting violence against girls and women, sexualising children and driving the demand for real child sex abuse material, which of course is illegal.

Depictions of sexual activity with the title "teen" are particularly violent. A study analysing the content of the three most accessed pornographic websites in the UK found that the three most common words in videos containing exploitation were "schoolgirl", "girl" and "teen". It is clear that underage sexual activity is implied. How have we as a society arrived at a point where one of the most commonly consumed pornographic genres is sexual violence directed at children?

Our security services can confirm this too. Retired Chief Constable Simon Bailey, the former child protection lead at the National Police Chiefs' Council, told the Independent Inquiry into Child Sex Abuse that the availability of pornography was

"creating a group of men who will look at pornography"

so much that they reach

"the point where they are simply getting no sexual stimulation from it … so the next click is child abuse imagery".

We know that the way pornography affects the brain means that users need more and more extreme content to fulfil themselves. It is like a drug. Pornography sites know this and exploit it. They design their sites to keep users for as long as possible, so as to increase exposure to adverts and therefore their revenue. They do this by presenting a user with ever-more extreme content. In 2021, Dr Vera-Gray and Professor McGlynn found that one in every eight titles advertised to a new user described acts of sexual violence.

I recently hosted a screening of the harrowing documentary "Barely Legal" here in the House of Lords. The documentary demonstrated just how far the pornography industry will go to make a profit, using extremely young-looking adult actors in content that suggests sexual activity with underage girls. Believe it or not, the pornography industry is worth much more than Hollywood; it makes thousands and thousands of dollars per second. Its quest for money comes at the expense of child protection and of society as a whole. This cannot be allowed to continue without regulation. Enough is enough.

Interviews with offenders who view illegal child sex abuse material in the UK indicate that most had not intentionally sought out child sex abuse materials. Nine out of 10 offenders said that they first encountered child sex abuse material through online pop-ups and linked material while looking at pornography sites.

I visited Rye Hill prison in Rugby, which houses over 600 sex offenders. Many said that they were affected by viewing porn, with devastating, life-changing outcomes. The largest ever survey of offenders who watch child sex abuse material online found significant evidence that those who watch illegal material are at high risk of going on to contact or abuse a child directly. Almost half said that they sought direct contact with children through online platforms after viewing child sexual abuse material.

This is an urgent and immediate child protection issue affecting our children. These concerns were shared earlier this year by the Children's Commissioner for England, whose research found that 79% of children had encountered violent pornography

"depicting … degrading or pain-inducing sex acts"

before they reached the age of 18. The impact that this is having on our children is immeasurable.

6.45 pm

I declare an interest as vice-president of the children's charity, Barnardo's. It has shared with many of us how its front-line services are working every day with children who have accessed pornography. It supports children who have taken part in acts that they have seen in pornographic videos, despite feeling uncomfortable and scared. Children see these acts as expected parts of relationships. I will never forget being told about a 10 year-old boy who said to a four year-old girl, "I'm going to rape you and you're going to like it". This is why I have campaigned to protect children from pornographic content for over a decade. We are creating a conveyor belt of child sex abusers who will inflict pain and suffering on others.

That is why I am supportive of the package of amendments tabled by the noble Baroness, Lady Kidron —whom I have the highest regard for—to ensure, among other vitally important things, that children are protected from accessing pornographic content. I believe that pornography is a gateway to so many other harms that are included in this Bill. Given the distinct proven harm of pornography, only the most

[Baroness Benjamin]
high-level age verification is acceptable, where the age of the user is proved to be 18 or above, beyond reasonable doubt.

I am supportive of the amendment tabled by the noble Baroness, Lady Kidron, and the noble Lord, Lord Bethell, which would place a duty on pornography companies to verify the age and consent of all performers in pornographic content. Pornography companies currently moderate user-uploaded pornographic content at great volume and speed, meaning that it is almost impossible for the moderators to spot content in which performers are underage or do not consent. Again, we cannot allow profit to come before protection, so this duty should be applied.

Without this package of amendments working in unison, the public health emergency of pornography—this devastating plague—will be allowed to create generations of children who are experiencing harm and generations of adults who create harm in their intimate relationships.

To sum up, I support a clearer definition of age assurance and age verification for pornography, and a six-month implementation deadline—we all know what happened with the repeated delays in implementing Part 3 of the Digital Economy Act 2017. We need performer age checks and quicker enforcement, without the need to go into court, and most of all, to cover all porn with the same regulation, whether on social media or on dedicated sites. I urge the Government to accept all these amendments. I look forward to receiving the Minister's assurances that this regulation of online pornographic content will be included within the scope of the Online Safety Bill. We need to show our children that we truly care.

The Lord Bishop of Oxford: My Lords, it is such a privilege to follow the noble Baroness, Lady Benjamin. I pay tribute to her years of campaigning on this issue and the passion with which she spoke today. It is also a privilege to follow the noble Baroness, Lady Kidron, and the noble Lord, Lord Bethell, in supporting all the amendments in this group. They are vital to this Bill, as all sides of this Committee agree. They all have my full support.

When I was a child, my grandparents' home, like most homes, was heated by a coal fire. One of the most vital pieces of furniture in any house where there were children in those days was the fireguard. It was there to prevent children getting too near to the flame and the smoke, either by accident or by design. It needed to be robust, well secured and always in position, to prevent serious physical harm. You might have had to cut corners on various pieces of equipment for your house, but no sensible family would live without the best possible fireguard they could find.

We lack any kind of fireguard at present and the Bill currently proposes an inadequate fireguard for children. A really important point to grasp on this group of amendments is that children cannot be afforded the protections that the Bill gives them unless they are identified as children. Without that identification, the other protections fail. That is why age assurance is so foundational to the safety duties and mechanisms in the Bill. Surely, I hope, the Minister will acknowledge both that we have a problem and that the present proposals offer limited protection. We have a faulty fireguard.

These are some of the consequences. Three out of five 11 to 13 year-olds have unintentionally viewed pornography online. That is most of them. Four out of five 12 to 15 year-olds say they have had a potentially harmful experience online. That is almost universal. Children as young as seven are accessing pornographic content and three out of five eight to 11 year-olds—you might want to picture a nine year-old you know—have a social media profile, when they should not access those sites before the age of 13. That profile enables them to view adult content. The nation's children are too close to the fire and are being harmed.

There is much confusion about what age assurance is. As the noble Baroness, Lady Kidron, has said, put simply it is the ability to estimate or verify an individual's age. There are many different types of age assurance, from facial recognition to age verification, which all require different levels of information and can give varying levels of assurance. At its core, age assurance is a tool which allows services to offer age-appropriate experiences to their users. The principle is important, as what might be appropriate for a 16 year-old might be inappropriate for a 13 year-old. That age assurance is absolutely necessary to give children the protections they deserve.

Ofcom's research shows that more than seven out of 10 parents of children aged 13 to 17 were concerned about their children seeing age-inappropriate content or their child seeing adult or sexual content online. Every group I have spoken to about the Bill in recent months has shared this concern. Age assurance would enable services to create age-appropriate experiences for children online and can help prevent children's exposure to this content. The best possible fireguard would be in place.

Different levels of age assurance are appropriate in different circumstances. Amendments 161 and 142 establish that services which use age assurance must do so in line with the basic rules of the road. They set out that age assurance must be proportionate to the level of risk of a service. For high-risk services, such as pornography, sites much establish the age of their users beyond reasonable doubt. Equally, a service which poses no risk may not need to use age assurance or may use a less robust form of age assurance to engage with children in an age-appropriate manner—for example, serving them the terms and conditions in a video format.

As has been said, age assurance must be privacy-preserving. It must not be used as an excuse for services to use the most intrusive technology for data-extractive purposes. These are such common-sense amendments, but vital. They will ensure that children are prevented from accessing the most high-risk sites, enable services to serve their users age-appropriate experiences, and ensure that age assurance is not used inappropriately in a way that contravenes a user's right to privacy.

As has also been said, there is massive support for this more robust fireguard in the country at large, across this House and, I believe, in the other place. I have not yet been able to understand, or begin to

understand, the Government's reasons for not providing the best protection for our children, given the aim of the Bill. Better safeguards are technically possible and eminently achievable. I would be grateful if the Minister could attempt to explain what exactly he and the Government intend to do, given the arguments put forward today and the ongoing risks to children if these amendments are not adopted.

Baroness Ritchie of Downpatrick (Lab): My Lords, it is a pleasure to follow the right reverend Prelate the Bishop of Oxford. He used an interesting analogy of the fireguard; what we want in this legislation is a strong fireguard to protect children.

Amendments 183ZA and 306 are in my name, but Amendment 306 also has the name of the noble Lord, Lord Morrow, on it. I want to speak in support of the general principles raised by the amendments in this group, which deal with five specific areas, namely: the definition of pornography; age verification; the consent of those participating in pornographic content; ensuring that content which is prohibited offline is also prohibited online; and the commencement of age verification. I will deal with each of these broad topics in turn, recognising that we have already dealt with many of the issues raised in this group during Committee.

As your Lordships are aware, the fight for age verification has been a long one. I will not relive that history but I remind the Committee that when the Government announced in 2019 that they would not implement age verification, the Minister said:

"I believe we can protect children better and more comprehensively through the online harms agenda".—[*Official Report*, Commons, 17/10/19; col. 453.]

Four years later, the only definition for pornography in the Bill is found in Clause 70(2). It defines pornographic content as

"produced solely or principally for the purpose of sexual arousal".

I remain to be convinced that this definition is more comprehensive than that in the Digital Economy Act 2017.

Amendment 183ZA is a shortened version of the 2017 definition. I know that the Digital Economy Act is out of vogue but it behoves us to have a debate about the definition, since what will be considered as pornography is paramount. If we get that wrong, age verification will be meaningless. Everything else about the protections we want to put in place relies on a common understanding of when scope of age verification will be required. Put simply, we need to know what it is we are subjecting to age verification and it needs to be clear. The Minister stated at Second Reading that he believed the current definition is adequate. He suggested that it ensured alignment across different pieces of legislation and other regulatory frameworks. In reviewing other legislation, the only clear thing is this: there is no standard definition of pornography across the legislative framework.

For example, Section 63 of the Criminal Justice and Immigration Act 2008 uses the definition in the Bill, but it requires a further test to be applied: meeting the definition of "extreme" material. Section 368E of the Communications Act 2003 regulates online video on demand services. That definition uses the objective tests of "prohibited material", meaning material too extreme to be classified by the British Board of Film Classification, and "specially restricted material", covering R18 material, while also using a subjective test that covers material that

"might impair the physical, mental or moral development"

of under-18s.

7 pm

This is wholly different from the definition in Clause 70(2). The Bill's definition is therefore not somehow aligned with other legislation. It primarily examines intention: why was a particular piece of content created? This is a subjective test that begs the question whether content providers could argue that the intent of the material is not sexual arousal but, for example, art or education, and therefore that it falls outside the scope of the Bill. Subjectivity must be removed as far as possible. Amendment 183ZA proposes adding an objective test: would the content receive, or has it been given, an R18 or 18 certificate, or would it be considered too extreme for either? The subjective test remains but makes it clear that the intention is for the Bill to cover material which, were it physical media, would receive a classification from the British Board of Film Classification that puts it firmly in the adult category. This definition is in line with offline platforms such as cinemas and DVDs and is broadly consistent with the definition already in place for other online platforms, such as video on demand services. Ensuring parity of regulation across platforms should be a key principle.

The Government have stated many times that what is illegal offline should be illegal online. It is illegal for a person to supply age-restricted physical media to someone below the age set by the British Board of Film Classification. This is exactly the same principle the Bill seeks to apply online by using age verification. I know your Lordships will agree that parents will expect the same standards that apply offline to apply online. Content deemed unsuitable for under-18s offline is unsuitable for them online. That is what the public expect this Bill to deliver, and my Amendment 183ZA seeks to do just that. Can the Minister be sure that the current definition will cover all material—18, R18 and unclassified—that would be age-gated for children offline?

That brings me to Amendment 185 in the name of the noble Baroness, Lady Benjamin, which also seeks parity between offline and online content by referencing the video on demand services standards. There is no barrier to finding material online which is illegal or so extreme that it would not receive a BBFC classification offline. Online, such material cannot be included in video on demand services, many of which are pornography providers. A couple of weeks ago, the noble Baroness, Lady Benjamin, hosted a film for us all to watch, and I must say I found that a very daunting video of what actually can happen. In the contribution of the noble Baroness this afternoon, she referred to a lot of what appeared on that day. That was most instructive, and it clearly told me that such material should be banned online and offline.

It seems absurd that if this Bill is passed as it stands, online content delivered by user-to-user services or commercial pornography sites will be held to a lower standard than other online content or content sold offline in shops. Amendment 185 makes it clear that the regulation of pornography should be consistent across all platforms.

[Baroness Ritchie of Downpatrick]

I will also make some comments about Amendment 184. Large pornography websites are filled with material that has been uploaded without consent. Material that features children is extremely concerning. Uploaded material also portrays adults filmed with consent but without their consent for it to be shared with the world. We also need to remember that pornography production can involve individuals trafficked, coerced, forced or threatened. There should be a way to verify an individual's age and their consent. Large porn companies need to be held to account. This Bill can deliver that, and I urge the Government to ensure that Amendment 184 is delivered on Report.

Regrettably, Amendments 184 and 185 would apply only to provider content, not user-to-user content—an issue I raised previously in Committee. That cannot be right and makes me wonder whether a service such as Pornhub might argue that third-party, studio-produced content that it uploads is not provider content and could be another loophole in the Bill. I do not wish to reopen a previous debate in Committee, but there needs to be parity across Parts 3 and 5 of the Bill. I note that the noble Baroness, Lady Kidron, who is a leading light on this issue, has tabled Amendment 123A in an attempt to bridge the gap between Parts 3 and 5. However, I do not think the amendment gets to the heart of the issue. Between now and Report, we need to work together across the House to ensure that this issue of parity between Parts 3 and 5 is dealt with.

I turn to the other amendments in the name of the noble Baroness, Lady Kidron, and others. The need for robust age verification for pornography is undisputed. The Bill clearly creates different regulatory frameworks for different types of content, based on who uploads it rather than its impact. I repeat that pornography, wherever it is found, should be regulated to the highest standards, with consistency across the Bill. That is why I welcome these amendments, which seek to ensure that anyone seeking to access pornographic content is verified as being aged 18 or older and that the standard of proof for their age is deemed beyond reasonable doubt. There needs to be consistent age verification, rather that age assurance, for pornographic content.

I have some questions for the noble Baroness about the detail. I am concerned that the amendments do not deal with different regulatory frameworks for pornography in Parts 3 and 5, creating potential loopholes which could be exploited by large pornography providers. I am particularly concerned about the approach taken in paragraphs 3 and 4 of the proposed new schedule in Amendment 161, and subsection (3)(c) of the proposed new clause in Amendment 142. My Amendments 183A and 183B, which we debated previously, would ensure that duties are consistent across the Bill, and I urge the noble Baroness to reflect on the need for clarity and consistency before Report.

Finally, I turn to my Amendment 306, also in the name of the noble Lord, Lord Morrow, which would ensure that age verification is brought into force within six months of the Bill receiving Royal Assent. A whole generation of children have become adults since the Digital Economy Act was passed but never commenced. That cannot be allowed to happen again and is why we need a clear commencement date in the Bill. Parents expect age verification—and swiftly. Given the recent welcome announcement that primary priority content, including pornography, will be named in the Bill, that should be an achievable goal.

I hope the Minister will commit to bringing this back on Report. I was concerned on 25 April when he said that the Government intend to commence Parts 3 and 5 at different times. I ask how this would work in practice, as a pornography provider may have its own provider content and user-to-user content on the same service, which implies that one part of the service would be regulated while the other would not. In theory, the content could be the same images. Logically, that content should be regulated from the same moment.

Thousands of children over the years have been let down. We know the harm that is caused by pornography. We legislated in 2017 to stop that harm, yet if the Ofcom road map is accurate it could be two or three more years before pornography is regulated. That is unacceptable. We must ensure that we do all we can to bring in age verification as quickly as possible.

Baroness Jenkin of Kennington (Con): My Lords, I too add my support to Amendments 123A, 142, 161, 183, 184, 185, 297, 300 and 306. I am grateful to my noble friend Lord Bethell and the noble Baroness, Lady Kidron, for putting before us such a comprehensive list of amendments seeking to protect children from a host of online harms, including online pornography. I am also grateful to the noble Baroness, Lady Benjamin, who, through her Amendment 185, draws our attention to the horrifying material that is prohibited in the offline world though is inexplicably legal in the online world. I also lend my support to Amendment 306 in the name of noble Baroness, Lady Ritchie, and the noble Lord, Lord Morrow, in relation to the swift implementation of age verification for pornography. I am sorry to have jumped the queue.

I spoke at Second Reading on the harms of pornography to children, but so much more evidence has come to my notice since then. I recently wrote an article for the *Daily Telegraph* about age verification, which resulted in my inbox being absolutely flooded by parents saying, "Please keep going". There are probably noble Lords here who feel that we have spoken enough about pornography over the last few weeks, but anybody who has watched any of this would, I am afraid, beg to differ. I hope noble Lords will forgive me for quoting from another email I received in response to that article, which is relevant to today's debate. A young man wrote:

"When I first visited online porn, I was about 12".

Incidentally, that is the average age at the first exposure. He said:

"I can remember feeling that this was 'wrong' but also that it was something that all boys do. I had no idea about masturbation, but that soon followed, and I was able to shake off the incredibly depressive sensation of having done something wrong after finishing by finding many online resources informing me that the practice was not bad, and actually quite healthy. Only over the past 3 years have I been able to tackle this addiction and I am now 31.

I will try and keep this letter as succinct as possible, but I believe the issue of pornography is at the root of so many issues in society that nobody, no man at least, seems willing to speak about it openly. If you research what happens in the brain of a person viewing pornography",

especially when so young,

"you see that the dopamine receptors get so fried it's almost as bad as a heroin experience and far more addictive. Far more addictive, in that I can just log on to my phone and open Pandora's box at any time, anywhere, and it's all free.

I'll tell you that I became alienated from women, in that I became afraid of them. Perhaps out of guilt for looking at pornography. Instead of having the confidence to ask a girl out and experience an innocent teenage romance, I would be in my room looking at all sorts of images.

