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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 6 June 2023

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Death of a Member: Lord Morris of Aberavon

Announcement

2.36 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble and learned Lord, Lord Morris of Aberavon, on 5 June. On behalf of the House, I extend our condolences to the noble and learned Lord's family and friends.

Baby-changing Facilities

Question

2.36 pm

Asked by ***Lord Kirkhope of Harrogate***

To ask His Majesty's Government whether they plan to oblige cafés, restaurants and other businesses serving food and drink to provide adequate baby-changing facilities.

The Minister of State, Department for Business and Trade (The Earl of Minto) (Con): Although building regulations already require consideration to be given to baby-changing facilities at the design stage of non-dwellings, we need to also consider the impact that further obligations would have. Most hospitality businesses are SMEs, which may not have the resources, or indeed the space, to install suitable facilities.

Lord Kirkhope of Harrogate (Con): I much appreciate those remarks from my noble friend. However, as many parents and guardians of infants find it inconvenient, if not embarrassing, when in restaurants and other outlets serving food and drink where adequate baby-changing facilities are not available, will the Government now consider amending Section 20 of the Local Government (Miscellaneous Provisions) Act 1976 to add a requirement for such facilities, wherever practicable, to those already covering the provision and maintenance of toilet facilities?

The Earl of Minto (Con): My Lords, I think we can all agree that the principle of free access to baby-changing facilities in as many different hospitality situations as we can reach is desirable. Under the existing building regulations there is already a requirement for new non-residential properties to consider this, as well as for buildings which are undergoing substantial reconstruction.

Lord Leong (Lab): My Lords, as most mothers and fathers will tell you, taking an infant out, especially to eating places, is a real chore—you have to pack nappies, a changing mat and wipes, among other things. Having to find a place to change nappies is another chore. They should not be forced to do this in unsuitable places. Most child-friendly restaurants and cafés already have baby-changing facilities. This makes good business sense, contributing to a healthy "bottom" line, as parents will look at these eateries positively. There have been suggestions from many people that cafés, pubs and restaurants should be required to provide baby-changing facilities by law so that parents can have peace of mind. Will the Government look at this again?

The Earl of Minto (Con): I thank the noble Lord for his comments—in all respects. My noble friend made a very good point about how this needs to be practicable. There are a lot of existing hospitality venues where it is not practical to provide additional services, either from a financial point of view or, more importantly, from a space point of view. However, the principle holds good that, whenever the opportunity arises with anything new or anything that is being rebuilt, consideration should be, and indeed is, required under the building regulations improvements.

Baroness O'Loan (CB): My Lords, in considering the situation of parents who wish to change babies in hospitality venues, will the Minister also consider parents who need to change children with disabilities, and older people with disabilities, who need more extensive facilities?

The Earl of Minto (Con): My Lords, that is again a very good point. There is a requirement at the moment to separate disabled toilet facilities from baby-changing facilities, and I think that is probably the right thing to do. This morning, I met the chief executive of the British Beer and Pub Association, and she said that her members take every opportunity to put in baby-changing facilities for precisely the reasons that the noble Lord mentioned earlier: from a marketing point of view, it is absolutely the right thing to do, because you win more customers and more money.

Lord Shinkwin (Con): My Lords, my noble friend the Minister helpfully makes a point about the separation between baby-changing facilities and accessible toilets. Does he accept that that depends on whether the building itself is accessible to someone like myself, a wheelchair user? Could he write to me to tell me how long he thinks I should have to wait, as a wheelchair user, before I can by law access licensed premises, given that the Government are refusing to use the Licensing Act, as recommended by a committee of this House, to enforce access on licensed premises?

The Earl of Minto (Con): My Lords, my noble friend makes a very good point. One of the challenges is that a lot of pubs are in historic buildings and are listed. Therefore, it is extremely difficult to get through the planning laws so that doorways and steps can be taken out to give free access. I say again that every opportunity is taken to provide disabled access.

Baroness Burt of Solihull (LD): My Lords, fathers change babies too, and yet baby-changing facilities are often situated in ladies toilets. Does the Minister think that we should have an inclusive place where fathers and

[Baroness Burt of Solihull]
mothers can change children—and in a nice environment, rather than some of those that some mothers have to bear up with?

The Earl of Minto (Con): My Lords, again, that is a very good point. The issue is predominantly driven by space and, to some extent, finance and running costs. The Welsh Government did a very interesting study a few years back, in 2019-20, where they estimated that it costs between £2,500 and £5,000 to put in baby-changing facilities. We all know that the majority of small hospitality businesses are SMEs, and that sort of cost, let alone the ongoing cost of maintenance, cleaning, refuse collection and that sort of thing, at times makes it restrictive.

Lord West of Spithead (Lab): My Lords, one of the joys is that these babies are being born into a free and wonderful country. Some 79 years ago today, 7,500 ships —the bulk of them British—landed the American, Canadian and British armies in Europe, at Normandy. Does the Minister agree that that helped lead to the destruction of the vile Nazi state? It is well worth commemorating that. Would it not be a good idea to have some more ships?

The Earl of Minto (Con): Although that is not entirely within my brief, I entirely agree.

Lord Hannan of Kingsclere (Con): My Lords, I wonder whether the Normandy landings would have been so successful had they all been obliged to have baby-changing facilities on every vessel. This idea of state regulation for baby changing takes the nanny state to a literal level. Can my noble friend the Minister confirm that, in the other place, the Government were elected on a manifesto promising minimal regulation, and that providers of services have every incentive to offer their customers the best deal they can afford without needing to be told what to do with the full coercive power of state law?