The human brain requires novelty, mine does at least, so soon you find yourself veering off from the boring vanilla porn into much darker territories.

The internet gives you access to literally everything you could possibly imagine, and the more you get sucked down the rabbit hole, the more alienated you become from your peers. You are like an addict searching for your next hit, your whole world revolves around your libido and you can't actually look at a woman without fantasising about sex.

Then if you do manage to enter into a relationship, the damage this causes is beyond comprehension. Instead of living each moment with your partner, you end up in a dual relationship with your phone, masturbating behind their back. In fact, your partner can't keep up with the porn, and you end up with issues with your erections and finding her attractive.

Whenever you would watch information about porn on TV or the internet, you would be told that it should be encouraged and is healthy. You end up trying to watch porn with your partner, and all the weird psychological ramifications that has. You go further down the rabbit-hole, but for some reason nothing feels right and you have this massive crippling depression following you wherever you go in life".

I hope noble Lords will forgive me for reading that fairly fully. It is a tiny illustration, and it is typical of how pornography steals men's childhoods and their lives. I discussed this with young men recently, and one told me that, because he had been in Dubai—where there is no access to it—for a month, he feels much better and plans to keep away from this addictive habit. When young men reach out to Peers because they have nowhere else to go, we must surely concede that we have failed them. We have failed generations of boys and girls—girls who are afraid to become women because of what they see—and, if we do not do something now, we will fail future generations.

7.15 pm

Porn addiction is very real and it is growing. As I just read, it triggers the dopamine processes in the brain and, just like addictive products such as tobacco and alcohol, it can create pathways within the brain that lead to cravings, which push consumers to search longer and continually for the same level of high. What is worse is that the amount of dopamine that floods the brain increases only with repeated consumption. Porn can trigger this process endlessly because it is endlessly available.

No one doubts that we have a serious problem on our hands. The Children's Commissioner report published in January this year made clear that the volume of pornography accessed by children is rising and that pornography exposure is widespread and normalised, to the extent that children cannot opt out. We know that it is shaping sexual scripts and, in the absence of good relationships and sex education, it is teaching children that violent sex is normal, that girls and children like to be subjugated, and that boys and men need to be dominating and violent. We cannot let this continue, which is why I support the package of amendments outlined today by the noble Baroness, Lady Kidron, and my noble friend Lord Bethell.

I strongly appreciate that the noble Baroness, Lady Ritchie, and the noble Lord, Lord Morrow, raised similar issues on the timeline for age verification. I am aware that the Bill makes provision for age verification for pornography, and I was relieved to hear that primary priority content and priority content would be in the Bill. But there is still a massive problem with the intended timeline for age verification: the Bill fails to outline a timeline for the implementation of it—there is no clear road map in the Bill—which allows for repeated delays. This is on top of what is already a repeated delay; as we heard, it could have been introduced in 2017. I and many others in both Houses fear that, without the timetable, it could be several more years before it is put into place. Parents expect age verification to start protecting children soon after Royal Assent, and a long delay will be unpopular and baffling to the public—it is baffling to me. Either it can be introduced now, in which case it should be, or it cannot, in which case I would be grateful if the Minister could explain why, in words that the public can understand.

I am also bewildered by the issue that the noble Baroness, Lady Benjamin, raised. I seek to support her by asking my noble friend the Minister: why is content depicting child sexual abuse allowed to be freely accessed online when it would be prohibited or illegal in the offline world? I watched with horror the documentary "Barely Legal", screened here last week. It outlined this violent and horrific material, with young women dressed up to look like children, told to look as young as possible and having sex—and worse—with older men. The instructions from the interviewed porn directors and producers who produce this material were that the younger these women could be made to look, the better. This material contributes to the number of porn consumers—mostly men—who, as a result of watching this material, seek out real child sexual abuse material. So I fully support the amendment from the noble Baroness, Lady Benjamin, which would make this content illegal and prohibited online, as it is offline. I ask my noble friend the Minister to explain why this is not already the case.

Lord Morrow (DUP): My Lords, I wish to direct my comments to Amendments 123A, 142, 161, 183, 297 and 306, and I want to focus mainly on age verification.

The starting point for effective age verification is being able to define what it is that is being regulated. That is why I support Amendment 183ZA in the name of the noble Baroness, Lady Ritchie. Without that clarity on what it is that needs to be age verified, the expectation of parents will not be met, and children who deserve the strongest and fullest protection will still be subject to harm. The noble Baroness made a convincing case for parity of regulation across different media, and that indeed was the principle behind the definition in the Digital Economy Act 2017. I hope that the Minister will set out either today in the Committee or via a letter afterwards how content which would fall under the different British Board of Film Classification ratings of 18, R18 and unclassified would be treated under the definition in this Bill. I cannot stress this enough: a proper definition of pornography is the foundation of good age-verification legislation. I agree with the noble Baroness, Lady Ritchie, that the definition in the Bill is just not robust.

[Lord Morrow]

I stood here on 28 January 2022 at the Second Reading of my Private Member's Bill encouraging the Government to bring into effect Part 3 of the Digital Economy Act 2017, which would have brought in age verification for commercial pornographic websites. Looking back to 2017, that legislation seems pioneering. Other countries have implemented similar measures since, but our children are still waiting despite the Government's assurances, when they postponed implementation of Part 3 in October 2019 in favour of the Bill we are debating today, that preventing children's access to pornography is a critically urgent issue. It still is. On 9 May, the Children's Commissioner again reiterated the importance of age verification. She said,

"I am categorically clear: no child should be able to access or watch pornography. Protecting children from seeing inappropriate material is critical".

I congratulate the noble Baroness, Lady Kidron, on yet again trying to persuade the Government to protect children in a robust manner. I am also pleased to support the noble Baroness, Lady Ritchie, as a co-signatory to her Amendment 306. She has learned the lessons of 2017 and is seeking to ensure that this policy cannot be abandoned again. A six-month implementation clause is the very least that we should accept.

It is now well documented that early exposure to pornography carries with it a host of harms—we have just heard something about that from the previous speaker—for the children and young people exposed and for society more widely. The Children's Commissioner has plainly spelled out those harms in the reports she has published this year. These dangers are ones which parents alone are unable to prevent. With pornography now merely one click away for children across the UK, it is no wonder that the majority of children have already been exposed to pornography before they become teenagers. It is heartbreaking that most children report that they have been exposed to it accidentally. The reality is that robust age verification is an effective antidote to this pervasive problem. Shockingly, only 4.5% of the top 200 pornographic websites have any mechanism to prevent or detect children accessing their sites, and it is unlikely that they would meet the bar of robust age verification.

It is clear that there is almost unanimous support for age verification across your Lordships' House. However the question before us is whether the Bill as it stands enables a robust enough level of protection. I welcome the duties in Clauses 11 and 22 on age verification. At present, the Bill enables pornographic sites to apply a light touch and, potentially, entirely inadequate age verification. Without a coherent, consistent approach, we are leaving the door open to those wishing to circumvent the prevention of harm we are putting in place.

Considering what we know and have heard about this industry, while the inclusion of age verification checks is welcome, is it really appropriate to leave the critical task of designing and implementing them to the pornography industry? I feel not. Should they be the ones charged with safeguarding our children and young people? Really? Would many in the pornographic industry prioritise their own web traffic over the welfare of children and young people? I think the answers to those questions are very clear.

Amendments 142 and 161 set higher standards so that the test is that there should be a "beyond reasonable doubt" age verification approach which should apply to Part 5 services or material that meet the definition of pornography in Clause 70(2). This will ensure children and young people are proactively protected from the deeply detrimental impact of online pornography.

While I welcome the new schedule introduced by Amendment 161, one of my key concerns is that there should be a consistent approach to enforcement of age verification when it comes to online pornography. Regardless of which websites it is found on, all forms of pornography should be held to the highest possible regulatory standards. I recognise that the noble Baroness has sought to go some way to addressing this with Amendment 123A, but this covers only Ofcom guidance on what constitutes pornographic material, rather than the requirements of age verification per se and the duty under Clause 11. Indeed, the amendment refers to age assurance, not age verification.

I know that we have already debated these points under earlier amendments tabled by the noble Baroness, Lady Ritchie, but the importance of the point cannot be overstated. Indeed, the Children's Commissioner said the same in her report of 9 May, saying that the requirement for robust age verification must be

"consistent across all types of regulated services – both user to user sites and pornography providers".

I must ask the noble Baroness, Lady Kidron—who I have admired on what she has been doing here—why paragraphs 3 and 4 of the proposed new schedule in Amendment 161 create different barriers under separate regulatory regimes for Part 3 services and Part 5 services. Why does the new clause proposed in Amendment 142 on the Ofcom guidance on age assurance refer only to Part 5 in subsection (3)(c)? Why is it that regulatory regimes for content produced by providers will differ from those where content is uploaded by users?

As it stands, those two regulatory regimes will be treated differently and, as I have said, I am not reassured by Amendment 123A. My concern is that, without change, we will not see all digital pornography treated with parity, serving only to create ambiguity and potential loopholes. I hope your Lordships will take note of the advice of the Children's Commissioner and prevent that happening.

I would also like to ask the noble Baroness about her plans for bringing this schedule into effect. Paragraph 8 says the schedule should be in effect within 12 months, but there is no obligation elsewhere to bring in Parts 3 and 5 on that same timetable, so age verification may be required but could not be implemented until other parts of the Bill are commenced.

I urge the noble Baroness, Lady Kidron, to take note of Amendment 306 in the name of the noble Baroness, Lady Ritchie, which puts the commencement elements of age verification into the commencement clause with a timetable of three months for the Ofcom guidance and the rest of Part 5 and relevant enforcement powers within six months. Of course, the noble Baroness, Lady Ritchie, in her earlier amendments, intended for Part 3 to have the same duties as Part 5 and I certainly hope we will come back to that on Report. I was concerned that, at the end of that debate, the Minister said about commencement:

"This may mean there will be a limited period of time during which Part 5 protections are in place ahead of those in Part 3". —[*Official Report*, 25/4/23; col. 1201.]

This again reiterates a dual approach to Part 3 and Part 5 services which host pornography.

I hope the Minister will assure us that it is no longer the Government's plan that pornography will be on the face of the Bill as primary priority content, and that they are making it clear to service providers now that they need to plan to prevent children accessing this material, so it will be possible to commence the duties at the same time. Indeed, this would be in line with the comments made by the Minister in Committee in the other place, although I regret that he was not as ambitious about the timetable as Amendment 306.

7.30 pm

I conclude by saying that we are well aware of the dangers that online pornography poses and, while age verification on pornographic websites is an important step forward, we must utilise this opportunity to ensure that the age verification processes are robust and able to function in such a way as to prevent children and young people being exposed to pornography. This change should be brought in as soon as possible and consistently across the Bill.

Lord Farmer (Con): My Lords, I support the noble Baroness, Lady Benjamin, in bringing the need for consistent regulation of pornographic content to your Lordships' attention and have added my name in support of Amendment 185. I also support Amendments 123A, 142, 161, 183, 184 and 306 in this group.

There should not be separate regimes for how pornographic content is regulated in this country. I remember discussions about this on Report of the Digital Economy Bill around six years ago. The argument for not making rules for the online world consistent with those for the offline world was that the CPS was no longer enforcing laws on offline use anyway. Then as now, this seems simply to be geared towards letting adults continue to have unrestricted access to an internet awash with pornographic material that depicts and/or promotes child sexual abuse, incest, trafficking, torture, and violent or otherwise harmful sexual acts: adult freedoms trumping all else, including the integrity of the legal process. In the offline world, this material is illegal or prohibited for very good reason.

The reason I am back here, arguing again for parity, is that, since 2017, an even deeper seam of academic research has developed which fatally undermines the case for untrammelled cyber-libertarianism. It has laid bare the far-reaching negative impacts that online pornography has had on individuals and relationships. One obvious area is the sharp rise in mental ill-health, especially among teenagers. Research from CEASE, the Centre to End All Sexual Exploitation, found that over 80% of the public would support new laws to limit free and easy access.

Before they get ensnared—and some patients of the Laurel Centre, a private pornography addiction clinic, watch up to 14 hours of pornography a day—few would have been aware that sexual arousal chained to pornography can make intimate physical sex impossible to achieve. Many experience pornography-induced erectile dysfunction and *Psychology Today* reports that

"anywhere from 17% to 58% of men who self-identify as heavy/compulsive/addicted users of porn struggle with some form of sexual dysfunction".

As vice-chair of the APPG on Issues Affecting Men and Boys, I am profoundly concerned that very many men and boys are brutalised by depictions of rape, incest, violence and coercion, which are not niche footage on the dark web but mainstream content freely available on every pornography platform that can be accessed online with just a few clicks.

The harms to their growing sons, which include an inability to relate respectfully to girls, should concern all parents enough to dial down drastically their own appetite for porn. There is enormous peer pressure on teenage boys and young men to consume it, and its addictive nature means that children and young people, with their developing brains, are particularly susceptible. One survey of 14 to 18 year-olds found almost a third of boys who used porn said it had become a habit or addiction and a third had enacted it. Another found that the more boys watched porn and were sexually coercive, the less respect they had for girls.

Today's headlines exposed the neurotoxins in some vaping products used by underage young people. There are neurotoxins in all the porn that would be caught by subsection 368E(2) of the Communications Act 2003, if it was offline—hence the need for parity and, just like the vapes, children as well as adults will continue to be exposed. Trustworthy age verification will stop children stumbling across it or finding it in searches, but adults who are negligent, or determined to despoil children's innocence, will facilitate their viewing it if it remains available online. This Bill will not make the UK the safest place in the world for children online if we continue to allow content that should be prohibited, for good reason, to flood into our homes.

Helen Rumbelow, writing in the *Times* earlier this month, said the public debate—the backdrop to our own discussions in this Bill—is "spectacularly ill-informed" because we only talk about porn's side-effects and not what is enacted. So here goes. Looking at the most popular pages of the day on Pornhub, she found that 12 out of 32 showed men physically abusing women. One-third of these showed what is known as "facial abuse", where a woman's airway is blocked by a penis: a porn version of waterboarding torture. She described how

"in one a woman is immobilised and bound by four straps and a collar tightened around her neck. She ends up looking like a dead body found in the boot of a car. In another a young girl, dressed to look even younger in a pair of bunny ears and pastel socks, is held down by an enormous man pushing his hand on her neck while she is penetrated. The sounds that came from my computer were those you might expect from a battle hospital: cries of pain, suction and "no, no, no". I won't tell you the worst video I saw as you may want to stop reading now. I started to have to take breaks to go outside and look at the sky and remember kindness".

Turning briefly to the other amendments, I thank my noble friend Lord Bethell for his persistence in raising the need for the highest standard of age verification for pornography. I also commend the noble Baroness, Lady Kidron, for her continued commitment to protecting children from harmful online content and for representing so well the parents who have lost children, in the most awful of circumstances, because of online harms. I therefore fully support the package of amendments in this group tabled by the noble Baroness, Lady Kidron, and my noble friend Lord Bethell.

[Lord Farmer]

This Bill should be an inflection point in history and future generations will judge us on the decisions we make now. It is highly like they will say "Shame on them". To argue that we cannot put the genie back in the bottle is defeatist and condemns many of our children and grandchildren to the certainty of a dystopic relational future. I say "certain" because it is the current reality of so many addicted adults who wish they could turn back the clock. Therefore, it is humane and responsible, not quaint or retrogressive, to insist that this Government act decisively to make online and offline laws consistent and reset the dial.

Lord Allan of Hallam (LD): My Lords, I will speak to my Amendment 232, as well as addressing issues raised more broadly by this group of amendments. I want to indicate support from these Benches for the broader package of amendments spoken to so ably by the noble Baroness, Lady Kidron. I see my noble friend Lord Clement-Jones has returned to check that I am following instructions during my temporary occupation of the Front Bench.

The comments I will make are going to focus on an aspect which I think we have not talked about so much in the debate, which is age assurance in the context of general purpose, user-to-user and search services, so-called Part 3, because we like to use confusing language in this Bill, rather than the dedicated pornography sites about which other noble Lords have spoken so powerfully. We have heard a number of contributions on that, and we have real expertise in this House, not least from my noble friend Lady Benjamin.

In the context of age assurance more generally, I start with a pair of propositions that I hope will be agreed to by all participants in the debate and build on what I thought was a very balanced and highly informative introduction from the noble Baroness, Lady Kidron. The first proposition is that knowledge about the age of users can help all online platforms develop safer services than they could absent that information—a point made by the right reverend Prelate the Bishop of Oxford earlier. The second is that there are always some costs to establishing age, including to the privacy of users and through some of the friction they encounter when they wish to use a service. The task before us is to create mechanisms for establishing age that maximise the safety benefits to users while minimising the privacy and other costs. That is what I see laid out in the amendment that the noble Baroness, Lady Kidron, has put before us.

My proposed new clause seeks to inform the way that we construct that balance by tasking Ofcom with carrying out regular studies into a broad range of approaches to age assurance. This is exactly the type of thinking that is complementary to that in Amendment 142; it is not an alternative but complementary to it. We may end up with varying views on exactly where that balance should be struck. Again, I am talking about general purpose services, many of which seek to prohibit pornography—whether they do so 100%, it is a different set of arguments from those that apply to services which are explicitly dedicated to pornography. We may come to different views about where we eventually strike the balance but I think we probably have a good, shared understanding of the factors that should be in play. I certainly appreciate the conversations I have had with the noble Baroness, Lady Kidron, and others about that, and think we have a common understanding of what we should be considering.

If we can get this formulation right, age assurance may be one of the most significant measures in the Bill in advancing online safety, but if we get it wrong, I fear we may create a cookie banner scenario, such as the one I warned about at Second Reading. This is my shorthand for a regulatory measure that brings significant costs without delivering its intended benefits. However keen we are to press ahead, we must always keep in mind that we do not want to create legislation that is well-intended but does not have the beneficial effect that we all in this Committee want.

Earlier, the noble Baroness, Lady Harding, talked about the different roles that we play. I think mine is to try to think about what will actually work, and whether the Bill will work as intended, and to try to tease out any grit in it that may get in the way. I want in these remarks to flag what I think are four key considerations that may help us to deliver something that is actually useful and avoid that cookie banner outcome, in the context of these general purpose, Part 3 services.

First, we need to recognise that age assurance is useful for enabling as well as disabling access to content—a point that the noble Baroness, Lady Kidron, rightly made. We rightly focus on blocking access to bad content, but other things are also really important. For example, knowing that a user is very young might mean that the protocol for the reporting system gets to that user report within one hour, rather than 24 hours for a regular report. Knowing that a user is young and is being contacted by an older user may trigger what is known as a grooming protocol. Certainly at Facebook we had that: if we understood that an older user was regularly contacting younger users, that enabled us to trigger a review of those accounts to understand whether something problematic was happening—something that the then child exploitation and online protection unit in the UK encouraged us to implement. A range of different things can then be enabled. The provision of information in terms that a 13 year-old would understand can be triggered if you know the age of that user.

Equally, perfectly legitimate businesses, such as alcohol and online gambling businesses, can use age assurance to make sure that they exclude people who should not be part of that. We in this House are considering measures such as junk food advertising restrictions, which again depend on age being known to ensure that junk food which can be legitimately marketed to older people is not marketed to young people. In a sense, that enables those businesses to be online because, absent the age-gating, they would struggle to meet their regulatory obligations.

Secondly, we need to focus on outcomes, using the risk assessment and transparency measures that the Bill creates for the first time. We should not lose sight of those. User-to-user and search services will have to do risk assessments and share them with Ofcom, and Ofcom now has incredible powers to demand information from them. Rather than asking, "Have you put in an age assurance system?", we can ask, "Can you tell us how many 11 year-olds or 15 year-olds you estimate

access the wrong kind of content?", and, "How much pornography do you think there is on your service despite the fact that you have banned it?" If the executives of those companies mislead Ofcom or refuse to answer, there are criminal sanctions in the Bill.

The package for user-to-user and search services enables us to really focus on those outcomes and drill down. In many cases, that will be more effective. I do not care whether they have age-assurance type A or type B; I care whether they are stopping 99.9% of 11 year-olds accessing the wrong kind of content. Now, using the framework in the Bill, Ofcom will be able to ask those questions and demand the answers, for the first time ever. I think that a focus on outcomes rather than inputs—the tools that they put in place—is going to be incredibly powerful.

7.45 pm

The third consideration is quite a difficult one. We need to plan for actual behaviour, and how it will change over time and how we adapt to that, rather than relying on assumptions that we make today. My experience is that actual behaviour often differs. Cookie banners are an example. The assumption of the regulator was, "We'll put these cookie banners in place, and it will be so off-putting that people will stop using cookies". The reality is completely different: everyone has just carried on using cookies and people click through. The behaviour has not matched up to expectations.

You can put a lot of these tools in place, such as age assurance and age-restricted services. If you build an age-restricted version of your service—there is a YouTube for kids along with many other kids' services—then you can see whether or not they are going to be acceptable. If people are rejecting them, you need to adapt. There is no point saying, "Well, you should go and use YouTube Kids". If people are signing up for it but finding it too restrictive and going elsewhere, we need to be able to think about how we can adapt to that and work with it.

The reality today, as the right reverend Prelate the Bishop of Oxford referred to, is that 60% of kids are on social media, and in many cases their parents have bought the phone and enabled that access. How do we deal with that? We cannot just bury our heads in the sand and ignore it; we have to be able to adapt to that behaviour and think about what tools work in that environment.

My last point on adaptation is that we found, working in the industry, that sometimes the law incentivised ignorance, which is the worst possible outcome. We had age-estimation tools that allowed us to understand that children were 11 or 12. They may have passed an age check by providing ID that showed that they were overage, and their parents may have helped them, but we knew they were not. But that knowledge itself created legal risk, so we would bury the knowledge. If kids are going on these online platforms, my view is that I would much rather the platforms use all the tools available—we should not discourage them from understanding that these are 11 year-olds—and we find a way to work with that and make the service as safe as possible. These are hard questions because, while we want the law to work in an absolute way, in practice people are very creative and will work around and through systems.

The final point about making all this work is understanding the key role of usability. I was struck by the compelling vision of noble Baroness, Lady Kidron, of low-friction age assurance. There are issues of principle and practice when it comes to making sure that age assurance is usable. The argument around principle is that we as a free society do not want to create unnecessary friction for people to access information online. We can put measures in place and impinge on freedom of expression in a way that is necessary and proportionate. With regard to all the arguments that we have heard about access to pornography sites, the case is of course clear and absolute—there is a strong case for putting in place very restrictive measures—but for other general purpose services that younger people may want to use to connect with family and friends, we need to tread quite carefully if we are putting in place things that might infringe on their rights. The UN convention also talks about the right to express oneself. We need to be careful about how we think that through, and usability is critical to that.

I share the noble Baroness's vision, in a sense. A lot of it could happen at the phone level, when a parent sets a phone up for their 11 year-old. The phone knows that you are an 11 year-old, and there is a system in place for the phone to tell the apps that you install that you are 11. That works in a smooth way and is potentially low friction but very effective. There are exceptions, but, by and large, teenagers have their own phone and the phone is tied to them; if you know the age of the phone then you have a highly reliable understanding of the age of the user. There is a lot in there. It is those kinds of low-friction measures that we should be looking for.

At the other end of the spectrum, if every app that you use asks you to upload your passport, that is not going to work. People will just bypass it, or they will stick to the apps they know already and never install new ones. We would end up concentrating the market, and our friends at the Competition and Markets Authority would not be very pleased with that potential outcome. It is about making something usable from both a principled reason—not blocking access to legitimate services—and a pragmatic reason: making sure we do not create an incentive. One of the phrases the team doing the age verification at the Facebook would use was, "Our competition is lying". If people do not like what you are doing, they will simply lie and find their way round it. We need to bear that in mind, even under the new regime.

If we are mindful of these practical considerations, we should be able to deliver very useful age-assurance tools. I hope the Minister will agree with that. I look forward to hearing the Government's description of how they think all this will work, because that bit is missing from the debate. I know other Lords will have heard from Ofcom, which started putting out information about how it thinks it will work. The age assurance community has started putting out information. The gap in all this is that it is not clear what the Government think this future world will look like. I hope they can at least start to fill that gap today by trying to explain to us, in response to these amendments, their vision for the new world of age assurance, not just for the pornography sites but, critically, for all these other

[Lord Allan of Hallam]
sites that millions of us use that certainly aim to be gateways not to pornography but rather to other forms of communication and information.

Baroness Gohir (CB): My Lords, I am still getting used to the rules in Committee. I did not get up quickly enough before the noble Lord, Lord Allan, so I hope I am able to add my voice to the amendments.

I support the amendments tabled by the noble Baroness, Lady Kidron, and supported by the noble Lord, Lord Bethell, to bring about robust age verification for pornography wherever it is found online and the need to prove beyond reasonable doubt that the user is above the age of 18. I also support the amendment tabled by the noble Baroness, Lady Benjamin, which would mean that content that is prohibited and illegal offline would also be prohibited online, and the other amendments in this group, tabled by the noble Baroness, Lady Ritchie, and the noble Lord, Lord Allan.

The impact that pornography has on violence against women and girls is well documented, yet the Bill does not address it. What is considered mainstream pornography today would have once been seen as extreme. In fact, swathes of content that is readily available online for all to view in just a few clicks would be illegal and prohibited by the British Board of Film Classification to possess or supply offline, under the powers given to it by the Video Recordings Act 1984. But because online pornography has been allowed to evolve without any oversight, pornographic content that includes overt sexual violence, such as choking, gagging and forceful penetration, is prevalent. This is alongside content that sexualises children, as mentioned by the noble Baroness, Lady Benjamin, which includes petite, young-looking adult actors being made to look like children, and pornography which depicts incest.

This content is not just available in niche corners of the internet or the dark web; it is presented to users on mainstream websites. Research by the academics Clare McGlynn and Fiona Vera-Gray into the titles of videos that were available on the landing page of three of the UK's most popular pornography websites revealed that one in eight titles used descriptions such as "pain", "destroy", "brutal", "torture", "violate", "hurt", and many others that are too unpleasant to mention in this Chamber. To reiterate, these videos were available on the landing pages and presented to first-time visitors to the site without any further searching necessary. We have to acknowledge that the vast majority of online pornographic content, viewed by millions across the globe, is directly promoting violence against women and girls.

A very real example of this impact is Wayne Couzens, the murderer of Sarah Everard. In court, a former colleague set out how Couzens was attracted to "brutal sexual pornography". Indeed, it is not hard to find an addiction to violent pornography in the background of many notorious rapists and killers of women. While not all men will jump from violent pornography to real-life harm, we know that for some it acts as a gateway to fulfilling a need for more extreme stimulation.

A study published in 2019 in the National Library of Medicine by Chelly Maes involving 568 adolescents revealed that exposure to pornographic content was related to individuals' resistance towards the #MeToo movement and increased acceptance of rape myths. Even the Government's own research found substantial evidence of an association between the use of pornography and harmful attitudes and behaviours towards women and girls, yet the Bill does nothing to bring parity between the way that pornography is regulated online and offline. That is why I support the amendment in the name of the noble Baroness, Lady Benjamin, to address this inconsistency.

We must remember that while this pornography has an effect on the viewer, it also has an effect on the performers taking part. Speaking to the APPG on Commercial Sexual Exploitation's recent inquiry into pornography, Linda Thompson, the national co-ordinator at the Women's Support Project, said:

"We know pornography is a form of violence against women. It is not just fantasy; it is the reality for the women involved. It is not just a representation of sex, it is actual sexual violence that is occurring to the women".

There is currently no obligation for pornography companies to verify that a performer in pornographic content is over the age of 18 and that they consent. Once the videos are uploaded on to platforms, they go through little moderation, meaning that only the most overtly extreme and obviously illegal and non-consensual content is readily identified and reported. This means that for many girls and women, their sexual abuse and rape is readily available and is viewed for pleasure. The Bill is an opportunity to rectify this and to put this duty on pornography companies. For that reason, I am supportive of amendments tabled by the noble Baroness, Lady Kidron, to put this duty on them.

Finally, we must remember the impact that having access to this content is having on our children right now. A recent report by the Children's Commissioner for England about pornography and subsequent harmful sexual behaviour and abuse demonstrates this. Using data from children's own testimonies about cases of child sexual abuse committed against them by another child, references to specific acts of sexual violence commonly found in pornography were present in 50% of the cases examined.

Pornography is how children are receiving a sex education. We know the impact that this type of pornographic content is having on adults, yet we are allowing children to continue having unfettered access as their attitudes towards sex and relationships are forming. In 2021, the singer Billie Eilish spoke out about her experiences of watching pornography from the age of 11, saying:

"The first few times I … had sex, I was not saying no to things that were not good. It was because I thought that's what I was supposed to be attracted to".

Children are seeing violent sexual acts as normal and expected parts of relationships. This cannot continue. That is why I am supporting the amendments tabled by the noble Baroness, Lady Kidron, and the noble Lord, Lord Bethell, to bring in robust age verification for pornography wherever it is found online. I thank them and the noble Baroness, Lady Benjamin, for their hard work in raising awareness of the online risks posed to children. I also express gratitude to all the children's charities such as Barnardo's which work tirelessly day and night to keep children safe. The Government also have a duty to keep children safe.

8 pm

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I too should have spoken before the noble Lord, Lord Allan; I should have known, given his position on the Front Bench, that he was speaking on behalf of the Liberal Democrats. I was a little reticent to follow him, knowing his expertise in the technical area, but I am very pleased to do so now. I support this very important group of amendments and thank noble Lords for placing them before us. I echo the thanks to all the children's NGOs that have been working in this area for so long.

For legislators, ambiguity is rarely a friend, and this is particularly true in legislation dealing with digital communications, where, as we all acknowledge, the law struggles to keep pace with technical innovation. Where there is ambiguity, sites will be creative and will evade what they see as barriers—of that I have no doubt. Therefore, I strongly believe that there is a need to have clarity where it can be achieved. That is why it is important to have in the Bill a clear definition of age verification for pornography.

As we have heard this evening, we know that pornography is having a devastating impact on our young people and children: it is impacting their mental health and distorting their views of healthy sexual relationships. It is very upsetting for me that evidence shows that children are replicating the acts they see in pornographic content, thinking that it is normal. It is very upsetting that, in particular, young boys who watch porn think that violence during intimacy is a normal thing to do. The NSPCC has told us that four in 10 boys aged 11 to 16 who regularly view porn say they want to do that because they want to get ideas as to the type of sex they want to try. That is chilling. Even more chilling is the fact that content is often marketed towards children, featuring characters from cartoons, such as "Frozen", "Scooby Doo" and "The Incredibles", to try to draw young people on to those sites. Frankly, that is unforgivable; it is why we need robust age verification to protect our children from this content. It must apply to all content, regardless of where it is found; we know, for instance, that Twitter is often a gateway to pornographic sites for young people.

The noble Lord, Lord Bethell, referred to ensuring, beyond all reasonable doubt, that the user is over 18. I know that that is a very high standard—it is the criminal law level—but I believe it is what is needed. I am interested to hear what the Minister has to say about that, because, if we are to protect children and if we take on the role of the fireguard, which the right reverend Prelate referred to, we need to make sure that it is as strong as possible.

Also, this is not just about making sure that users are over 18; we need to make sure that adults, not children, are involved in the content. The noble Baroness, Lady Benjamin, talked about adults being made to look like children, but there is also the whole area of young people being trafficked and abused into pornography production; therefore, Amendment 184 on performer age checks is very important.

I finish by indicating my strong support for Amendment 185 in the name of the noble Baroness, Lady Benjamin. Some, if not most, mainstream pornography content sites are degrading, extremely abusive and violent. Such content would be prohibited in the offline world and is illegal to own and to have; this includes sexual violence including strangulation, incest and sexualising children. We know that this is happening online because, as we have heard, some of the most frequently searched terms on porn sites are "teens", "schoolgirls" or "girls", and the lack of regulation online has allowed content to become more and more extreme and abusive. That is why I support Amendment 185 in the name of noble Baroness, Lady Benjamin, which seeks to bring parity between the online and offline regulation of pornographic content.

This Bill has been eagerly awaited. There is no doubt about that. It has been long in the gestation—some people would say too long. We have had much discussion in this Committee but let us get it right. I urge the Minister to take on board the many points made this afternoon. That fireguard needs not only to be put in place, but it needs to be put in place so that it does not move, it is not knocked aside and so that it is at its most effective. I support the amendments.

Baroness Harding of Winscombe (Con): My Lords, I also failed to stand up before the noble Lord, Lord Allan, did. I too am always slightly nervous to speak before or after him for fear of not having the detailed knowledge that he does. There have been so many powerful speeches in this group. I will try to speak swiftly.

My role in this amendment was predefined for me by the noble Baroness, Lady Kidron, as the midwife. I have spent many hours debating these amendments with my noble friend Lord Bethell, the noble Baroness, Lady Kidron, and with many noble Lords who have already spoken in this debate. I think it is very clear from the debate why it is so important to put a definition of age assurance and age verification on the face of the Bill. People feel so passionately about this subject. We are creating the digital legal scaffolding, so being really clear what we mean by the words matters. It really matters and we have seen it mattering even in the course of this debate.

My two friends—they are my friends—the noble Baroness, Lady Kidron, and my noble friend Lord Bethell both used the word "proportionate", with one not wanting us to be proportionate and the other wanting us to be proportionate. Yet, both have their names to the same amendment. I thought it might be helpful to explain what I think they both mean—I am sure they will interrupt me if I get this wrong—and explain why the words of the amendment matter so much.

Age assurance should not be proportionate for pornography. It should be the highest possible bar. We should do everything in our power to stop children seeing it, whether it is on a specific porn site or on any other site. We do not want our children to see pornography; we are all agreed on that. There should not be anything proportionate about that. It should be the highest bar. Whether "beyond reasonable doubt" is the right wording or it should instead be "the highest possible bar practically achievable", I do not know. I would be very keen to hear my noble friend the Minister's thoughts on what the right wording is because, surely, we are all clear it should be disproportionate; it should absolutely be the hardest we can take.

[Baroness Harding of Winscombe]

Equally, age assurance is not just about pornography, as the noble Lord, Lord Allan, has said. We need to have a proportionate approach. We need a ladder where age assurance for pornography sits at the top, and where we are making sure that nine year-olds cannot access social media sites if they are age-rated for 13. We all know that we can go into any primary school classroom in the land and find that the majority of nine year-olds are on social media. We do not have good age assurance further down.

As both the noble Lord, Lord Allan, and the noble Baroness, Lady Kidron, have said, we need age assurance to enable providers to adapt the experience to make it age-appropriate for children on services we want children to use. It needs to be both proportionate and disproportionate, and that needs to be defined on the face of the Bill. If we do not, I fear that we will fall into the trap that the noble Lord, Lord Allan, mentioned: the cookie trap. We will have very well-intentioned work that will not protect children and will go against the very thing that we are all looking for.

In my role as the pragmatic midwife, I implore my noble friend the Minister to hear what we are all saying and to help us between Committee and Report, so that we can come back together with a clear definition of age assurance and age verification on the face of the Bill that we can all support.

Baroness Stowell of Beeston (Con): My Lords, about half an hour ago I decided I would not speak, but as we have now got to this point, I thought I might as well say what I was going to say after all. I reassure noble Lords that in Committee it is perfectly permissible to speak after the winder, so no one is breaking any procedural convention. That said, I will be very brief.

My first purpose in rising is to honour a commitment I made last week when I spoke against the violence against women and girls code. I said that I would none the less be more sympathetic to and supportive of stronger restrictions preventing child access to pornography, so I want to get my support on the record and honour that commitment in this context.

My noble friend Lady Harding spoke on the last group about bringing our previous experiences to bear when contributing to some of these issues. As I may have said in the context of other amendments earlier in Committee, as a former regulator, I know that one of the important guiding principles is to ensure that you regulate for a reason. It is very easy for regulators to have a set of rules. The noble Baroness, Lady Kidron, referred to rules of the road for the tech companies to follow. It is very easy for regulators to examine whether those rules are being followed and, having decided that they have, to say that they have discharged their responsibility. That is not good enough. There must be a result, an outcome from that. As the noble Lord, Lord Allan, emphasised, this must be about outcomes and intended benefits.