The Earl of Minto (Con): My Lords, I entirely agree. In fact, my role is about regulation and reducing the amount of it. We should all agree that, by reducing regulation, business becomes easier and more productive, everybody's salaries improve and there are increased job opportunities.

Lord Sahota (Lab): My Lords, I declare an interest: my wife runs a leased café in Telford. When I am not in your Lordships' House, I help her out. I totally agree with baby-changing facilities but there should also be a public convenience because, since the severe cuts to public authority budgets in 2010, we have been short of public conveniences up and down the country. I know this for a fact because people come running into my wife's café looking for a public convenience. There should be one funded by the local authority. I hope that the Minister agrees with me.

The Earl of Minto (Con): My Lords, I do. Most shopping centres now provide not only a full range of toilet facilities but baby-changing facilities too; that is absolutely right and proper. The planning law is operating correctly. On levelling up, £30 million has been set aside for precisely what the noble Lord wants. I am sure that we will continue to move towards a more available service.

European Court of Human Rights: Rule 39

Question

2.47 pm

Asked by ***Baroness Chakrabarti***

To ask His Majesty's Government what assessment they have made of the benefits of the jurisdiction of the European Court of Human Rights, provided by Rule 39 of the Rules of Court, to grant interim measures where there is imminent risk of irreparable harm to a claimant in an ongoing application.

Baroness Chakrabarti (Lab): In memory of my late noble and learned friend Lord Morris, I beg leave to ask the Question standing in my name on the Order Paper.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, if I may, I associate myself with the tribute to the late Lord Morris.

The Government recognise that interim measures can be an important mechanism for securing individuals' convention rights in exceptional circumstances. Nevertheless, the Government want the interim measures process to achieve a better balance between transparency, fairness and the proper administration of justice. Ministers, including the Prime Minister, have had constructive discussions with the Strasbourg court about reform. The court's regular internal review of procedures began to look at the interim measures procedures in November 2022.

Baroness Chakrabarti (Lab): As always, I am grateful to the Minister for his Answer. Does he agree with me that the current group of interim measures against the Russian Federation precluding the execution of prisoners of war is very important, and that, notwithstanding Russia's current status outside the Council of Europe, anyone who thinks about ignoring those interim measures should think again? In the spirit of reciprocity, notwithstanding the discussions about process, will the Minister also think again about legislating to allow British Ministers to ignore interim measures from the Court of Human Rights?

Lord Bellamy (Con): My Lords, if I may take the last question first, that issue will be explored in more detail in Committee when we get to Clause 53 of the Illegal Migration Bill. I remind the House that the Rule 39 power is a very important power, particularly in relation to the circumstances affecting Russia. However, it raises at least five quite difficult legal questions. First, what is the basis of the legal power? Secondly, what is the procedure with which the power is exercised? Thirdly, what is the competence, in the civil sense of the term, of the single judge? Fourthly, what is the effect in domestic law of such an order? Fifthly, what constitutes a breach of the order? None the less, the Government's focus is on constructive and helpful discussions with the Strasbourg court on improving the process.

Viscount Hailsham (Con): My Lords, does my noble and learned friend agree that in principle, an interim order should be made only after a hearing at which both parties are present and can make their case? If, in exceptional cases, an interim order is made on an ex parte basis, does he agree that the return date should be a swift one and that both parties should then be able to make their representations to the judge?

Lord Bellamy (Con): My Lords, I agree in principle with the comments made by my noble friend.

Baroness Ludford (LD): My Lords, the Government play fast and loose with the European Convention on Human Rights and the Human Rights Act. This has not inhibited them in invoking Article 8 of the ECHR—the right to private and family life—in their application for judicial review against the Covid inquiry. Article 8, as well as judicial review, has been demonised by successive Tory Governments—I seem to recall something about a cat, from Theresa May when she was Home Secretary. Will the Government make it a hat-trick of hypocrisy by seeking interim measures under Rule 39 from the Strasbourg court if they do not get satisfaction domestically over that Covid inquiry JR?

Lord Bellamy (Con): With respect to the noble Baroness, that question does not arise. The Government have no intention of going to Strasbourg on that issue. Article 8 is a very important part of the convention, which is also part of domestic law through the Human Rights Act. The subject of today's question is the Rule 39 power, which is quite a difficult question.

Lord Anderson of Swansea (Lab): My Lords, with his usual reasonableness, the Minister appears to accept that such emergency and interim measures are not uncommon in international legal matters. He confirmed that the difference this time is that a group of right-wing people, led by the Home Secretary, take issue with one decision by a judge seeking to protect the human rights of other individuals.

Lord Bellamy (Con): My Lords, interim measures play a very important part in the international jurisdiction. I respectfully point out that as far as I know, the process by which the Strasbourg court grants interim measures is different from that of the International Court of Justice, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights, all of which provide for a proper hearing, a return date, and reasoned judgments—which are sadly lacking at the moment in the Strasbourg process in some cases.

Lord Wolfson of Tredegar (Con): My Lords, the Minister is quite right to point out that there are important jurisdictional questions regarding the Rule 39 injunctions. However, focusing on the process, is it not a real problem that these orders are made by an unnamed judge? The state has little opportunity to make representations either before or after the order is made. As my noble friend Lord Hailsham said, the return date can be a long time in the future. The process surely needs reform. Does the Minister therefore agree that the Government are right to be engaging with the Strasbourg court to improve the processes of that court?