I support making it clear in the Bill that, as my noble friend Lady Harding said, we are trying to prevent, disproportionately, children accessing pornography. We will do all we can to ensure that it happens, and that should be because of the rules being in place. Ofcom should be clear on that. However, I also support a proportionate approach to age assurance in all other contexts, as has been described. Therefore, I support the amendments tabled by the noble Baroness, Lady Kidron, and my noble friend Lord Bethell, and the role my noble friend Lady Harding has played in arriving at a pragmatic solution.

Lord Stevenson of Balmacara (Lab): My Lords, it is a privilege to be in your Lordships' House, and on some occasions it all comes together and we experience a series of debates and discussions that we perhaps would never have otherwise reached, and at a level which I doubt could be echoed anywhere else in the world. This is one of those days. We take for granted that every now and again, we get one of these rapturous occasions when everything comes together, but we forget the cost of that. I pay tribute, as others have, to the noble Baroness, Lady Kidron. She has worked so hard on this issue and lots of other issues relating to this Bill and has exhausted herself more times than is right for someone of her still youthful age. I am very pleased that she is going off on holiday and will not be with us for a few days; I wish her well. I am joking slightly, but I mean it sincerely when I say that we have had a very high-quality debate. That it has gone on rather later than the Whips would have wanted is tough, because it has been great to hear and be part of. However, I will be brief.

It was such a good debate that I felt a tension, in that everybody wanted to get in and say what they wanted to say be sure they were on the record. That can sometimes be a disaster, because everyone repeats everything, but as the noble Baroness, Lady Harding, said, we know our roles, we know what to say and when to say it, and it has come together very nicely. Again, we should congratulate ourselves on that. However, we must be careful about something which we keep saying to each other but sometimes do not do. This is a Bill about systems, not content. The more that we get into the content issues, the more difficult it is to remember what the Bill can do and what the regulator will be able to do if we get the Bill to the right place. We must be sure about that.

I want to say just a few things about where we need to go with this. As most noble Lords have said, we need certainty: if we want to protect our children, we have to be able to identify them. We should not be in any doubt about that; there is no doubt that we must do it, whatever it takes. The noble Lord, Lord Allan, is right to say that we are in the midst of an emerging set of technologies, and there will be other things coming down the line. The Bill must keep open to that; it must not be technology-specific, but we must be certain of what this part is about, and it must drill down to that. I come back to the idea of proportionality: we want everybody who is 18 or under to be identifiable as such, and we want to be absolutely clear about that. I like the idea that this should be focused on the phones and other equipment we use; if we can get to that level, it will be a step forward, although I doubt whether we are there yet.

8.15 pm

Secondly, we must not leave open the idea that there will somehow be different approaches to how we regulate what children see in this space. We are talking about

pornography here. Whether it comes through a Part 3 or Part 5 service, or accidently through a blog or some other piece of information, it has to be stopped. We do not want our children to receive it. That must be at the heart of what we are about, and not just something we think about as we go along. The Bill is complicated and difficult to read. It has to be because the services are different, but that should not be at the expense of the ability to say at the end: "We did it".

Thirdly, I worry about some things that have crept into the debate on the proportionality issue. If "a small number" means that we will somehow let a few children see something, that will not be acceptable. Everybody has said this. Let us be clear about it: this is either 100% or it is not worth doing. If so, the question of whether we do it is not about finding the right form of words, such as "beyond reasonable doubt"; it is about certainty.

Lord Parkinson of Whitley Bay (Con): As the noble Baroness, Lady Kidron, set out at the beginning of this debate, the amendments in this group have involved extensive discussions among Members in both Houses of Parliament, who sit on all sides of both Houses. I am very grateful for the way noble Lords and Members in another place have done that. They have had those preliminary discussions so that our discussions in the debate today and in preparation for it could be focused and detailed. I pay particular tribute to the noble Baroness, Lady Kidron, and my noble friends Lord Bethell and Lady Harding, who have been involved in extensive discussions with others and then with us in government. These have been very helpful indeed; they continue, and I am happy to commit to their continuing.

Age-assurance technologies will play an important role in supporting the child safety duties in this Bill. This is why reference is made to them on the face of the Bill—to make it clear that the Government expect these measures to be used for complying with the duties to protect children from harmful content and activity online. Guidance under Clause 48 will already cover pornographic content. While this is not currently set out in the legislation, the Government intend, as noble Lords know, to designate pornographic content as a category of primary priority content which is harmful to children. As I set out to your Lordships' House during our debate on harms to children, we will amend the Bill on Report to list the categories of primary and primary priority content on the face of the Bill.

I am very grateful to noble Lords for the engagement we have had on some of the points raised in Amendments 142 and 306 in recent weeks. As we have been saying in those discussions, the Government are confident that the Bill already largely achieves the outcomes sought here, either through existing provisions in it or through duties in other legislation, including data protection legislation, the Human Rights Act 1998 and the Equality Act 2010. That is why we think that re-stating duties on providers which are already set out in the Bill, or repeating duties set out in other legislation, risks causing uncertainty, and why we need to be careful about imposing specific timelines on Ofcom by which it must produce age-assurance guidance. It is essential that we protect Ofcom's ability robustly to fulfil its consultation duties for the codes of practice. If Ofcom is given insufficient time to fulfil these duties, the risk of legal challenge being successful is increased.

I welcome Ofcom's recent letter to your Lordships, outlining its implementation road map, which I hope provides some reassurance directly from the regulator on this point. Ofcom will prioritise protecting children from pornography and other harmful content. It intends to publish, this autumn, draft guidance for Part 5 pornography duties and draft codes of practice for Part 3 illegal content duties, including for child sexual exploitation and abuse content. Draft codes of practice for children's safety duties will follow next summer. These elements of the regime are being prioritised ahead of others, such as the category 1 duties, to reflect the critical importance of protecting children.

Although we believe that the Bill already largely achieves the outcomes sought, we acknowledge the importance of ensuring that there are clear principles for Ofcom to apply when recommending or requiring the use of age-assurance technologies. I am happy to reassure noble Lords that the Government will continue to consider this further and are happy to continue our engagement on this issue, although any amendment must be made in a way that sits alongside existing legislation and within the framework of the Bill.

I turn to Amendments 161 and 183. First, I will take the opportunity to address some confusion about the requirements in Parts 3 and 5 of the Bill. The Bill ensures that companies must prevent children accessing online pornography, regardless of whether it is regulated in Part 3 or Part 5. The Government are absolutely clear on this point; anything less would be unacceptable. The most effective approach to achieving this is to focus on the outcome of preventing children accessing harmful content, which is what the Bill does. If providers do not prevent children accessing harmful content, Ofcom will be able to bring enforcement action against them.

I will address the point raised by my noble friend Lord Bethell about introducing a standard of "beyond reasonable doubt" for age verification for pornography. As my noble friend knows, we think this a legally unsuitable test which would require Ofcom to determine the state of mind of the provider, which would be extremely hard to prove and would therefore risk allowing providers to evade their duties. A clear, objective duty is the best way to ensure that Ofcom can enforce compliance effectively. The Bill sets clear outcomes which Ofcom will be able to take action on if these are not achieved by providers. A provider will be compliant only if it puts in place systems and processes which meet the objective requirements of the child safety duties.

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. 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 these systems and processes achieve the required outcomes of the child safety duties.

[Lord Parkinson of Whitley Bay]

The Government expect companies to use age-verification technologies to prevent children accessing services which pose the highest risk of harm to children, such as online pornography. However, companies may 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.

Age verification may not always be the most appropriate or effective approach for user-to-user companies to comply with their duties. For example, if a user-to-user service such as a social medium does not allow—

Lord Stevenson of Balmacara (Lab): I am sorry to interrupt. The Minister said that he would bear in mind proportionality in relation to size and capacity. Is that not exactly the point that the noble Baroness, Lady Harding, was trying to make? In relation to children, why will that be proportionate? A single child being damaged in this way is too much.

Lord Parkinson of Whitley Bay (Con): The issue was in relation to a provider's size and capacity; it is an issue of making sure it is effective and enforceable, and proportionate to the size of the service in question. It may also not be the most effective approach for companies to follow to comply with their duties. If there is a company such as a user-to-user service in social media that says it does not allow pornography under its terms of service, measures such as content moderation and user reporting might be more appropriate and effective for protecting children than age verification in those settings. That would allow content to be better detected and taken down, while—

Lord Stevenson of Balmacara (Lab): I understand that, but it is an important point to try to get on the record. It is an outcome-based solution that we are looking for, is it not? We are looking for zero activity where risks to children are there. Clearly, if the risk assessment is that there is no risk that children can be on that site, age verification may not be required—I am extending it to make a point—but, if there is a risk, we need to know that the outcome of that process will be zero. That is my point, and I think we should reflect on that.

Lord Parkinson of Whitley Bay (Con): I am very happy to, and the noble Lord is right that we must be focused on the outcomes here. I am very sympathetic to the desire to make sure that providers are held to the highest standards, to keep children protected from harmful content online.

Lord Bethell (Con): I know the Minister said that outcomes are detailed in the Bill already; I wonder whether he could just write to us and describe where in the Bill those outcomes are outlined.

Lord Parkinson of Whitley Bay (Con): I shall happily do that, and will happily continue discussions with my noble friend and others on this point and on the appropriate alternative to the language we have discussed.

On the matter of Ofcom independently auditing age-assurance technologies, which my noble friend also raised, the regulator already has the power to require a company to undertake and pay for a report from a skilled person about a regulated service. This will assist Ofcom in identifying and assessing non-compliance, and will develop its understanding of the risk of failure to comply. We believe that this is therefore already provided for.

I reassure noble Lords that the existing definition of pornographic content in the Bill already captures the same content that Amendment 183ZA, in the name of the noble Baroness, Lady Ritchie of Downpatrick, intends to capture. The definition in the Bill shares the key element of the approach Ofcom is taking for pornography on UK-established video-sharing platforms. This means that the industry will be familiar with this definition and that Ofcom will have experience in regulating content which meets it.

The definition is also aligned with that used in existing legislation. I take on board the point she made about her trawl of the statute book for it, but the definition is aligned elsewhere in statute, such as in the Coroners and Justice Act 2009. This means that, in interpreting the existing definition in the Bill, the courts may be able to draw on precedent from the criminal context, giving greater certainty about its meaning. The definition of pornography in Part 5 is also consistent with the British Board of Film Classification's guidelines for the definition of sex works, which is

"works whose primary purpose is sexual arousal or stimulation"

and the BBFC's definition of R18. We therefore think it is not necessary to refer to BBFC standards in this legislation. Including the definition in the Bill also retains Parliament's control of the definition, and therefore also which content is subject to the duties in Part 5. That is why we believe that the definition as outlined in the Bill is more straightforward for both service providers and Ofcom to apply.

I turn to Amendments 184 and 185. The Government share the concerns raised in today's debate about the wider regulation of online pornography. It is important to be clear that extreme pornography, so-called revenge pornography and child sexual exploitation and abuse are already illegal and are listed as priority offences in the Bill. This means that under the illegal content duties, Part 3 providers, which will include some of the most popular commercial pornography services, must take proactive, preventive measures to limit people's exposure to this criminal content and behaviour.

8.30 pm

As I have made clear in previous debates, providers will need to protect children from all forms of online pornography, including illegal pornography or content that the British Board of Film Classification refuses to classify. Providers in scope of Part 5 are publishers which directly control the material on their services, and which can already be held liable for existing extreme pornography and child sexual exploitation and abuse offences captured by the criminal law. The most appropriate mechanism for dealing with these services is, rather than a regulatory regime, the criminal law.

I can also reassure noble Lords that the Government's new offences relating to sharing and sending intimate images without consent will apply to providers in scope of Part 5. They will be criminally liable for any non-consensual intimate images published on their service.

In relation to Amendment 184, as intimate image abuse will already be illegal in criminal law, it is unnecessary to include a specific duty for Part 5 providers to prohibit this content. Any publisher that shares such images on its site would risk breaking the law and could face a prison sentence. The Bill is also not the right mechanism to regulate content produced or published by the adult industry with regard to the consent of performers appearing in pornographic content. Copyright and contract law already gives performers based in the UK the right to authorise the making of a recording of their performance. Any works recorded and made available to the public without the performer's consent would constitute an infringement of their rights. As a private right, it is for the performer to enforce this, not a broader regulatory regime.

Lord Bethell (Con): Does my noble friend the Minister recognise that those laws have been in place for the 30 years of the internet but have not successfully been used to protect the rights of those who find their images wrongly used, particularly those children who have found their images wrongly used in pornographic sites? Does he have any reflections on how that performance could be improved?

Lord Parkinson of Whitley Bay (Con): I would want to take advice and see some statistics, but I am happy to do that and to respond to my noble friend's point. I was about to say that my noble friend Lady Jenkin of Kennington asked a number of questions, but she is not here for me to answer them.

I turn to Amendment 232 tabled by the noble Lord, Lord Allan of Hallam. Because of the rapid development of age-assurance technologies, it is right that they should be carefully assessed to ensure that they are used effectively to achieve the outcomes required. I am therefore sympathetic to the spirit of his amendment, but must say that Ofcom will undertake ongoing research into the effectiveness of age-assurance technologies for its various codes and guidance, which will be published. Moreover, when preparing or updating the codes of practice, including those that refer to age-assurance technologies, Ofcom is required by the Bill to consult a broad range of people and organisations. Parliament will also have the opportunity to scrutinise the codes before they come into effect, including any recommendations regarding age assurance. We do not think, therefore, that a requirement for Ofcom to produce a separate report into age-assurance technologies is a necessary extra burden to impose on the regulator.

In relation to this and all the amendments in this group, as I say, I am happy to carry on the discussions that we have been having with a number of noble Lords, recognising that they speak for a large number of people in your Lordships' House and beyond. I reiterate my thanks, and the Government's thanks, to them for the way in which they have been going about that. With that, I encourage them not to press their amendments.

Baroness Kidron (CB): My Lords, I thank everyone for their contributions this evening. As the noble Lord, Lord Stevenson, said, it is very compelling when your Lordships' House gets itself together on a particular subject and really agrees, so I thank noble Lords very much for that.

I am going to do two things. One is to pick up on a couple of questions and, as has been said by a number of noble Lords, concentrate on outcomes rather than contributions. On a couple of issues that came up, I feel that the principle of pornography being treated in the same way in Parts 3 and 5 is absolute. We believe we have done it. After Committee we will discuss that with noble Lords who feel that is not clear in the amendment to make sure they are comfortable that it is so. I did not quite understand in the Minister's reply that pornography was being treated in exactly the same way in Parts 3 and 5. When I say "exactly the same way", like the noble Lord, Lord Allan, I mean not necessarily by the same technology but to the same level of outcome. That is one thing I want to emphasise because a number of noble Lords, including the noble Baroness, Lady Ritchie, the noble Lord, Lord Farmer, and others, are rightly concerned that we should have an outcome on pornography, not concentrate on how to get there.

The second thing I want to pick up very briefly, because it was received so warmly, is the question of devices and on-device age assurance. I believe that is one method, and I know that at least one manufacturer is thinking about it as we speak. However, it is an old battle in which companies that do not want to take responsibility for their services say that people over here should do something different. It is very important that devices, app stores or any of the supposed gatekeepers are not given an overly large responsibility. It is the responsibility of everyone to make sure that age assurance is adequate.

Baroness Harding of Winscombe (Con): I hope that what the noble Baroness is alluding to is that we need to include gatekeepers, app stores, device level and sideloading in another part of the Bill.

Baroness Kidron (CB): But of course—would I dare otherwise? What I am saying is that these are not silver bullets and we must have a mixed economy, not only for what we know already but for what we do not know. We must have a mixed economy, and we must not make an overly powerful one platform of age assurance. That is incredibly important, so I wanted to pick up on that.

I also want to pick up on user behaviour and unintended consequences. I think there was a slight reference to an American law, which is called COPPA and is the reason that every website says 13. That is a very unhelpful entry point. It would be much better if children had an age-appropriate experience from five all the way to 18, rather than on and off at 13. I understand that issue, but that is why age assurance has to be more than one thing. It is not only a preventive thing but an enabling thing. I tried to make that very clear so I will not detain the Committee on that.

[Baroness Kidron]

On the outcome, I say to the Minister, who has indeed given a great deal of time to this, that more time is needed because we want a bar of assurance. I speak not only for all noble Lords who have made clear their rightful anxiety about pornography but also on behalf of the bereaved parents and other noble Lords who raised issues about self-harming of different varieties. We must have a measurable bar for the things that the Bill says that children will not encounter—the primary priority harms. In the negotiation, that is non-negotiable.

On the time factor, I am sorry to say that we are all witness to what happened to Part 3. It was pushed and pushed for years, and then it did not happen—and then it was whipped out of the Bill last week. This is not acceptable. I am happy, as I believe other noble Lords are, to negotiate a suitable time that gives Ofcom comfort, but it must be possible, with this Bill, for a regulator to bring something in within a given period of time. I am afraid that history is our enemy on this one.

The third thing is that I accept the idea that there has to be more than principles, which is what I believe Ofcom will provide. But the principles have to be 360 degrees, and the questions that I raised about security, privacy and accessibility should be in the Bill so that Ofcom can go away and make some difficult judgments. That is its job; ours is to say what the principle is.

I will tell one last tiny story. About 10 years ago, I met in secret with one of the highest-ranking safety officers in one of the companies that we always talk about. They said to me, "We call it the 'lost generation'. We know that regulation is coming, but we know that it is not soon enough for this generation". On behalf of all noble Lords who spoke, I ask the Government to save the next generation. With that, I withdraw the amendment.

Amendment 123A withdrawn.

Clause 48 agreed.

House resumed. Committee to begin again not before 9.22 pm.