Lord Bellamy (Con): My Lords, I entirely agree with my noble friend Lord Wolfson, particularly where the interim measures order, in the circumstances that he relates, overrides three reasoned judgments by the domestic court at first instance, the Court of Appeal and the Supreme Court. None the less, the Prime Minister is fully engaged and discussed this very question in Reykjavík recently with the president of the Strasbourg court.

Baroness Kennedy of The Shaws (Lab): My Lords, I have asked the Minister about the difficulty that we lose credibility if we do not engage with the use of this particular interim measure order. It has been so useful, for example in relation to Russia, because interim measures have already got in under the wire and now, of course, Russia has been expelled from the Council of Europe. Does the Minister agree that, eventually, when people are brought before the International Criminal Court, the fact that Russia has failed to abide by those interim measures will be evidence of their culpability in war crimes?

Lord Bellamy (Con): My Lords, I have already agreed on Russia. I emphasise that the Government's approach to this is to engage very closely, respectfully and constructively with the Strasbourg authorities and the court's working party, which is considering this very question.

Lord Anderson of Ipswich (CB): My Lords, does the Minister agree that interpretation of a treaty is informed not just by the court that is set up to adjudicate on it, but by state practice? The member Governments of the Council of Europe, including our own, have repeatedly confirmed the binding nature of interim measures under Rule 39—in the Committee of Ministers, and in the Izmir and Brighton declarations. Is the Minister proud of the United Kingdom's record of compliance with interim measures, particularly in comparison to some founding members of the European Union?

Lord Bellamy (Con): On the latter point, I do not presume to cast any kind of judgment on or make any comparison between the United Kingdom and other contracting states. On the general point about acceptance in practice of the position of interim measures under the convention, there are two legal views.

Lord Browne of Ladyton (Lab): My Lords, the context of this Question requires consideration of more than one case. Between 2020 and 2022, of the 161 applications for interim measures against the UK Government, only 12 were granted by the European Court of Human Rights. Secondly, the Minister's responses thus far indicate that the Government no longer stand by Clause 24 of the Bill of Rights Bill, which, if enacted, requires courts to ignore interim measures. Until now, we have been told that that is an expression of the Government's manifesto commitment to reform the Human Rights Act.

Lord Bellamy (Con): My Lords, on the first aspect, if I may speak on behalf of the United Kingdom and all Governments, the Government have a commendable record on interim measures. I fully agree that you

[Lord Bellamy]
cannot judge the underlying legal and practical questions by just one case. On the issue of the Bill of Rights Bill, I think the focus should now be on Clause 53 of the Illegal Migration Bill, which I am sure we will discuss in great detail in Committee.

Lord Faulks (Non-Afl): My Lords, it is most important that we maintain a good relationship with the European Court of Human Rights. The context of this Question follows the decision of the judges in this jurisdiction about the flights to Rwanda. An anonymous judge then gave a ruling that, on the face of it, was not entirely compliant with natural justice. However, is it not right to say that the Home Secretary entirely accepted that ruling? There was no question of ignoring it. The Government have proceeded by trying to improve the process in a way that is more satisfactory and complies with most people's notions of how interim relief ought to be obtained.

Lord Bellamy (Con): My Lords, I respectfully agree with the comments of the noble Lord, Lord Faulks.

Scottish Government: Expenditure
Question

2.59 pm

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

To ask His Majesty's Government whether they intend to take further action on expenditure by the Scottish Government in relation to reserved matters.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): My Lords, as the Prime Minister has made clear, we will continue to work constructively with the Scottish Government in tackling all the shared challenges that we face. However, in light of the recent Supreme Court ruling, I am concerned at the decision to appoint a Minister for Independence. The Secretary of State for Scotland's view is that taxpayers' money could be spent more wisely on delivery for the people of Scotland and on devolved services.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, since it is absolutely clear that the Minister agrees with me, and I think with this whole House, that the Scottish Government should not be spending UK taxpayers' money on reserved areas, is it not quite outrageous that they are spending £100,000 on a so-called Minister for Independence to go around the country in a party-political campaign to break up Britain? Even worse, there are 20 United Kingdom civil servants supporting him. Since there is only one body that can do anything about it—that is the UK Government, the Minister and his Secretary of State—when is he going to take some action?

Lord Offord of Garvel (Con): I thank the noble Lord for his tenacity on this subject, because I have now been in post for 18 months and this is the sixth Question I have answered for the noble Lord, Lord Foulkes, on pretty much the same theme. It is a good theme: what do the UK Government do when they believe that the Scottish Government stray from devolved into reserved matters? We made some progress the last time we spoke in this Chamber; the previous Deputy First Minister, John Swinney, confirmed that he had taken away the £20 million that was going to be spent on the referendum on independence. But then, last week, we had the new head of the Scottish Civil Service, JP Marks, defending the appointment of the Minister for Independence, so we have sort of gone up a ladder and down a snake.

The issue here is that devolution, as devised by the noble Lord's party, was conceived to be a construct in which the UK and Scottish Governments would work together in unity. It was not envisaged that we would have a situation in which the Scottish Government would seek every opportunity to find division and diversion away from Westminster, and therefore there are no practical levers or mechanics built into the devolution architecture for the UK Government to directly intervene in devolved matters, except through the courts. We already had the ruling in the Supreme Court. The UK Government's position is to continue to ask the Scottish Government to focus on the real priorities of the people of Scotland and stop this obsession with independence.