Immigration (Electronic Travel Authorisations) (Consequential Amendment) Regulations 2023

Motion to Regret

8.43 pm

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

That this House regrets that the Immigration (Electronic Travel Authorisations) (Consequential Amendment) Regulations 2023 (SI 2023/305) will impose additional bureaucracy on international visitors to Northern Ireland travelling from the Republic of Ireland, creating barriers that will potentially cause significant damage to the tourism industry in Northern Ireland; and calls on His Majesty's Government (1) to consider revoking the Regulations forthwith, and (2) urgently to enter discussions with the government of the Republic of Ireland and representatives of the tourism industry in Northern Ireland to ensure that the Electronic Travel Authorisations scheme is adapted to reflect Northern Ireland's unique position as the only part of the United Kingdom with a land border.

Relevant documents: 35th and 40th Reports of the Secondary Legislation Scrutiny Committee. Special attention drawn to the instrument.

Baroness Ritchie of Downpatrick (Lab): My Lords, it is late in the evening, but this is an important issue, hence my regret Motion. I am pleased that the Front Benches and the Minister are present, on foot of the detailed explanation that he gave us in the Secondary Legislation Scrutiny Committee. I will concentrate on one aspect of his discussion with us that day: the impact of electronic travel authorisations on tourism in Northern Ireland. My Motion specifically states that the regulations will impose

"additional bureaucracy on international visitors to Northern Ireland travelling from the Republic of Ireland, creating barriers that will potentially cause significant damage to the tourism industry".

I call on the Government to consider revoking the regulations forthwith, or, if that is not possible, to bring forward an exemption and urgently enter into discussions with the tourism industry and the Government in the Republic of Ireland to ensure that the ETA scheme is adapted to reflect Northern Ireland's unique position as the only part of the UK with a land border.

There is already a precedent for an exemption because one was provided for legal residents of Ireland in the regulations introduced in March this year. Everybody will recall that we discussed these issues at Second Reading, in Committee and on Report of the Nationality and Borders Act when it progressed through your Lordships' House about a year ago.

The UK's decision to introduce ETAs, as a result of the Nationality and Borders Act, will deter visitors arriving via the Republic of Ireland from coming to Northern Ireland due to the administrative process and cost, putting at risk 25% of total tourism spend. The ETA is due to be implemented for the majority of countries by the end of 2024. I do not agree with that because of the bureaucracy, cost, hindrance, impediments and barriers that will be placed in the way of spontaneous tourists.

The Northern Ireland Tourism Alliance, which has already had many discussions with the Home Office, is concerned that the costs, bureaucracy and hassle involved in getting an ETA will make Northern Ireland a less attractive place to visit, particularly for short or spontaneous trips. Tourists and operators may decide that it is more convenient and cheaper to drop Northern Ireland from their itinerary. We do not want that to happen, so I ask the Minister what steps the Government will take to prevent that from happening. Our economy and tourism must be protected. Tourism and the spend from it are significant proportions of our economy. Due to the fact the 70% of overseas visitors arrive in the Republic of Ireland and travel to Northern Ireland via the land border, there will be no official communication at the time of booking or when visitors arrive in Dublin or other parts of the Republic. This is different from those visitors arriving into a direct port of entry

in the UK, and therefore tourists could inadvertently cross the land border into Northern Ireland without an ETA. This will place them in legal jeopardy and open to a criminal charge, as per the Nationality and Borders Act. The legislation states that an offence occurs if a person knowingly enters the UK without an ETA. This fact has been recognised by the Minister of State for Immigration in the Home Office, Robert Jenrick, who wrote to the Northern Ireland Tourism Alliance on 2 May 2023 stating that:

"in terms of the implementation of the proposed duty to make arrangements for removal in the Illegal Migration Bill, the Government is giving consideration to how our regulation-making power may be applied in order to exempt persons who knowingly enter the UK via the Irish land border".

Along with the noble Baroness, Lady Suttie, I tabled an amendment to this effect to the Bill this time last year.

It is quite clear that there is a need to protect our tourism industry in Northern Ireland. Therefore, the Government should consider revocation and, if that is not possible, bring forward an exemption. That exemption should be introduced along the lines discussed with the Northern Ireland Tourism Alliance, and I think there are strong lines for that. The kernels for this are based around six main points.

Tourism is one of the six areas of co-operation enshrined in the Good Friday agreement, which introduced a new business model to promote Northern Ireland overseas as part of the island of Ireland destination. As a result of that, we have the body called Tourism Ireland. The number of visits to Northern Ireland by international tourists arriving via the Republic of Ireland was an estimated 550,000 in 2019-20, which represents only 1.3% of all international visits to the UK. The land border between the Republic of Ireland and Northern Ireland is 300 miles long, crossing between both jurisdictions, and has no immigration checks. It is an invisible border that currently allows for seamless travel across the island of Ireland, and that is part of the common travel area.

Immigration checks will be intelligence-led, so a tourist could be stopped; and if they have an accident or require medical attention, their insurance will be invalid if they do not have an ETA. Tourists crossing the land border into Northern Ireland are treated differently from tourists arriving via the UK direct port of entry, who are informed of the ETA requirement at the time of booking and at the time of boarding their flight. They will be stopped at immigration control in the airport or ferry terminal, where they will be told again. The situation for those coming from the Republic of Ireland to Northern Ireland will be different, due to the fact that they enter via an airport or ferry port in the Republic of Ireland and will not be informed that they need an ETA to enter the UK, because it will be assumed that they are simply staying in the Republic. Some of these people may decide, on entry, that they would like a visit to sample the many important heritage sites in Northern Ireland that have already brought significant financial spend into our local economy.

What is the solution? I suggest that the Government revoke the regulations or provide for an exemption. The Northern Ireland Tourism Alliance has already provided the basis for such an exemption to the Home Office. Obviously, I would prefer the revocation of the requirement, but I can see that it is necessary to be pragmatic in this regard. Therefore, I believe that the necessary exemption should be provided for.

Based on research by Tourism Ireland, a duration exemption for a period of five to seven days in Northern Ireland would mean that around 90% of international visitors would not require an ETA. This is a reasonable compromise that should be considered by the Government. The majority of people who are coming are coming simply for tourist reasons, not for any other ulterior motive.

This exemption should cover promotable visitors travelling to Northern Ireland from the Republic of Ireland as part of their trip to Ireland, including those travelling as part of a tour group or travelling independently. This minor adaptation is in keeping with the spirit of the original legislation and the Good Friday agreement, and would allow seamless tourism on the island of Ireland to continue in the majority of cases. It would protect our tourism economy, ensure clarity in marketing and eliminate disruption for most visitors.

Will the Minister tell us what progress has been made as a result of discussions with the Northern Ireland Tourism Alliance? What further discussions have taken place with the Irish Government following the exemption for legal residents from Ireland? I acknowledge that the Minister has indicated to the protocol committee, of which I am a member, in a letter dated 5 May, that the Government want to ensure that targeted messaging from the ETA scheme will take place. When will that communication campaign take place? What will be the content, and how will it take place? What progress has been made in discussions concerning the exemption?

I request that the Minister provides your Lordships' House with answers to those questions in response to this debate. I urge him and his ministerial colleagues either to revoke the regulations or to go for the compromise involving the sensible, practical exemption for tourists and our tourism industry, considering that, in March, permission was already given under the regulations for legal residents of Ireland.

Tourism is a significant contributor to our overall economy, investing a considerable amount of money in the circular economy. A lot of people are employed in the tourism industry, which was impacted by Covid but is now recovering significantly. I urge noble Lords, if they have some time during the Recess, to consider visiting Northern Ireland to sample some of our most historic sites of heritage value and see the balance of mountains and sea—our significant landscape qualities.

To encourage people to come, it is important that barriers or impediments are not placed in their way. I urge the Minister to give positive consideration to revocation or, if that is not possible, an exemption which would ensure that promotable visitors can travel without the need for an ETA. I beg to move.

Lord Dodds of Duncairn (DUP): My Lords, I am very grateful to the noble Baroness, Lady Ritchie, for raising this and for the opportunity to debate the matter once again; we have looked at these issues previously. I want to explore with the Minister a number of issues for clarification and explanation.

[Lord Dodds of Duncairn]

It should be said that the introduction of the electronic travel authorisation for the United Kingdom is, in principle, something that brings us in line with most other countries across the world. The European Union is introducing the European travel information and authorisation scheme sometime next year; the United States has ESTAs; Canada has eTAs if you transit through or travel to a Canadian airport; Australia has an ETA—this is not unique to the United Kingdom. All of us who have travelled to the United States are used to applying for ESTAs and so on. The European scheme, for instance, will require 1.4 billion people from over 60 visa-exempt countries to apply for their authorisation at a cost of €7. So this is broadly in line with what other countries are doing.

However, as the noble Baroness, Lady Ritchie, has mentioned, a particular issue has arisen in relation to the fact that the United Kingdom's frontier with the European Union runs between Northern Ireland and the Irish Republic. That has given rise to a number of issues, which the noble Baroness has referred to. In that context, I ask the Minister for some reassurances about the work that the Government have undertaken to do with the Northern Ireland Tourism Alliance, as was spelled out in the letter of 5 May that the noble Baroness referred to from the right honourable Robert Jenrick MP to the protocol committee on which both I and the noble Baroness serve. There were commitments given in that letter to work with the Northern Ireland Tourism Alliance to ensure that visitors are aware of the ETA scheme requirements before travel. I would be grateful for some more details on that.

I would also be grateful for an assurance that, if this is to proceed, applications will be processed very rapidly. My experience, when I was in the other place helping constituents on a personal basis, is that the United States is able to process ESTA applications within a matter of hours. Surely that should be the case for ETA applications, so that international visitors who decide to come to Northern Ireland are able to have this processed very quickly.

9 pm

In relation to more general information, I would be grateful if the Minister could also tell us what is the position in the reverse situation for people who enter the Republic of Ireland from Northern Ireland—people coming from abroad, transiting from the rest of the United Kingdom into Northern Ireland and then deciding to go into the Irish Republic? What flexibility will the EU have in regard to exemptions in that situation? Will people coming from Northern Ireland into the Irish Republic require the European travel information and authorisation system document, or will there be an exemption so that there will be a reciprocal arrangement? Have there been any discussions with the EU or the Irish authorities about that? Have there been any representations made from the UK Government to the Dublin Government or to the European Commission in that regard?

I would also be grateful if the Minister could set out what categories of people from abroad entering the Irish Republic from Northern Ireland will be exempt in totality. There could be instances where there would need to be a degree of reciprocal arrangements with the arrangements that are now in place for people coming from the Irish Republic into Northern Ireland or transiting through the Irish Republic into Northern Ireland.

I would also be grateful if the Minister could tell us—and he may not be able to answer these questions today, but if he cannot, I would be grateful if he could write to me—what is the timetable for entry into force of the UK ETA scheme compared to the EU scheme. Will there be a period when one is in operation and the other is not? What thought has been given to that?

When Robert Jenrick wrote to the committee, he said that an exemption as suggested by the noble Baroness

"would undermine the rationale for introducing the ETA scheme and the opportunity the scheme provides to help further secure the Common Travel Area".

If there were to be an exemption as suggested, can the Minister assure us that this would not lead inevitably to checks happening not on the frontier between Northern Ireland and the Irish Republic but between Northern Ireland and the rest of the United Kingdom? That has happened all too often, and I would be grateful for an assurance that will certainly not be the case in any circumstance.

With that, I would be grateful if the Minister could provide those answers and I am grateful again for the opportunity to debate this matter.

Lord Murphy of Torfaen (Lab): My Lords, I rise very briefly to support my noble friend Lady Ritchie and, indeed, everything that the noble Lord, Lord Dodds, has just said. This is a classic example of where Brexit completely hits the Good Friday agreement because the agreement was negotiated on the basis in strand 2 of having north-south bodies on the island of Ireland. The most obvious and the least controversial of those bodies was, of course, tourism. People come to Ireland to go to north and to south and there were never any barriers. Now, of course, if you are one of the 70% of tourists who come to visit north and south—mainly from America but elsewhere too—you are now saddled with this bureaucratic business of having to apply for a sort of semi-visa to go across the border. That goes completely against the sense of what the border meant when the Good Friday agreement was negotiated a quarter of a century ago. There was a hard border, of course, then, but the idea was that within the European Union that would become more and more vague—the border almost disappears.

Now, of course, because of what has happened with Brexit, we have the difficulty with the border in the Irish Sea, but we also have this difficulty of the land border between Northern Ireland and Ireland. As my noble friend said, it is over 300 miles of border. That cannot conceivably be policed in the traditional way. I too would be grateful if the Minister could tell the House how this system will be policed. It seems virtually impossible for that to happen. They say it can be done electronically, but, frankly, that is pie in the sky. If the idea is to stop terrorists, drug dealers, gangs or criminals, I do not think that this will do anything to stop those people at all. There are other ways in which that can be dealt with. What the regulations will

do is seriously impact the tourist industry, north and south. Hundreds of thousands of people travel that border for the purposes of tourism only. Millions of pounds go into the Northern Ireland economy as a consequence of Tourism Ireland—this north-south body that was created 25 years ago.

I do not see the necessity for this. I am glad the Government dropped the idea of citizens who legally live in the Republic of Ireland having to have one of these authorisations to go across the border and work either side. That has gone. It was bonkers. However, this scheme will still be very difficult for the tourist industry in Northern Ireland. Indeed, it goes against the spirit of what we negotiated a quarter of a century ago.

Baroness Suttie (LD): My Lords, I too thank the noble Baroness, Lady Ritchie of Downpatrick, for her regret Motion, which has allowed a very interesting debate on a very important matter. I also thank the noble Lord, Lord Dodds, for his very relevant questions from the other perspective, which I hope the Minister will be able to give full answers to.

I pretty much agreed with everything the noble Baroness, Lady Ritchie, and the noble Lord, Lord Murphy, said so I will keep my remarks very brief. I commend the noble Baroness for the very clear and detailed way in which she introduced the problems facing the Northern Ireland tourist industry as a result of these measures. Unfortunately, I believe this is an example of unjoined-up government. The Home Office made these measures without giving due consideration to the very particular circumstances of the island of Ireland and without perhaps fully understanding the consequences on tourism—a sector which, as others have said, is of huge economic importance across the island of Ireland. For my own curiosity, can the Minister say what consultations the Home Office had with the Northern Ireland Office, the Northern Ireland tourist sector or, indeed, the Irish embassy in advance of drawing up these proposals?

The Minister will no doubt say that these proposals will be very light touch and should not cause any kind of bureaucratic obstacle, but it is still very unclear, as the noble Lord, Lord Murphy, said, how they can be enforced in reality when there are—thank goodness—no proposals to introduce checks on the north-south border. Perhaps he can provide an explanation on this point and say how enforcement will actually take place. Can he also say how, in enforcing these measures, the Government will be able to determine whether people travelled knowingly, or indeed unknowingly, into Northern Ireland from the Republic of Ireland?

One of the other concerns about these measures, as the noble Baroness, Lady Ritchie, said, is that they might deter the spontaneous traveller. This is not just a hypothetical point. A great many tourists who fly into Dublin from the United States or Australia, for example, will spontaneously decide to go to Northern Ireland to visit friends and family. Given that, as others have again said, approximately two-thirds of international visitors to Northern Ireland arrive via Dublin in the Republic of Ireland, does the Minister not accept that these measures are likely to act as a deterrent, given the additional bureaucracy, delay and cost?

Will the Minister undertake to meet representatives from the Northern Ireland tourist sector or, better still, as the noble Baroness suggested, travel to Northern Ireland to meet representatives of Tourism Ireland, which, as the noble Lord, Lord Murphy, said, operates on an all-Ireland basis, and see for himself the realities and the potential impact of this scheme, as well as the complexities involved? To repeat the request made by the noble Baroness, even at this late stage in the process, can he commit to giving clear exemptions on criminal sanctions for non-visa nationals crossing the land border?

Finally, will the Government agree to publish the impact assessment of these measures on the Northern Ireland tourism industry, including an analysis of the possible deterrence effect that the introduction of the ETA might cause?

Baroness Wheatcroft (CB): My Lords, I thank the noble Baroness, Lady Ritchie, for reintroducing this issue to the Chamber. I declare an interest as chairman of the Association of Leading Visitor Attractions. I hear from members how concerned they are about the effect that this could have on their industry, when it is just recovering from Covid.

As we have heard, 70% of tourism to Northern Ireland comes from the Republic of Ireland. Can the Minister tell us, not just the details of the impact assessment but whether he is aware of how many of the visitors to Northern Ireland from the Republic simply make day trips and how he feels those trips might affected by the introduction of the ETA? Can he also tell the House what the cost of the ETA will be, and what it will cost to operate? Has that been taken account of? I have been brief, but I would like answers to my questions.

Lord Ponsonby of Shulbrede (Lab): My Lords, I think I am happy to agree with everything that has been said in this debate. I agree with the way the noble Baroness, Lady Suttie, opened her speech by saying that my noble friend Lady Ritchie asked a lot of pertinent questions and proposed some interesting solutions and that the noble Lord, Lord Dodds, from a different perspective, also asked pertinent questions. One particularly interesting question from the noble Lord was about any reciprocal arrangements which may have been discussed with the EU regarding this set of circumstances. I look forward to the Minister's answers to those points.

It is worth pointing out that, in the other place, a prayer was laid by colleagues, which received signatures from Members of various Northern Ireland parties on this matter—so there is considerable interest in this.

The Government have stated they have held back the economic assessment of the regulations until the fee for the ETA is confirmed. An economic assessment has been drafted, but not released. The Minister stated to the Secondary Legislation Scrutiny Committee that the assessment, if released now, would be a much less useful document without the fee information. However, although the fee is an important part of the economic impact, it does not represent all of it. The fact that the assessment has been drafted demonstrates that there is

[Lord Ponsonby of Shulbrede]
a lot of substance in it, even without that particular number, to make calculations on the economic impact itself.

The issues raised in the Motion represent wider economic concerns about the consequences of the introduction of the ETA for the tourism industry in Northern Ireland. As we have heard, 70% of all visitors arriving in Northern Ireland arrive through Dublin. I was interested in the question from the noble Baroness, Lady Wheatcroft, about how many people make day trips from Dublin, or the surrounding area, to visit various places in Northern Ireland. I was also particularly taken by my noble friend's suggestion of a five- to seven-day exemption, which may meet the vast bulk of those tourists' needs. I am interested to hear the Minister's answer to that proposal.