Lord Howell of Guildford (Con): My Lords, I acknowledge the death of Lord Morris KG, who was a remarkable Member of this House. Could it be that we are getting to the time when there is a need to revisit the demarcations as laid down in the devolution legislation? There seem to be constant disputes going on, particularly in the area of trade treaties, as well as foreign policy generally and memoranda of understanding, as to what is and is not reserved in rapidly changing industrial and economic circumstances. Can my noble friend consider that?

Lord Offord of Garvel (Con): I thank my noble friend for that question. In the Scotland Act, the devolution settlement is actually very simple. You can put it on one piece of A4; on the left you have devolved matters, and on the right reserved matters. The issue here is that since we have come out of the EU, in effect we have had to create a single market for the UK. The SNP loves the EU; it wants to be in a single market with 27 or 28 states, and agrees that there should be no divergence within that system. Post devolution, we now have a scenario in which we have four assemblies making laws in the UK but we want to keep the UK together. So now they are promoting a whole series of legislative moves that create divergence, which the people of Scotland do not want, especially in trade, not least as 60% of Scotland's trade is with the rest of the United Kingdom and does not recognise borders.

Lord Bruce of Bennachie (LD): My Lords, the Scottish Government have squandered hundreds of millions of pounds on mismanaged projects. They had a £2 billion underspend last year, have squeezed local government savagely and have made Scotland the highest-taxed area of the United Kingdom. Is it not clear that the current Scottish Parliament has neither the will nor the capacity to hold its Executive to account, and does not a wider consideration therefore need to be taken into account?

A noble Lord: Yes.

Lord Offord of Garvel (Con): I thank my noble friend for his helpful contribution there.

The reality is that Scotland is the best-funded part of the United Kingdom; for every £100 spent in England, £125 is spent in Scotland. That is not a subsidy; it is an equalisation payment, because the whole idea of the UK is that you get the same services whether you live in Streatham or Stornoway. It costs a lot more to deliver them in Stornoway than in Streatham, so we have to pay more for that. There has been no austerity put on the Scottish Government by the UK Government; in the last six years, Scottish spending on public services has gone up by 8%, against 6% for the UK, so that is not austerity. If the Scottish Government decide to choose to increase their welfare spend by 15% and their education spend only by 3%, that is a choice for the Scottish Government and they should be held to account at the ballot box.

Lord McAvoy (Lab): My Lords, does the Minister not understand what is happening here? The SNP Government are spending public money on issues they do not have a legal mandate for. Why is this Government, a unionist Government, not using their powers to put a stop to public money being used to divide our country? Action is required now.

Lord Offord of Garvel (Con): The Scottish Government will argue that every area of legislation they are putting forward is within the devolution settlement. We sometimes disagree with that, and where we disagree with it vehemently, as we did on GRR, we invoke Section 35. That was the first time in 237 Bills that received Royal Assent and was not done lightly; that was done in a case where they strayed across the line and were making legislation for Scotland that had a negative impact on England. We will continue to monitor this. Fergus Ewing, who is part of SNP royalty, would blame the Bute House agreement with the Green Party—which he describes as wine bar revolutionaries—for putting forward "progressive" legislation designed to diverge from the UK, and that is what we must put an end to.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend think it reasonable that the Scottish Government, who cannot run ferry services to the Western Isles, where the roads are full of holes and the health service and education are in crisis, should have an office in Beijing? Why on earth should my taxes support an office in Beijing for the Scottish Government?

Lord Offord of Garvel (Con): Again, this is an issue of there being no SNP representative in this House. It is a bit like playing "Hamlet" without the prince; there is nobody here to put the Scottish Government's case. They would say that under the devolution settlement they are allowed to promote Scotland overseas, in particular in relation to trade, and that they have eight embassies that they are using to promote trade across the UK. It came to our attention that it was not entirely the case that it was only in trade matters, and the Foreign Secretary has taken steps to pull that back into line.

Baroness Smith of Basildon (Lab): My Lords, the questions asked by my noble friends Lord Foulkes and Lord McAvoy related specifically to the Minister for Independence. There are two issues here. One is the cost, particularly in times of constrained public finances, and what budget the money comes from. There is also a practical point. The Minister has spoken previously in this House about the independence of the Civil Service. Concerns have been raised in regular discussions between the Cabinet Secretary and the Scottish Government's Permanent Secretary. Is the Minister aware of whether such concerns continue to be raised? If so, how does the Cabinet Office ensure that individual civil servants are not put in an invidious position regarding supporting political campaigns?

Lord Offord of Garvel (Con): The response to that question given by the head of the Civil Service in Scotland, JP Marks, was that he is entirely impartial and is there to do the bidding of the party in power, elected at the ballot box. It is in the manifesto of the SNP that it wants to break up the United Kingdom and hold an independence referendum, even though only a third of Scots want that. It has been in power for 15 years and has not been able to move it forward from a third, which means that the project has effectively failed and which is why we say: please get back to the day job of running the country more efficiently.