I understand that a series of regulations will be put in place before the ETA system is introduced, but, as it stands, there is no set date for the introduction of the ETA, no set fees for the ETA, and no impact assessment from the Government on this aspect of it. As we have heard, this puts the travel industry in Northern Ireland, and related industries, at a disadvantage. We have also heard, from my noble friend, about how important tourism is, how it is perhaps the least controversial of any activity in Northern Ireland, and that it needs to be encouraged.

I look forward to the Minister's response to the questions raised in this brief debate. It is an important issue to raise, and I commend my noble friend Lady Ritchie for her tenacity in doing so.

9.15 pm

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, I start by thanking the noble Baroness, Lady Ritchie, for securing this short but very interesting debate, and those who have spoken in it.

It almost goes without saying that the Government's number one priority is to keep the UK safe. To strengthen our border security, we are therefore introducing our electronic travel authorisation—ETA—scheme. As the noble Lord, Lord Dodds, observed, this approach is in line with the approaches of many of our international partners, which have already taken a similar step. The USA, Canada, Australia and New Zealand have similar schemes and, as the noble Lord identified, the European Union—at least the Schengen area and some others—is preparing to introduce a comparable scheme, the European travel information and authorisation system, or ETIAS.

The UK's ETA scheme will enhance the Government's ability to prevent the travel of those who pose a risk to the UK. For the first time, ETAs will allow us to screen non-visa national visitors in advance of the border and stop those who pose a threat travelling to the UK. To answer one of the questions of the noble Lord, Lord Dodds, the UK's ETA scheme will launch in October 2023. The scheme will be rolled out in a phased manner from October 2023 until the end of 2024. It is our present understanding that the EU system will launch in 2024, and indications in the European media suggest a date following the Paris Olympics. The UK's ETA scheme will make the UK a safer place.

The Government have carefully considered the concerns about the application of the ETA scheme within the common travel area, which, as the noble Lord, Lord Ponsonby, and others said, has been raised in both Houses and by many stakeholders in Northern Ireland and elsewhere.

In response to concerns raised about the impact of ETAs on the residents of Ireland who frequently cross the Northern Ireland/Republic of Ireland border, the Government have agreed to exempt non-visa nationals who are legally resident in Ireland from the requirement to obtain an ETA when travelling to the UK on a journey within the common travel area. I reassure the noble Baroness, Lady Suttie, that this was done in full consultation with the Northern Ireland Office. Perhaps I should also clarify, for the benefit of the noble Lord, Lord Murphy, that it was never proposed that Irish citizens would be subject to the ETA system. They, of course, have a special status and always have done, and that is enshrined in primary legislation. The only question that arose was what one did with third-country non-visa nationals within the Republic, and, as I say, they have now been exempted.

In order to benefit from that exemption, those who are legally resident in Ireland may instead, if required by a UK immigration official, present physical evidence that demonstrates their legal residence in Ireland. The Home Office will publish guidance on acceptable evidence before the end of July. I know the noble Baroness was asking me questions about that in the Select Committee, and I am delighted to provide her with a firm date for the publication of that guidance.

The Government have carefully considered requests to exempt those tourists visiting Northern Ireland from the Republic of Ireland from the ETA requirement, due to concerns that the requirement to obtain an ETA will be considered a bureaucratic barrier for international visitors visiting Northern Ireland from Ireland. While the Government entirely recognise the intention behind that request, an exemption of that kind would undermine the Government's efforts to strengthen border control and make the UK, and indeed the common travel area, safer.

ETAs will for the first time allow us to have a comprehensive understanding of those seeking to come to the UK via the common travel area and, as I have said, to refuse them permission as appropriate. Exempting tourists visiting Northern Ireland from Ireland from the requirement to obtain an ETA would result in an unacceptable gap in UK border security that would potentially allow persons of interest or risk, who would otherwise be refused an ETA, to enter the UK legally, undermining the very purpose of the ETA scheme, which is to prevent the travel of those who pose a threat to the UK. The Government are therefore clear that individuals arriving in the UK, including those visiting Northern Ireland from Ireland, will be required to obtain an ETA. As I say, that is to protect both the UK immigration system and the common travel area from abuse.

It is well established as a principle of the operation of the common travel area that all non-Irish, non-British citizens travelling in all directions within the common travel area must enter in line with the laws of those jurisdictions. We are simply extending the same principle

to ETAs when they are introduced. After all, visa nationals—that is, those people travelling from countries that require a visa to come to the UK or to the Republic of Ireland—are expected to do that in any event when crossing the land border, and if they fail to do so they will be entering illegally. However, as now, there will continue to be no routine immigration controls within the common travel area—that is obviously an important principle within the Good Friday agreement, as the noble Lord, Lord Murphy, pointed out—and no immigration controls whatever are maintained on the Northern Ireland/Republic of Ireland land border.

I assure the House that the ETA application process has been designed to be as quick and easy as possible for applicants to complete. It cleverly utilises technology to minimise the need for manual data entry by applicants. As part of our development of the application process and wider preparations for the launch of the ETA scheme, the Home Office has undertaken extensive user research, and we will continue to build on that even after the scheme is launched. I am pleased to inform noble Lords that our user research to date has been overwhelmingly positive, with test users reporting that the application process was easy and straightforward. It has deliberately been designed to be completed in less than 10 minutes. From my own experience of testing the mobile application on a smartphone, I assure noble Lords that the process for obtaining an ETA will be neither bureaucratic nor burdensome. I was in fact able to complete the process in under five minutes.

Once granted, an ETA will be valid for two years or until the passport used to apply for that ETA expires, allowing the holder to make many repeat journeys to the whole of the UK. Our objective is that applicants will be granted an ETA on the same day as their application. I hope that addresses the point made in relation to ESTAs, the American equivalent, by the noble Lord, Lord Dodds. I can reassure the noble Baronesses, Lady Ritchie and Lady Wheatcroft, that same-day travel should still be an option for the majority of tourists crossing the Republic of Ireland/Northern Ireland land border, even if they have not obtained an ETA further in advance and decide to make a spontaneous visit to Northern Ireland.

I turn briefly to the question of the fee. The Home Office will charge a fee for an ETA application. The fee will be competitive and comparable to similar schemes in operation. For example, the USA charges $21, Australia charges 20 Australian dollars and New Zealand charges 17 New Zealand dollars, all for applications made on their mobile applications, and those charges are equivalent to between £10 and £17. We expect to be able to confirm the exact cost of our ETA shortly. I am sure noble Lords would agree that this is a very small cost for travellers relative to the cost and benefits of visiting the UK. I therefore suggest that it is unlikely to deter the majority of genuine tourists and visitors. That is certainly the experience of other countries that already operate similar schemes.

Finally, in response to the questions raised by the noble Lord, Lord Ponsonby, regarding the impact assessment, the precise impact of the introduction of ETAs is uncertain and depends on the potential behavioural impact on the individuals wishing to travel to the UK. When these countries introduced this system, none of them experienced a dip in tourism. It is worth noting that the impact assessment will estimate the potential impact of the ETA introduction at the agreed fee level and again, as I said in Grand Committee, that impact assessment will be published shortly.

I can reassure the noble Lords, Lord Murphy and Lord Dodds, that the Government remain committed to the Belfast/Good Friday agreement, and to ensuring that there is no hard border between Ireland and Northern Ireland. In line with our commitments under strand 2, the Government remain firmly committed to working with the Government of the Republic of Ireland and representatives of the tourism industry, north and south, to ensure that the ETA requirement is communicated effectively. We are committed to doing all we can to mitigate any risk of it being seen as an increased barrier to cross-border tourism on the island of Ireland. My officials are meeting with the Northern Ireland Tourism Alliance, Tourism Ireland and Tourism Northern Ireland in early June to explore how we can best work together to communicate the ETA requirement.

We have made it clear that prosecutions for illegal entry offences will focus on egregious cases and not accidental errors. We will examine very carefully the individual circumstances of each case before deciding whether they should be pursued to prosecution. Ultimately, the Public Prosecution Service for Northern Ireland will determine whether a prosecution is appropriate and in the public interest.

I hope, therefore, that noble Lords acknowledge that the Government have listened to and addressed the concerns raised in this House and in the other place, by providing an exemption for those who are legally resident in Ireland when travelling to the UK on a journey within the common travel area, and by ensuring that the process of obtaining an ETA is quick and simple for those who require one. We are committed to working with relevant stakeholders to ensure that the ETA requirement is communicated effectively, so that we improve the security of the UK and the common travel area without impeding legitimate travel.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank all noble Lords who have contributed to and participated in this debate and thank the Minister for his response.

There remain some outstanding issues, notwithstanding the fact that officials from the Home Office will be meeting with the Northern Ireland Tourism Alliance, Tourism NI and Tourism Ireland, in early June, which I welcome. It would be useful if the Minister could provide me with an update on the outcome, because I am still concerned that there could be a considerable impact on tourism figures from the Republic of Ireland into Northern Ireland, since our local economy, in terms of jobs and the wider circular economy, depends on that. We are seeking a pragmatic solution to that issue if that is at all possible in terms of the exemption. I urge the Minister to look at that.

There have been varying perspectives. The noble Lord, Lord Dodds, brought an opposite perspective, with some important questions. The noble Baronesses,

[Baroness Ritchie of Downpatrick]
Lady Suttie and Lady Wheatcroft, and my noble friends Lord Murphy and Lord Ponsonby, brought another perspective, but the bottom line is that we want the Northern Ireland economy to thrive, to grow and to be boosted, and not to have any impediments or barriers placed in its way. So, looking forward to further responses from the Minister, I beg leave to withdraw.

Motion withdrawn.

Online Safety Bill

Committee (8th Day) (Continued)

9.29 pm

Clause 49: "Regulated user-generated content", "user-generated content", "news publisher content"

Amendment 124

Moved by ***Lord Clement-Jones***

124: Clause 49, page 47, line 6, at end insert—

"(2A) Subsection (2)(e) does not apply in respect of a regulated user-to-user service which is operated by an organisation which—

(a) is a relevant publisher (within the meaning of section 41 of the Crime and Courts Act 2013), and

(b) has an annual UK turnover in excess of £100 million."

Member's explanatory statement

This amendment seeks to ensure the comment sections of the largest newspaper websites are subject to the Online Safety Bill's regulatory regime.

Lord Clement-Jones (LD): My Lords, I shall speak to Amendment 124 but also to Amendments 126 and 227, all of which were tabled by my noble friend Lord McNally and supported by the noble Lord, Lord Lipsey. Sadly, they are both unable to do battle today, for health reasons, and I start by wishing them both a speedy recovery. I hope that I at least partly do justice to their intentions and to these amendments today.

These amendments are designed to address significant loopholes in the Bill which have been very clearly pointed out by Hacked Off, Impress—the press regulator—and the Press Recognition Panel. These loopholes risk enabling extremist publishers to take advantage of the overbroad "recognised news publisher" exemption and allow hatred and other online harms to spread on some of the most popular social media forums online—the newspaper comment sections. Amendment 124 would remove comment sections operated by news websites where the publisher has a UK turnover of more than £100 million from the exemption for regulated user-generated content.

Some of the most harmful online content is in newspaper comment sections, which are in fact social media forums themselves and are read by millions of readers every day. Hacked Off has found examples of misogyny, explicit anti-Semitic language, Holocaust denial and more. Women in public life are also the target of misogyny in these comments sections. Professor Corinne Fowler, an academic who was criticised by some newspapers after contributing to a National Trust report, describing her experience, wrote that

"unregulated comments beneath articles, including the Telegraph and The Times as well as the Daily Mail and the Express … contained scores of suggestions about how to kill or injure me. Some were general ideas, such as hanging, but many were gender-specific, saying that I should be burnt at the stake like a witch … without me knowing, my son (then 12 years old) read these reader comments. He became afraid for my safety. The comments were easily accessible: he googled 'Corinne Fowler National Trust' and scrolled below the articles. No child should have to deal with hate speech directed at a parent".

Amendment 126 would have the effect of incentivising newspapers to sign up to an independent regulator. It would expand the definition of a "recognised news publisher" to incorporate any entity that is a member of an approved regulator, while excluding publishers that are not members of such a regulator, unless they are broadcasters and regulated by Ofcom. Recognised news publishers enjoy wide exemptions in the Bill. Their content is not only protected from being taken down by platforms, but a new provision will require platforms to actively consult media publishers before removing their content. As a result, news publishers will enjoy greater free speech rights under the Bill than private citizens.

The criteria to qualify as a "recognised news publisher" is different for broadcasters and other media. For broadcasters, outlets must be regulated by Ofcom. For non-broadcast media, outlets need only meet a list of vague criteria: have a standards code, which could say anything; have a complaints process, which could also say anything; have a UK office; have staff; and not be a sanctioned title. As a result, a host of extremist and disinformation publishing websites may qualify immediately, or with minor administrative changes, for this rather generous exemption. For example, conspiracy theorist and racist David Icke's website could qualify with minor administrative changes. He would be free to propagate his dangerous and, in many cases, anti-Semitic conspiracies on social media. Heritage and Destiny, an openly racist website, would likewise be able to qualify with minor changes and spread racial hatred on social media. Infowars could open up a UK office, qualify and spread harmful content on social media.

This amendment would replace that vague list of criteria with the simple requirement that, to access the exemption, non-broadcast media publishers must be in a PRP-approved independent regulator. The effect would be that extremists and harmful publishers would not be able to access the exemption. All publishers would have the same free speech rights as everyone else, unless they are otherwise regulated under the charter system or Ofcom in the case of broadcasters.

Amendment 227 requires Ofcom's reporting on the impact of the regulatory regime on the availability and treatment of news publishers and journalistic content to also cover what impact the news publisher exemption and journalistic content duty have on the regime's efficacy. The Bill requires Ofcom to publish a report on whether the new regime will harm freedom of the press. This is despite the fact the Bill already goes to extraordinary lengths to protect the interests of the press. This very modest amendment would require Ofcom's report to also query whether the news publisher exemption is undermining the regulatory regime.

Impress, which is the UK's only press regulator approved by the Press Recognition Panel under royal charter, says that the Bill leaves the public vulnerable and exposed to online harms and therefore falls short of the Government's aim of making the UK the safest place to be online. It has summarised the three ways in which the current Bill is in danger of undermining its principal function—to protect the public from online harms—which could be resolved by these amendments.

First, the Bill creates an uneven playing field. A poor definition of what constitutes a news publisher threatens to undermine the public protection benefits of the Bill. Secondly, the Bill misses an opportunity to fight misinformation or disinformation. The Bill undermines industry standards and fails to distinguish journalism from fake news. Thirdly, the Bill could be easily used as a cover to spread serious harms. The Bill's current journalism exemptions create dangerous loopholes which could easily be exploited to spread misinformation and disinformation. Publishers should be required to demonstrate compliance and oversight in relation to their published code of conduct and complaints policy.

If we needed any more persuasion, a letter to me from David Wolfe KC, the chair of the PRP, provides an additional twist:

"I am writing to draw your attention to the Bill's potential impact on the regulation of the press and news publishers in the UK. Specifically, to Clause 50 of the Bill, which explains the circumstances in which news publishers are taken out of the proposed Ofcom regulatory regime … it does not specify any minimum standards and does not specify who is to assess publishers. The practical implication, though, is that Ofcom—whose board are appointed by the Secretary of State … and which operates under their direct oversight—will not only set the minimum requirements but also undertake the assessment. Paradoxically, the possibility of political interference, which Lord Leveson and the Royal Charter set out to avoid (in the Royal Charter and PRP framework) might now be directly introduced for all UK news publishers".

That means that the national press, which has avoided regulation, is coming under the regulation of Ofcom. I will be very interested to hear what a number of noble Lords might have to say on that subject.

Taken together, these amendments would address serious flaws in the Bill, and I very much hope that the Government's response will be to reflect on them. I beg to move.

Lord Black of Brentwood (Con): My Lords, I join the noble Lord in wishing the noble Lords, Lord McNally and Lord Lipsey, well. I hope they are watching us on the television—perhaps as a cure for insomnia at this time of night. I declare my interest as deputy chairman of the Telegraph Media Group and of the Regulatory Funding Company and note my other interests set out in the register. I must admit I was gripped by a sense of déjà vu when I saw these amendments on the Marshalled List, because I fear they risk catapulting us back into the debate over matters which were settled a decade ago in response to events which took place two decades or more ago.

Before coming on to the detail of some of the amendments that the noble Lord set out, I will make a few general points which relate principally to Amendments 126 and 227 but impinge on the whole group.

First, I do not believe that this Bill, which is about the enormous, unaccountable and unregulated platforms and the dangers they pose to the vulnerable, is the place to reopen the debate about press regulation. Later in the year there will be a media Bill, recently published in draft, which will contain provisions to repeal Section 40 of the Crime and Courts Act 2013. If noble Lords want to discuss the whole issue of the royal charter and punitive legislation against the press, I respectfully suggest that that is the time and place to do so.

Secondly, this Bill has widespread support. The vast majority of people agree with its aims, even if we have disagreements at the edges. If the Bill ceases to be the Online Safety Bill and becomes the state regulation of the press Bill, it will become enormously controversial not just here but internationally.

That is my third point: the enormous global ramifications of seeking to use novel online legislation to force state-backed regulation on the press. The Crime and Courts Act 2013 and the establishment of the royal charter were roundly condemned by international press freedom organisations worldwide—the very same press freedom organisations we all claim to support when talking about the safety of journalists or the way in which the press is controlled in authoritarian regimes. Those same organisations condemned it utterly and they would look on with incredulity and horror if this, the first brave piece of legislation in the world to tackle online safety, was corrupted in this way and in a manner which sent the wrong signals to undemocratic regimes worldwide that it is okay to censor the press in the name of making the platforms accountable.

I was going to make a few comments about IPSO, which the noble Lord raised, but I see that the noble Lord, Lord Faulks, is in his place and I am sure he will make them much more effectively than I would.

The other general point is that this group of amendments flies in the face of the most fundamental Leveson recommendation. In his report, he stressed that it was essential that the system of self-regulation remained voluntary. What these proposals do is the antithesis of that. In effect, they hold a gun to the head of the industry and say, "Either you join a state-approved regulator, or you're subject to the statutory control of Ofcom". There is no voluntary element in that at all because either route ends up in a form of state regulation. That is Hobson's choice.

Finally, as I have said to this House before, and I hoped I would never have to say again, the vast majority of the press will not under any circumstances join a regulator which is authorised by a state body and underpinned by the threat of legislation. Even Sir Brian Leveson said that he recognised that this was a matter of principle. That principle is that the press cannot be free if it is subject to any form of statutory control, however craftily concealed. That position has existed for many centuries and is threatened by the amendments. The reason for that is that if Amendment 126, and some of the others, went through, none of the major publishers at national, regional and local level, nor magazines, would be exempt from the terms of the Bill and would become subject to the statutory control of Ofcom—something that Ofcom

[Lord Black of Brentwood]
has always made clear that it wants nothing to do with—and the prospect of unlimited penal sanctions. That is the end of a free press, by any definition.

I will very briefly discuss a few specifics. Amendment 124 seeks to bring the comments sections of basically all national newspaper websites within the Bill's statutory regime. These are already regulated by IPSO, unless the noble Lord, Lord Faulks, corrects me, and they come under its jurisdiction as soon as a complaint is made to the publishers, even if they are not moderated. Unlike social media, which is entirely different in its reach and impact, editors are legally responsible for what appears on their websites, which is why in most cases there are strong content moderation procedures in place. That is why comments sections rightly fall within the limited functionality exemption in the Bill, because there is such limited scope for harm. The impact of Amendment 124 would be to introduce confusing and complex double regulation of comments sections on websites, to the detriment of the public who wish to engage in legitimate debate.

9.45 pm

Amendment 127 also veers in the direction of extending statutory controls, because it is a subjective test, unlike the others in Clause 50, which would in effect require either the tech platforms or Ofcom to make value judgments about the timeliness of complaints handling, either by publishers or by IPSO. When it comes to media freedom, subjective tests in the hands of state regulators end up making bad law.

Finally, Amendment 227 seeks to extend Ofcom's powers to include an assessment of whether the news publisher exemption is adversely impacting the online safety regime. That would again place a state regulator in the position of assessing whether independent voluntary self-regulation, of the sort envisaged by Leveson, complied with an online safety regime which was never intended to encompass press regulation. It is, in effect, the royal charter by the backdoor, trying to shoehorn a square peg into a round hole in a way which makes this legislation and the powers of the regulator even more complex and controversial.

At the end of the day, this should not be a press regulation Bill, and it is wrong to try to do that. It is a Bill about the responsibility of the vast unaccountable, unregulated platforms which disseminate so much dangerous and harmful content without anyone having recourse, as we have heard powerfully already this afternoon, and not a Bill about the publishers who produce verifiable, trusted journalism which is the lifeblood of a democracy. We confuse the two at our peril and at the cost of the free press, which I know all your Lordships hold dear.

Lord Faulks (Non-Afl): My Lords, much of what I would have said has been said by the noble Lord, Lord Black, so I will make my contribution brief. Elegantly dressed up as these amendments were by the noble Lord on behalf of the noble Lords, Lord Lipsey and Lord McNally, to whom I also say get well soon, they are in fact intended to change the way the press is currently regulated. I declare my interest as chairman of IPSO, a post I have held since January 2020. IPSO regulates 95%, by circulation, of the printed press, and that includes online versions of newspapers.

Noble Lords will remember the Leveson inquiry, following the discovery of unacceptable press practices including phone hacking. Parliament's response was to create the Press Recognition Panel and the concept of an approved regulator. It was not state regulation, but nor was it the status quo ante. Only one regulator has sought and attained approved status: Impress. The Press Recognition Panel was chaired by David Wolfe KC, who provided a quotation to the noble Lord. Impress is funded by the estate of Max Mosley. It does not regulate any of the main national newspapers, which have either, like the *Guardian*, elected for self-regulation, or, like most of the others, selected IPSO as their regulator. Now, clearly it would be unattractive for me to extol the virtues of IPSO, but to its critics I recommend reading the newly published independent external review, written by Sir Bill Jeffrey, former Permanent Secretary at the MoD. I think readers would generally be reassured by the report.

Section 40 of the Crime and Courts Act was intended as a stick—or was it a carrot—to drive newspapers into the arms of the approved regulator. Even when I had nothing to do with press regulation, I did not like that provision, which has hovered over the newspaper industry like the sword of Damocles. It has never been brought into effect, and I welcome the fact that the Government now intend to repeal Section 40 via the media Bill—although I accept, as the noble Lord, Lord Black, said, that there may be a debate about the proper scope of regulation, and indeed of Section 40, when that comes before Parliament.

As I understand these amendments, regulation of the largest websites would prospectively be the subject of the Online Safety Bill's regulatory regime. I echo comments already made that this extraordinarily significant Bill is not primarily directed at press regulation at all. It is intended by these amendments that for newspapers to qualify for the recognised news publisher status, they would have to be a member of an approved regulator. This is plainly an attempt to dismantle the current system of press regulation.

It seems something of an irony that newspapers that are regulated by IPSO or even self-regulated have accountability, however imperfect, whereas, pending the passing of the Bill, internet platforms are wholly unregulated—yet it is sought to pass off some of the regulation of newspapers to Ofcom. Is Ofcom ready, willing or even equipped to replicate the complaints system that currently obtains? I think Ofcom would have quite enough to do. Is its horizon-scanning model even appropriate for press complaints? It is very early days to increase the scope of Ofcom's rule. The Government have promised a review of the regulatory framework in two or three years; I suppose then it might be possible to assess whether Ofcom's role should change or be enlarged. Until then, it seems inappropriate to do so.

I suggest that the current system of press regulation should not be the subject of further statutory provision at this juncture, or indeed at all. There have been some deplorable press practices in the past, but the traditional

printed press in this country, albeit a much-reduced animal with diminished circulation and advertising revenues, nevertheless has some real strengths. A free, vigorous and challenging press is part of a functioning democracy. We should be very wary of giving a Government, of whatever colour and by whatever means, greater power to control it.

Baroness Grey-Thompson (CB): My Lords, I speak in favour of Amendments 124, 126 and 227 to which my name is attached. I will reserve my comments mostly to the Bill's loophole on newspaper comment sections.

These forums would qualify as social media platforms under the Bill's definition were it not for a special exemption in Clause 49. They have been found to host some of the most appalling and despicable content online. I will paraphrase some examples so as not to subject the Committee to the specific language used, but they include anti-Semitic slurs in comments appearing under articles covering a violent attack on a synagogue; Holocaust denial; and speculation that Covid was created and spread by a secretive global cabal of powerful individuals who control the world's leaders like puppets.

Some of the worst abuse is reserved for women in public life, which I and others in your Lordships' House have personally experienced. In an article about a female leader, comments included that she should be struck down or executed by the SAS. Others commented graphically on her appearance and made disturbing sexual remarks. Another woman, Professor Fowler—who the noble Lord, Lord Clement-Jones, has already discussed—was described as having a sick mind and a mental disorder; one comment implied that a noose should be prepared for her. There are many more examples.

Comment sections are in too many cases badly regulated and dangerous places for members of the public. The exemption for them is unwarranted. Specifically, it protects any social media platform where users make comments in response to what the Bill describes as "provider content". In this case, that means comments posted in response to articles published by the newspaper. This is materially no different from user exchanges of any other kind and should be covered just the same.

The Government have previously argued that there should be a distinction between newspaper comment sections and other platforms, in that other platforms allow for virality because posts that are liked and retweeted do better than the others. But this is exactly the same for many modern comment sections. Lots of these include functionality to upvote certain comments, which can then rise to the top of the comment section on that article.

There are estimated to be around 15 million people on Twitter in the UK—I am one of them—but more than twice that number read newspaper websites every month. These comment sections are social media platforms with the same power, reach and capacity to cause harm as the US giants. We should not treat them any differently on account of the fact that they are based out of Fleet Street rather than Silicon Valley.

There are some concerns that the Bill's requirements would put an undue burden on small organisations running comment sections, so this amendment would apply only to organisations with an annual turnover in excess of £100 million. This would ensure that only the largest titles, which can surely afford it, are required to regulate their comment sections. Amendment 124 would close the comment section loophole, and I urge the Government to act on it.

It is a great shame that, due to the lateness of the hour, my noble friend Lady Hollins is unable to be here. She would strongly support Amendment 126 on several points but specifically wanted to talk about how the exemption creates double standards between how the public and news publishers are treated, and puts platforms and Ofcom in an impossible situation over whether newspapers meet vague criteria to access exemptions.

I also support Amendments 126 and 227, which would help protect the public from extremist and other dangerous websites by preventing them accessing the separate media exemption. In all these matters, we must not let overbroad exemptions and loopholes undermine what good work this Bill could do.

Baroness Fox of Buckley (Non-Afl): My Lords, while considering this group of amendments, a comment by Index on Censorship came to mind. Critical of aspects of the Bill, it worried out loud about whether this legislation

"will reverse the famous maxim 'publish and be damned', to become, 'consider the consequences of all speech, or be damned'".

In that context, I am very grateful—relieved at least—that the freedom of the press is given due regard and protections in the Bill. Freedom of the press is one practical form in which freedom of expression exists and is invaluable in a democracy. It is so crucial that it has been at the centre of democratic struggles in this very Parliament for more than five centuries—ever since the first printing press meant that the masses could gain access to the written word. It fuelled the pamphleteers of the English Civil War. It made a hero of MP John Wilkes in the 18th century, his victory giving the press freedom to report on the goings-on of the great and the good, to muckrake and to dig the dirt; long may that continue.

So I welcome that news publishers' content on their own websites is not in scope of the legislation; that if platforms take down or restrict access to trusted news sources, they will face significant sanctions; that platforms must notify news publishers if they want to take down their content and, if the publisher disputes that, the platform must not remove it until the dispute is resolved; and that Ofcom must also review the efficacy of how well the platforms are protecting news.

I say "Hurrah!" to all that. If only the Bill treated all content with such a liberal and proportionate approach, I would not be standing up and speaking quite so much. But on the press specifically, I strongly oppose Amendments 124 and 126—as well as Amendment 127, now that it has been explained and I understand it; I did not quite before. Amendment 124 would mean that the comment section of the largest newspaper websites were subject to the regulation in the Bill.

It is important to note—as has been explained—that user comments are already regulated by IPSO, the Independent Press Standards Organisation, and that individual publishers have strong content moderation system policies and the editor is ultimately liable for comments. That is the key issue here. This is about

[Baroness Fox of Buckley]
protecting editorial independence from state interference. Amendment 124 does the opposite. That amendment would also restrict the ability of UK citizens to discuss and engage with publishers' content.

It is part of a lively and vital public square to be free to debate and discuss articles in newspapers. We have heard some pretty graphic and grim descriptions from the noble Baroness, Lady Grey-Thompson, and the noble Lord, Lord Clement-Jones, about those comments; but for me, ironically, the comment section in newspapers is a form of accountability of the press to readers and the audience. Although the descriptions were grim, much of that section is intelligent, well-informed and interesting feedback. I will talk a little about hate afterwards.

10 pm

What is more, one likely outcome of this amendment is that newspapers could shut down their comments sections. The cost of investing in proactive scanning or child safety technology would be prohibitively expensive, and I think that would be a great loss. Whenever a newspaper article is published and, maybe because it is controversial, the newspaper decides not to have a comments section, all over social media people say, "That's not fair, I wanted to say something on it", and they just comment on social media.

I am especially opposed to Amendment 126, which would mean that only those news publishers that would qualify for recognised news-publisher status would have to be a member of an approved regulator. We have to be clear what is meant by approved here: it means state approved. It would be the return of state licensing of the press and wipe out all those hard-won gains dating back from Milton's *Areopagitica* and John Lilburne and the Levellers' sacrifices for press freedom. I just do not want to throw those away; it would leave publishers in an impossible position of choosing between submitting to state-backed regulation or leaving their media content open to censure or censorship by tech giants, or Ofcom.

I think it is an attempt at coercing or bullying these papers into what is a Hacked Off-inspired, Leveson-style regulation system by the back door that has been rejected by the vast majority of the print media, as has been explained. It will remove vital protections for press freedom built into the Bill and allow anyone who refused to be blackmailed into state licensing and statutory content regulation, or thrown under the bus, and it would effectively greenlight Silicon Valley censorship of UK journalism.

That said, while it is important to give due respect to press freedom under a specific category, just as we do with academic freedom, I am still a little squeamish about the special-favours approach towards the mainstream media, as it is described, and legacy media. Perhaps that is the one thing on which I agree with the noble Lord, Lord Clement-Jones. Privileging comments sections of newspapers, while offering no parallel protections for some members of the public to comment on social media on the internet itself, is a problem. While we are focusing in this Bill only and largely on the negatives of the internet, we should remember that it has been hugely democratising, removing official gatekeeping and allowing ordinary people to publish and amplify their voices, which were often silenced or ignored in the past. Yet now they are peculiarly subject to censorious measures and, what is more, their reputations are traduced.

I thought it was interesting, listening to the discussion about hate in response to the way the noble Baroness, Lady Grey-Thompson, and the noble Lord, Lord Clement-Jones, discussed the comments section in newspapers—which I am not naive enough to imagine are not full of some horrors, as they described—that there is a danger that we have an impression of the British public as a hate-fuelled mob who, as soon as you let them speak, spew out anti-Semitism, misogyny and all the rest of it. As I constantly try to say throughout this Bill, the whole notion of hate is at least subjective and often quite complicated.

One example that happened just a couple of days ago was when an organisation called Stop Funding Hate, in response to an article about a female sportswoman who legitimately raised concerns about the disputes on sex and gender in sport, and who believes that women's sport is in danger and on the line, described it as "bigotry" and "hate". That led to a great deal of abuse of the female athlete. Stop Funding Hate then led a campaign to get a corporate boycott of advertising from the *Telegraph*, on the basis that the article was hate-fuelled—whereas I think the censorious boycott was hate-fuelled.

Therefore, using big business money, in this instance, as a weapon to dictate editorial content shows that press freedom is on the line in a variety of ways. Women arguing for protecting single-sex sport, and then being subject to vile misogyny, themselves being described as using transphobic hate speech shows me, at least, that in the name of fighting hate we should not have any attempts to assault press freedom. I will oppose all three of these amendments.

Lord Allan of Hallam (LD): My Lords, I support Amendment 227 in particular. I am pleased to contribute, as someone who gave evidence to the Leveson inquiry, explaining why social media should not be in scope for any new press regulation scheme. It is entertaining for me now to come through the looking glass and listen to the noble Lords, Lord Black of Brentwood and Lord Faulks, in particular making the kinds of argument I made then, as we discuss whether the press should be in scope for a new social media regulatory scheme.

These amendments are a helpful way to test how the Government expect their decision to afford certain privileges for online activity by journalists and news publishers to work. That is what the regime does, in effect, with the rationale, which was explained to us, that this is why certain bodies can be privileged when using user-to-user services and search engines in a way that, if they were not afforded that status, they would not be given those privileges. Again, it is noteworthy that there has often been criticism of social media precisely for giving special treatment to some users, including in stories in some of the press that we are talking about, and here we are creating not just a state sanction but a state-ordered two-tier system that all the social media companies will now have to adopt. That creates some interesting questions in itself.

I want to press the Minister primarily on definitions. It is certainly my experience that definitions of who is a journalist or a news media publisher are challenging and can be highly political. There have been several pressure points, pushing social media companies to try to define journalists and news publishers for themselves, outside of any regulatory scheme—notably following the disputes about misinformation and disinformation in the United States. The European Union also has a code of practice on misinformation and disinformation. Every time someone approaches this subject, they ask social media companies to try to distinguish journalists and news media from other publishers. So these efforts have been going on for some time, and many of them have run into disputes because there is no consistent agreement about who should be in or outside those regimes. This is one of those problems that seems clear and obvious when you stand back from it, but the more that you zoom in, the more complex and messy it becomes. We all say, "Oh yes, journalists and news publishers—that is fine", and we write that in the legislation, but, in practice, it will be really hard when people have to make decisions about individuals.

Some news organisations are certainly highly problematic. Most terrorist organisations have news outlets and news agencies. They do not advertise themselves as such but, if you work in a social media platform, you have to learn to distinguish them. They are often presented entirely legitimately, and some of the information that you use to understand why they are problematic may be private, which creates all sorts of problems. Arguably, this is the Russia Today situation: it presented itself as legitimate and was registered with Ofcom for a period of time; we accepted that it was a legitimate news publisher, but we changed our view because we regard the Russian Government as a terrorist regime, in some senses. That is happening all of the time, with all sorts of bodies across the world that have created these news organisations. In the Middle East in particular, you have to be extraordinarily careful—you think that something is a news organisation but you then find that it has a Hezbollah connection and, there you go, you have to try to get rid of it. News organisations tied to extremist organisations is one area that is problematic, and my noble friend referred to it already.

There is also an issue with our domestic media environment. Certainly, most people would regard Gary Lineker as a journalist who works for a recognised news publisher—the BBC—but not everyone will agree with that definition. Equally, most people regard the gentleman who calls himself Tommy Robinson as not being a journalist; however much he protests that he is in front of judges and others, and however much support he has from recognised news publishers in the United States, most people would say that he is not a journalist. The community of people who agree that Gary Lineker is not a journalist and that of people who think that Tommy Robinson is not a journalist do not overlap much, but I make the point that there is continually this contention about individuals, and people have views about who should be in or out of any category that we create.

This is extraordinarily difficult, as in the Bill we are tasking online services with a very hard job. In a few lines of it, we say: "Create these special privileges for these people we call journalists and news publishers". That is going to be really difficult for them to do in practice and they are going to make mistakes, either exclusionary or inclusionary. We are giving Ofcom an incredibly difficult role, which is why this debate is important, because it is going to have to adjudicate when that journalist or news publisher says to Ofcom: "I think this online platform is breaching the Online Safety Act because of the way it treated me". Ofcom is going to have to take a view about whether that organisation or individual is legitimate. Given the individuals I named, you can bet your bottom dollar that someone is going to go to Ofcom and say, "I don't think that Gary Lineker or the BBC are legitimate". That one should be quite easy; others across the spectrum will be much more difficult for it to deal with.