Baroness Bennett of Manor Castle (GP): My Lords, I am happy to put the case for the progressive force of the Greens in the Scottish Parliament in your Lordships' House. The Minister mentioned the deposit return scheme. I am sure he would want to take this opportunity to correct a misstatement by the Secretary of State for Scotland on BBC Scotland's "Sunday Show", which suggested that the glass recycled under the scheme was going to be crushed into aggregates. The head of Circularity Scotland has said that threatened £10 million of investment, when the figures are that on launching the scheme 90% of the glass is to be reused, and 95% as the scheme goes ahead. Do the Government understand those facts and are they dealing with their consideration of this case on those facts?

Lord Offord of Garvel (Con): The chief executive of Circularity Scotland said that the Scotland DRS could work very well without glass. We recommend that we all work together to put in a unitary scheme, reminding ourselves that we still have one United Kingdom.

Kosovo and the Western Balkans Region

Question

3.09 pm

Asked by ***Baroness Helic***

To ask His Majesty's Government what assessment they have made of the recent unrest in northern Kosovo; and what steps they are taking to support stability, democracy and human rights in (1) Kosovo, and (2) the Western Balkans region.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we are working closely with international partners to de-escalate the situation in northern Kosovo and encourage a return to dialogue. The noble and gallant Lord, Lord Peach, visited Kosovo on 30 May and met political leaders, the commander of NATO's KFOR mission and other key actors. The Government use a number of diplomatic, programme and other tools to encourage and support crucial rule of law and human rights reforms across the western Balkans.

Baroness Helic (Con): I thank my noble friend for his update and pay tribute to NATO soldiers, including our own. The incident which resulted in 30 NATO peacekeepers being injured appears to have been a co-ordinated attack supported and inspired by Belgrade, yet both the United States and the EU seem to have chosen to ignore Belgrade's hand in this flare-up and have imposed, and threatened to impose, sanctions on Kosovo. It remains unclear what our Government's position is on this matter. I would be grateful if my noble friend could clarify it.

I would also welcome a swift increase in the number of NATO troops in Kosovo. However, I am deeply concerned that right now in Bosnia-Herzegovina, where the threat of Kremlin-backed secession is real, our ability to deter any such act is wholly inadequate. What consideration has been given to increasing our contribution to NATO HQ in Sarajevo or to Operation Althea?

Lord Ahmad of Wimbledon (Con): My Lords, I believe I speak for the whole House when I join my noble friend in paying tribute to the incredible work done across the world by both NATO troops and those deployed through key missions. The situation in Kosovo is of course very alarming, although the latest report I have is that it is calmer. There is direct engagement by our key partners; we are working closely with the EU and the United States in this respect. Their representatives are on the ground speaking to both sides. We have also called for a four-step de-escalation.

Both sides have a role to play. Kosovo should perhaps now enable its mayors to work from locations outside municipal offices until such time as these issues can be resolved. Importantly, Serbia needs to reverse its decision to raise the level of readiness of its armed forces. The read-across to Bosnia-Herzegovina is very clear. Of course, I know that my noble friend engages consistently and extensively in that area. The UK fully supports EUFOR and KFOR in Kosovo; my right honourable friend the Minister for Armed Forces recently announced our continuing commitment to KFOR in Kosovo.

Baroness Coussins (CB): My Lords, one recommendation from the inquiry into the western Balkans by the International Relations Committee was that the UK should actively help to preserve the large amount of evidence held by EULEX on conflict-related sexual violence in Kosovo. Witnesses suggested that it would be better safeguarded by the UN, or its loss would feed the continuing culture of impunity. Can the Minister say what has happened to safeguard this evidence and, in the current circumstances, what is being done to prevent further conflict crimes of sexual violence?

Lord Ahmad of Wimbledon (Con): My Lords, as the Prime Minister's Special Representative on Preventing Sexual Violence in Conflict, I assure the noble Baroness that we have taken these measures seriously. Some of the initiatives that we have taken, such as the introduction of the Murad code, do exactly that—protecting and sustaining the testimonies of those who suffer the most extreme violations to allow for successful prosecutions to take place. I myself have visited Kosovo twice, once in 2018—indeed, with my noble friend Lady Helic—and, subsequently, in 2019. We are engaging on the ground. The current situation is calm, but we want to ensure that there are no violations, and none that lead to the kind of crimes that we have seen in the past.

Lord Anderson of Swansea (Lab): Does the Minister agree that President Vučić is riding two horses simultaneously? On the one hand, he is trying to move closer to the European Union; on the other, he is following the traditional Serbian warmth in relations with Moscow. Does he see any hand of Moscow in the current disturbances?

Lord Ahmad of Wimbledon (Con): My Lords, one thing is very clear in Kosovo and, as my noble friend said, in Bosnia-Herzegovina. When you visit on the ground, as I did last year in Sarajevo, you can feel and see the growing assertiveness of Russian influence in these key areas, which is very much in evidence. While we call for Russia to respect the sovereignty of these key nations, it is evident that those leading some of the Serb causes, such as Mr Dodik in the so-called Republika Srpska, are becoming ever more assertive. That is why the United Kingdom took steps to sanction such individuals.

Lord Purvis of Tweed (LD): My Lords, the replenishment of KFOR is regrettably necessary, and I welcome the fact that the UK has announced that it is going to replenish the 80 personnel there. I commend the Minister on his commitment to peacekeeping forces, as demonstrated just before Recess at the event where he, I and the noble Lord, Lord Hannay, met peacekeepers of the UK contributions. Just two years ago, the contribution from the UK was over 400 personnel but, according to the UN Association, the UK is now 50th in the world for our contribution to global peacekeeping forces. Will he please tell his colleagues in the MoD that now is the time to increase the number of UK personnel able to be deployed for peacekeeping forces around the world?

Lord Ahmad of Wimbledon (Con): My Lords, we take considered decisions on the deployment of UK forces for international missions in terms of our support for both NATO and the United Nations. I am proud of the fact that we have consistently been strong supporters of troop-contributing countries in the UN system—we are one of the largest contributors. We have troops who serve through various UN mandates as well. We look at the particular mandate to see what is required. The other thing to note is the strong technical and training support that the MoD and UK troops provide to many nations across the world, which is very much valued.

Lord Peach (CB): My Lords, I declare my interest as the Prime Minister's special envoy to the western Balkans. I very much support the Minister. As a frequent visitor to the region, I assure noble Lords that the United Kingdom's role there is appreciated; we just do not always advertise it on Twitter.

We should thank our allies in NATO for keeping the peace for over 20 years. The quality of our contribution remains important. It is critical now to stop the violence and to de-escalate. We continue to support normalisation between Kosovo and Serbia, which takes many forms, and again we call for the Kosovo Serbs to be readmitted into security structures, particularly the police.

We must break the cycle of violence in the Balkans. We need to be alert, as a noble Lord has said, to the risk posed by Russia, exploiting the region as a second front through warfare by other means.

Lord Ahmad of Wimbledon (Con): My Lords, there is little that I can add to the words of the noble and gallant Lord apart from thanking him for the incredible role that he plays on the ground. I believe that he has made four visits in the recent past to Kosovo. I agree with him that the United Kingdom has stood side by side with Kosovo as it seeks to find its place in the international world, and we continue to campaign for its global recognition as an independent nation. However, I also agree that we must ensure that what happened in the past is not repeated.

Lord Collins of Highbury (Lab): My Lords, I welcome the FCDO's role with France, Germany and Italy last week in their joint statement. The Minister referred to the EU-facilitated dialogue to normalise relationships. Can he tell us a bit more about how the UK is directly involved in supporting that dialogue? How closely are we working to ensure that it achieves its objective?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Lord that the current engagement is live; it has been taking place yesterday and today, and I will update the House on certain outcomes. We are working closely with both our US and EU partners in this respect, and recently my right honourable friend the Prime Minister attended the meeting of the EPC, where there was engagement on this important issue.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, does the Minister agree that the recent decision by the Committee of Ministers of the Council of Europe to accept the recommendation of the Parliamentary Assembly that Kosovo should join the Council of Europe is a step forward to developing Kosovo as a free, independent and democratic country?

Lord Ahmad of Wimbledon (Con): My Lords, I can confirm that His Majesty's Government fully support that decision.

The Earl of Sandwich (CB): My Lords, following on from the question from the noble Lord, Lord Collins, does the Minister not think that the election issue is the critical one? If we still have any influence outside the EU, we should bring the two Prime Ministers together to discuss those elections and make sure they happen.

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Earl that our influence with our EU partners and other partners, across Europe and beyond, is substantial. Recently, my right honourable friend the Prime Minister and I engaged directly at the Council of Europe meeting. I was also at a recent meeting of the EU with Indo-Pacific nations, where we discussed co-ordination and strategy. Equally, I agree with the noble Earl on this issue; we are using our convening powers with key partners to ensure that both sides meet. We need inclusive elections. The conditionalities being set by the Kosovan Serbs are in some cases unrealistic, but inclusive elections are needed so that all people of Kosovo, irrespective of their background, culture or community, can be represented effectively.

Supported Housing (Regulatory Oversight) Bill

Order of Commitment

3.20 pm

Moved by ***Lord Best***

That the order of commitment be discharged.

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

Motion agreed.

Retained EU Law (Revocation and Reform) Bill

Commons Amendments and Reasons

3.21 pm

Motion A

Moved by ***Lord Callanan***

That this House do agree with the Commons in their Amendment 1A.

1A: Leave out subsections (1B) to (1D)

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, in moving Motion A, I will also speak to the other Motions in this group. It feels very recent that we had Third Reading on the Bill, as the other place has returned it remarkably quickly.

Motion A covers this House's Amendment 1. The original amendment was to require a Joint Committee to consider the revocation list and to arrange debates in both Houses with respect to anything that represented

[Lord Callanan]
a change to the law before the legislation on it could be revoked. I thank the noble Lords who sponsored this amendment for not pushing it again today.

Motions B and B1 cover the Commons disagreement to Lords Amendment 6. I sympathise with the amendment proposed by the noble Lord, Lord Anderson, in lieu of Amendment 6 on its intent to help establish legal clarity. Indeed, one of the main purposes of the Bill is to simplify the statute book. However, in my view, such an amendment is not necessary. The amendment seeks to clarify that the new clause "Retained EU law dashboard and report", inserted by Lords Amendment 16, will include those rights, powers and liabilities referred to in Section 4 of the European Union (Withdrawal) Act 2018. I am happy to reassure the noble Lord, Lord Anderson, today that the Government intend to ensure that rights, powers, and liabilities referred to in Section 4 of the 2018 Act will be included in future dashboard updates and accompanying reporting. The Government will include those rights, powers and liabilities that they have explicitly codified or intend to codify, as well as those they have decided not to codify because they are no longer fit for purpose. I hope that this provides the necessary clarity around which matters, originally retained under Section 4 of the 2018 Act, will be codified into domestic law. I thank the noble Lord for his valuable and collegiate engagement on this matter. I hope that this commitment provides him with the reassurance he is looking for and that he therefore will not press his Motion.