That is the primary logic underlying Amendment 227: we have known unknowns. There will be unanticipated effects of this legislation and, until it is in place and those decisions are being made, we do not know how it will work. Frankly, we do not know whether, as a result of legal trickery and regulatory decisions, we have inadvertently created a loophole where some people will be able to go and win court cases by claiming protections that we did not intend them to have. I disagree with the noble Lord, Lord Black: I do not think Amendment 227 undermines press freedom in any sense at all. All it does is to say: "We have created an Online Safety Bill. We expect it to enhance people's safety and within it we have some known unknowns. We do not know how this exemption is going to work. Why not ask Ofcom to see if any of those unintended consequences happen?"

I know that we are labouring our way through the Online Safety Bill version 1, so we do not want to think about an online safety Bill version 2, but there will at some point have to be a revision. It is entirely rational and sensible that, having put this meaningful exemption in there—it has been defended, so I am sure that the Government will not want to give it up—the least we can do is to take a long, hard look, without interfering with press freedom, and get Ofcom to ask, "Did we see those unintended consequences? Do we need to look at the definitions again?"

Baroness Stowell of Beeston (Con): My Lords, the noble Lord, Lord Allan, has clearly and comprehensively painted a picture of the complex world in which we now live, and I do not think that anybody can disagree with that or deny it. We are in a world which is going to keep evolving; we have talked in lots of other contexts about the pace of change, and so on. However, in recognising all that, what the noble Lord has just described—the need for constant evaluation of whether this regime is working effectively—is a job for Parliament, not for Ofcom. That is where I come back to in starting my response to this group of amendments.

Briefly—in order that we can get to the wind-ups and conclude business for the day—ensuring that recognised news publishers and organisations are not subject to Ofcom or any form of state regulation is a vital principle. I am pleased that the Government have included the safeguards which they have in the legislation, while also making it much harder for the tech platforms to restrict the freedom of recognised news publishers and users' access to them.

[Baroness Stowell of Beeston]

I reiterate that I understand that this is becoming increasingly complicated, but these are important principles. We have to start in the world that we currently understand and know, ensure that we protect those publications which we recognise as trusted news providers now, and do not give way on those principles. As my noble friend Lord Black said, regarding debates about Section 40 of the Crime and Courts Act, there will be an opportunity to re-evaluate that in due course when we come to the media Bill. For what it is worth, my personal view is that I support the Government's intention to remove it.

10.15 pm

The only other thing I would add is that as far as the accountability of news publishers is concerned, I, too, think this is important. It is an important element of their proper editorial oversight that they control and oversee online comments sections and that they are subject to the same sort of self-regulation and regulation by IPSO as has been described. However, it is also important to say to these news publishers and any organisations that rely on the support and continued use and subscription of their users that they ought to have in place good-quality customer service regimes. If people want to raise complaints and concerns, not necessarily just about content but about the way in which they manage their subscriptions, their inability to cancel their subscriptions or indeed a demand for a more flexible approach to their subscriptions, I would like to see much better accountability in the way that these organisations look after and service the people who are their readers. The future of news publishers ultimately relies on them meeting the expectations of their readers and giving voice to the perspective of their readers, and for as long as they do that, I think they should enjoy the freedom to operate without statutory control, and therefore I do not support the amendments in this group.

Baroness Gohir (CB): My Lords, I support Amendments 124, 126 and 227. I thank the noble Lords, Lord Lipsey and Lord McNally, for proposing these amendments and I wish them well.

A number of far-right websites already exist across the internet which are capable, with minimal reform, of meeting the requirements to qualify as recognised news publishers and benefit from the exemption. Some of these websites host content from known high-profile racists. These extreme websites feature anti-Semitism, hatred of women and hatred of Muslims. The Centre for Media Monitoring, part of the Muslim Council of Britain, has criticised the Bill's media exemption. The threat of far-right and anti-Muslim websites arguing that they constitute a news publisher is not only inevitable but very dangerous. As news publishers, they would have the freedom to propagate fake news, disinformation and conspiracy theories about Islam and Muslims.

The thought that UK-based racist outlets would be able to access this exception is horrific enough, but there is also a risk that extremist news websites currently based in the USA and elsewhere around the world will seek to relocate to Britain to benefit from the exemption in future. This is because while the exemption does not require publishers to abide by any specific set of standards, it does require publishers to have a UK office. Perversely, this creates an incentive for an extremist website based the US, for example, from where many of the internationally most popular racially hateful websites currently operate, to establish an office here in the UK. In doing so, it may then be able to post content under the terms of the exemption. Indeed, this exemption risks paving the way for a catastrophic scenario in which, on account of this exemption, the UK becomes less safe. It is critical that the Government listen and engage with these concerns.

Amendment 124 seeks to ensure that newspaper comment sections are properly regulated. Anyone can be a target of hatred in a newspaper comment section, but they are most likely to have Islamophobic, anti-Semitic, racist and misogynistic content. Without the amendment, the Bill's provisions on the media will endanger those it is intended to protect. These amendments propose a compromise which is the right approach and will ensure that people are protected from abuse while also retaining the media exemption for responsible newspaper publishers. I hope the Government will engage more on these matters and work towards a solution.

Lord Knight of Weymouth (Lab): My Lords, I regret that my noble friend Lord Lipsey is unable to be here. I wish him and the noble Lord, Lord McNally, well. I also regret that my noble friend Lord Stevenson is not here to wind up this debate and introduce his Amendment 127. Our inability to future-proof these proceedings means that, rather than talking to the next group, I am talking to this one.

I want to make four principal points. First, the principle of press freedom, as discussed by the noble Lords, Lord Black and Lord Faulks, in particular, is an important one. We do not think that this is the right Bill to reopen those issues. We look forward to the media Bill as the opportunity to discuss these things more fully across the House.

Secondly, I have some concerns about the news publisher exemption. In essence, as the noble Lord, Lord Clement-Jones, set out, as long as you have a standards code, a complaints process, a UK address and a team of contributors, the exemption applies. That feels a bit loose to me, and it opens up the regime to some abuse. I hear what the noble Baronesses, Lady Gohir and Lady Grey-Thompson, said about how we already see pretty dodgy outfits allowing racist and abusive content to proliferate. I look forward to the Minister's comments on whether the bar we have at the moment is too low and whether there is some reflection to be done on that.

The third point is on my noble friend Lord Stevenson's Amendment 127, which essentially says that we should set a threshold around whether complaints are dealt with in a timely manner. In laying that amendment, my noble friend essentially wanted to probe. The noble Lord, Lord Faulks, is here, so this is a good chance to have him listen to me say that we think that complaints should be dealt with more swiftly and that the organisation that he chairs could do better at dealing with that.

My fourth comment is about comments, particularly after listening to the speech of the noble Baroness, Lady Grey-Thompson, about some of the hateful

comment that is hidden away inside the comments that news publishers carry. I was very much struck by what she said in respect of some of the systems of virality that are now being adopted by those platforms. There, I think Amendment 227 is tempting. I heard what the noble Baroness, Lady Stowell, said, and I think I agree that this is better addressed by Parliament.

For me, that just reinforces the need for this Bill, more than any other that I have ever worked on in this place, to have post-legislative scrutiny by Parliament so that we, as a Parliament, can review whether the regime we are setting up is running appropriately. It is such a novel regime, in particular around regulating algorithms and artificial intelligence. It would be an opportunity to see whether, in this case, the systems of virality were creating an amplification of harm away from the editorial function that the news publishers are able to exercise over the comments.

On that basis, and given the hour, I am happy to listen with care to the wise words of the Minister.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I join noble Lords who have sent their best wishes to the noble Lords, Lord Lipsey and Lord McNally.

His Majesty's Government are committed to defending the invaluable role of a free media. We are clear that our online safety legislation must protect the vital role of the press in providing people with reliable and accurate information.

We have included strong protections for news publishers' and journalistic content in the Bill, which extends to the exemption from the Bill's safety duties for users' comments and reviews on news publishers' sites. This reflects a wider exemption for comments and reviews on provider content more generally. For example, reviews of products on retailers' sites are also exempt from regulation. This is designed to avoid disproportionate regulatory burden on low-risk services.

Amendment 124 intends to modify that exemption, so that the largest news websites no longer benefit and are subject to the Bill's regulatory regime. Below-the-line comments are crucial for enabling reader engagement with the news and encouraging public debate, as well as for the sustainability—and, as the noble Baroness, Lady Fox, put it, the accountability—of the news media. We do not consider it proportionate, necessary or compatible with our commitment to press freedom to subject these comment sections to oversight by Ofcom.

We recognise that there can sometimes be unpleasant or abusive below-the-line comments. We have carefully considered the risks of this exemption against the need to protect freedom of speech and media freedoms on matters of public interest. Although comment functions will not be subject to online regulation, I reassure the Members of the Committee who raised concerns about some of the comments which have attracted particular attention that sites hosting such comments can, in some circumstances, be held liable for any illegal content appearing on them, where they have actual knowledge of the content in question and fail to remove it expeditiously.

The strong protections for recognised news publishers in the Bill include exempting their content from the Bill's safety duties, requiring category 1 platforms to notify recognised news publishers and to offer a right of appeal before removing or moderating any of their content. Clause 50 stipulates the clear criteria that publishers will have to meet to be considered a "recognised news publisher" and to benefit from those protections. When drafting these criteria, the Government have been careful to ensure that established news publishers are captured, while limiting the opportunity for bad actors to qualify.

Amendment 126 seeks to restrict the criteria for recognised news publishers in the Bill, so that only members of an approved regulator within the meaning of Section 42 of the Crime and Courts Act 2013 benefit from the protections offered by the Bill. This would create strong incentives for publishers to join specific press regulators. We do not consider this to be compatible with our commitment to a free press. We will repeal existing legislation that could have that effect, specifically Section 40 of the Crime and Courts Act 2013, through the media Bill, as noble Lords have noted, which has recently been published. Without wanting to make a rod for my own back when we come to that Bill, I agree with my noble friend Lord Black of Brentwood that it would be the opportunity to have this debate, if your Lordships so wished.

The current effect of this amendment would be to force all news publishers to join a single press regulator—namely Impress, the only UK regulator which has sought approval by the Press Recognition Panel—if they were to benefit from the exclusion for recognised news publishers. Requiring a publisher to join specific regulators is, in the view of His Majesty's Government, not only incompatible with protecting press freedom in the UK but unnecessary given the range of detailed criteria which a publisher must meet to qualify for the additional protections, as set out in Clause 50 of the Bill.

As part of our commitment to media freedom, we are committed to independent self-regulation of the press. As I have indicated, Clause 50 stipulates the clear criteria which publishers will have to meet to be considered a "recognised news publisher" and to benefit from the protections in the Bill. One of those criteria is for entities to have policies and procedures for handling and resolving complaints. Amendment 127 from the noble Lord, Lord Stevenson, adds a requirement that these policies and procedures must cover handling and resolving complaints "in a timely manner". To include such a requirement will place the responsibility on Ofcom to decide what constitutes "timely", and, in effect, put it in the position of press regulator. That is not something that we would like. We believe that the criteria set out in Clause 50 are already strong, and we have taken significant care to ensure that established news publishers are captured, while limiting the opportunity for bad actors to benefit.

I turn now to Amendment 227. We recognise that, as legislation comes into force, it will be necessary to ensure that the protections we have put in place for journalistic and news publisher content are effective. We need to ensure that the regulatory framework does not hinder access to such content, particularly in the

[Lord Parkinson of Whitley Bay]
light of the fact that, in the past, news content has sometimes been removed or made less visible by social media moderators or algorithms for unclear reasons, often at the height of news cycles. That is why we have required Ofcom to produce a specific report, under Clause 144, assessing the impact of the Bill on the availability and treatment of news publisher and journalistic content on category 1 services.

10.30 pm

Amendment 227 would require Ofcom's report also to assess the impact that the recognised news publisher exemption and journalistic content duties have on the efficacy of the new online safety regulatory framework, and

"the securing of public safety from online harms".

The Bill currently requires the Secretary of State to review the regulatory framework established by the Bill at least two years after it comes into force, as set out in Clause 159. This review will encompass the elements that these amendments seek to assess, because it requires an evaluation of how effective the new regulatory framework is at minimising the risk of harm to people in the United Kingdom.

The Secretary of State must consult Ofcom in producing this report, as well as any other persons she considers appropriate. Any concerns about the recognised news publisher and journalistic content exemptions can be brought to the Secretary of State's attention in the course of this review. Requiring Ofcom also to assess these factors in the production of its report under Clause 144 would therefore be duplicative. On that basis, I hope the noble Lord will be willing to—

Lord Knight of Weymouth (Lab): Before the Minister closes his folder and sits down, perhaps I could say that I listened carefully and would just like him to reflect a little more for us on my question of whether the bar is set too low and there is too much wriggle room in the exemption around news publishers. A tighter definition might be something that would benefit the Bill and the improvement of the Bill when we come back to it on Report.

Lord Parkinson of Whitley Bay (Con): Looking at the length of Clause 50—and I note that the noble Lord, Lord Allan of Hallam, made much the same point in his speech—I think the definitions set out in Clause 50 are extensive. Clause 50(1) sets out a number of recognised news publishers, obviously including

"the British Broadcasting Corporation, Sianel Pedwar Cymru"—

self-evidently, as well as

"the holder of a licence under the Broadcasting Act 1990 or 1996"

or

"any other entity which … meets all of the conditions in subsection (2), and … is not an excluded entity"

as set out in subsection (3). Subsection (2) sets out a number of specific criteria which I think capture the recognised news publishers we want to see.

Noble Lords will be aware of the further provisions we have brought forward to make sure that entities that are subject to a sanction are not able to qualify, such as—

Lord Allan of Hallam (LD): I think it is actually quite important that there is—to use the language of the Bill—a risk assessment around the notion that people might game it. I thought the noble Baroness, Lady Gohir, made a very good point. People are very inventive and, if you have ever engaged with the people who run some of those big US misinformation sites—let us just call them that—you will know that they have very inventive, very clever people. They will be looking at this legislation and if they figure out that by opening a UK office and ticking all the boxes they will now get some sorts of privileges in terms of distributing their misinformation around the world, they will do it. They will try it, so I certainly think it is worth there being at least some kind of risk assessment against that happening.

In two years' time we will be able to see whether the bad thing happened, but whether or not it is the Minister having a conversation with Ofcom now, I just think that forewarned is forearmed. We know that that is a possibility and it would be helpful for some work to be done now to make sure that that is not a loophole that none of us want, I think.

Lord Parkinson of Whitley Bay (Con): I am mindful of the examples the noble Lord gave in his speech. Looking at some of the provisions set out in subsection (2) about a body being

"subject to a standards code"

or having

"policies and procedures for handling and resolving complaints",

I think on first response that those examples he gave would be covered. But I will certainly take on board the comments he made and those the noble Baroness, Lady Gohir, made as well and reflect on them. I hope—

Baroness Fox of Buckley (Non-Afl): On a final point of clarification, in contrast, I think the exemption may be too narrow, not too broad. With the emergence of blogs and different kinds of news organisations—I think the noble Lord, Lord Allan, described well the complexity of what we have—and some of the grimmer, grosser examples of people who might play the system, does the Minister acknowledge that that might be dealt with by the kind of exemptions that have been used for RT? When somebody is really an extremist representative of, I do not know, ISIS, pretending to be a media organisation, the sensible thing to do would be to exempt them, rather than to overtighten the exemptions, so that new, burgeoning, widely read online publications can have press freedom protection.

Lord Parkinson of Whitley Bay (Con): I will certainly take on board the points the noble Baroness raises. Hearing representations in both directions on the point would, on first consideration, reassure me that we have it right, but I will certainly take on board the points which the noble Baroness, the noble Lord and others have raised in our debate on this. As the noble Lord, Lord Allan, suggests, I will take the opportunity to discuss it with Ofcom, as we will do on many of the issues which we are discussing in this Committee, to make sure that its views are taken on board before we return to these and other issues on Report.

Lord Clement-Jones (LD): My Lords, I thank the Minister for his responses to the number of different issues that he has been asked about after he sat down, so to speak, which I think have been taken on board. I thank the noble Baronesses, Lady Gohir and Lady Grey-Thompson, and the noble Lord, Lord Allan, for their support for these amendments.

It is also a pleasure to see the noble Lord, Lord Black, who has clearly been lured out at this late hour—perhaps not so unwillingly; it gives him a chance to rehearse some of the arguments for the media Bill coming down the track. Along with the noble Lord, Lord Faulks, I am sure he will enjoy the media Bill when it comes. I had many happy hours sitting next door to the noble Lord, Lord Black, on the Joint Committee on the draft Bill, on which I may say that we agreed on most things.

But the fact is that one person's strong exemptions is another person's special privileges, and that very much applies in these circumstances as regards what I think the noble Baroness, Lady Fox, would call the mainstream media. I enjoyed what the noble Baroness had to say, because she came round to some kind of agreement at the end on what we might call mainstream media exceptionalism, which is a fair description. There is an element of cakeism about the way that the mainstream media seem to want to have it.

The Minister talked about low-risk services, and I think that was the reason why we had these questions asked about risk assessment. How does the Minister know that these below-the-line comments sections are low-risk unless a risk assessment has been made? We heard from the noble Baronesses, Lady Grey-Thompson and Lady Gohir, about the content of some of those comments sections. That does not sound low-risk to me at all, and I think that is the basis of their support for the amendments. When the Minister says it is not proportionate to regulate these comments sections, he is assuming they are low-risk services without much evidence. He threw a small bone by saying that sites can be held liable for illegal content, but that is a relatively small bone in those circumstances.

I took some comfort from the way that the noble Baroness, Lady Stowell, talked about the need for constant evaluation. Perish the thought, but we may well need an online safety Bill number 2; I just hope it is not too soon and that we have time for a little evaluation of how this Bill operates. That is why I am pretty keen that we should get this Bill into the best possible shape.

I thought what the noble Lord, Lord Knight, had to say about post-legislative scrutiny was very apposite, but the hour is late so I will not go through too many other aspects of this. This has been a good debate. I hope the media Bill is not déjà vu all over again, but we will see what happens when we get to it. In the meantime, I beg leave to withdraw the amendment.

Amendment 124 withdrawn.

House resumed.

Strikes (Minimum Service Levels) Bill

Returned from the Commons

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

House adjourned at 10.41 pm.