Turning to the Motion to amend the drafting of what was Amendment 16, I know that many noble Lords have strong views on Amendment 16 and the Motions concerning it. The other place inserted further measures to strengthen the reporting requirements and to ensure that the Government inform Parliament of their progress on using the powers in the Bill and their forthcoming plans on a more frequent basis. The Motion in my name therefore simply tidies that drafting and, on that basis, I hope that the House is able to support it.

Finally, I call on the House to reject the amendment proposed by the noble Lord, Lord Anderson. The Government recognise the significant role that Parliament has played in scrutinising instruments and are committed to ensuring the appropriate scrutiny under the delegated powers in the Bill, including any instruments made under the powers to revoke or replace. This amendment would impose a novel and untested scrutiny procedure on regulations proposed to be made using the powers to revoke or replace. This novel approach is, in our view, simply unnecessary.

The Government will ensure that any significant retained EU law reforms will receive the appropriate level of scrutiny by the relevant legislatures and are subject to all the usual processes for consultation and impact assessment. However, it is important that we ensure that the limited amount of parliamentary time available is used appropriately and effectively.

The existing sifting procedures in the Bill have been purposely drafted as a safeguarding measure for these powers and already contain adequate scrutiny. They allow for additional scrutiny for the exercise of the power to revoke or replace, while retaining the flexibility of using the negative procedure where there are good reasons to do so—for example, in repealing redundant rules that no longer have any purpose on the UK statute book.

In addition, in certain situations, notably the use of subsection (3), the affirmative procedure continues to be required. The existing procedure will give the UK Parliament the opportunity to take an active role in the development of this legislation. It is a tried and tested method of parliamentary scrutiny which, in my view, delivers good results for everyone and draws on the experience of our parliamentary committees. We will, of course, respect the judgment of the sifting committees relevant to the Bill, in the same way as we did for the EU withdrawal Act. Therefore, I do not consider the proposed amendments to be necessary. I hope this provides the House with sufficient reassurance on this matter.

Lord Anderson of Ipswich (CB): My Lords, I will speak to Motions B1 and E1 in my name in this group. Having heard the Minister, I can be brief on Motion B1, which concerns a sometimes-neglected part of the Bill. Clause 3 is headed "Revocation of retained EU rights, powers, liabilities etc". That clause is unaffected by the Government's concession on the sunset and continues to provide for all directly effective provisions of EU law—whether they are found in the treaty, in directives, or in international agreements—to be revoked at the end of the year. My concern in tabling this amendment has been to know precisely what is being revoked and what will be proposed by way of replacement.

To that end, Motion B1, which builds on the helpful amendment originally proposed by the noble Baroness, Lady Noakes, seeks a guarantee that the directly effective provisions will be fully included in dashboard updates, as they have not been to date, and that the Government will give us clear warning in advance of those which they intend to carry over into our law and those which they may have decided not to carry over.

Unpicking provisions so deeply embedded in our law will not be a simple business. I declare an interest as a lawyer who sometimes needs to advise in this area. Such a commitment will be helpful to anyone who needs to understand what our law provides and how it is intended to be changed. I am grateful to the Minister and the Bill team for their constructive engagement on this issue, and for the clear commitments that he has just offered. In the circumstances, I am confident that I do not need to trouble the House with a Division on this issue.

Motion E1 is of a constitutional nature and concerns what, to some of us, has always been the most troubling feature of the Bill. It is nothing to do with the dashboard, direct effect or even the end-of-year sunset. It is rather the delegated superpower, headed "Powers to revoke or replace", which currently appears as Clause 14. I remind the House of its most remarkable feature, subsection (3), which states:

> "A relevant national authority may by regulations revoke any secondary retained EU law and make such alternative provision as the relevant national authority considers appropriate".

That power will last until June 2026, which even we in the ivory tower of these Benches understand is some time after the next general election. It allows the Government to make regulations that Parliament cannot

amend or, in practice, block, even when those regulations have quite different objectives from the laws that they replace, as the Bill makes clear.

3.30 pm

I say "laws" because the measures whose replacement is authorised by this clause are no ordinary regulations concerned only with matters of detail. They include major instruments of policy, often arrived at by codecision between the Parliament and Council of the European Union—the equivalent in our system of primary legislation. They take the form of regulations only because of Section 2(2) of the European Communities Act, which was itself a prime target of Brexit, ironically, because it stripped sovereignty from our Parliament. The seriousness of what is proposed—permission to amend by statutory instrument numerous laws, in many fields, with the quality of primary legislation—is no doubt why, today, organisations from the RSPB to the TUC and the Law Society have come out in favour of this amendment.

The amendment contains an exceptional power, as the Minister said, but it is designed for exceptional circumstances. A Commons sifting committee would have the power to identify proposed regulations that are particularly deserving of parliamentary attention—perhaps because they are so substantially different from what went before, or because consultation or an impact assessment is lacking. Both Houses of Parliament could then agree on amendments—not an unprecedented power but one modelled on Section 27 of the Civil Contingencies Act 2004. This power would not be a precedent for the routine amendment of statutory instruments, any more than the Civil Contingencies Act has proved to be. Both these laws are in the same wholly exceptional category because both confer the power to make regulations on subjects that would normally be appropriate only for primary legislation—emergency powers in one case, and the unique circumstances of our departure from the EU in the other.

The precursor to this amendment, tabled by the noble and learned Lord, Lord Hope of Craighead, and signed by me and the noble Lords, Lord McLoughlin and Lord Hamilton of Epsom, was carried by a majority of 64. It did not meet with favour in the Commons, although there were some interesting speeches from the Conservative Benches there. We have listened and come up with something more modest. Its scope is limited to the one clause I have identified—not three clauses, as previously—and the sifting committee will be of the Commons only, not a Joint Committee. There is ample reason, I suggest, to ask the Commons to think again about what we meant when we took back control and whether the Commons is really willing to write itself out of the script, as the Bill would allow.

I only wish that this speech could have been made by the noble and learned Lord, Lord Judge. It would have been half as long, twice as amusing and four times as persuasive. So I end by recalling that, at the last Queen's Speech, the noble and learned Lord asked, on his favourite subject of delegated powers,

"what is the point of us being here if, when we identify a serious constitutional problem, we never do anything about it except talk?"—[*Official Report*, 12/5/22; col. 130.]

It is time to act, and I propose to do so by testing the opinion of the House.

Viscount Hailsham (Con): My Lords, I will very briefly support what the noble Lord, Lord Anderson, said. I agree with all of his detailed arguments, which were extraordinarily well put.

I will focus on two general points. First, in principle, I am very much in favour of increasing the control of Parliament over the legislative powers exercised by the Government. That is increasingly the case because Governments of all stripes are increasingly using secondary legislation to make very substantial changes to our laws. I want to see much greater parliamentary control.

Secondly, and differently, this issue goes to the amending power included in subsection (3) of the proposed new clause—I am very much in favour of that. For the many years I have been in Parliament, I have been deeply troubled by our inability to amend secondary legislation. What is being proposed by the noble Lord, Lord Anderson, is a mechanism; it may be rather a tricky one to use, but I hope it will be a precedent. It is one that I strongly support, because it is important for this House and the House of Commons to be able to amend statutory instruments. So if the noble Lord moves his amendment to a Division, I shall support it.

Baroness Butler-Sloss (CB): My Lords, I too strongly support what the noble Lord, Lord Anderson, and the noble Viscount, Lord Hailsham, said. I cannot resist telling the House that I am chairman of the Ecclesiastical Committee, and some years ago the most reverend Primate the Archbishop of Canterbury was discussing a measure that was coming through our hands before going to Parliament, which had a clause that would allow the General Synod to make almost any changes to any law in England. We pointed out gently that it would not get through Parliament. Dear, oh dear, what are we talking about today? I would not have been quite as gung-ho about what could not happen in Parliament if I had come across this Bill and, I have to say, the Illegal Migration Bill.

The point that the noble and learned Lord, Lord Judge, was making about delegated powers—I remember that speech very well—is one that I am delighted the noble Lord, Lord Anderson, has taken up. The noble and learned Lord, Lord Judge, was saying that there will come a point when we will actually vote against secondary legislation—and maybe the time is just beginning to come. If we end up with having no power in Parliament, in either House, to decide whether laws that are different from those we have can be argued in either Chamber, what is the point of us being here? Consequently, I do feel that the House should support the noble Lord, Lord Anderson.

Baroness Ludford (LD): My Lords, I thank the noble Lord, Lord Anderson, for the work he has done on Motion B1 with the listing of powers, rights and liabilities. I note that he will not press his amendment because he has got it to the point of getting a pledge from the Government.

Perhaps I might ask the Minister what the timescale is for putting these on the dashboard, because they are not currently on the dashboard. The last time they were searchable on the dashboard, only 28 rights, powers and liabilities were listed. They did not include,

[Baroness Ludford]
for instance, Article 157 of the Treaty on the Functioning of the European Union, which, as all noble Lords know, concerns the right to equal pay for equal work; it goes further than the Equality Act 2010 and is an absolutely crucial instrument for equal pay. They also did not include Article 6.2 of the habitats directive, which imposes an obligation to take appropriate steps to avoid the deterioration of habitats. Those are two examples of key rights and powers that need to be on the dashboard, and there must be many more. Can the Minister tell us how many he thinks will be listed and by when?

Lord Lisvane (CB): My Lords, I am delighted to support Motion E1 in the name of my noble friend Lord Anderson of Ipswich. At a time when there is increasing concern about the balance between Parliament and the Executive, I was rather surprised that the elected House rejected the idea of a Joint Committee to sift proposals, which might well be of disadvantage to their constituents. I was also surprised—perhaps "saddened" might be the better word—that the Government saw fit to take that view of the amendment in the Commons. This Motion, as my noble friend outlined, returns to the charge, but provides a Commons-only Select Committee—a sifting committee—rather than a Joint Committee.

There has been much talk about amendable SIs. It may be part of the Government's case, or be seen by the Government as strengthening their case, to portray them as a whole new category of legislative procedure, where SIs become like mini-Bills, with all the complications that would ensue.

Much as I appreciate the noble Viscount's wish that these would be broad, sunlit uplands, I do not think that this is the case in this instance. As far as I am aware, there are only two examples of statute providing for amendable SIs, via Section 1(2) of the Census Act 1920 and Section 27(3) of the Civil Contingencies Act 2004. SIs under either of those Acts are truly amendable because, if an amendment is approved, it becomes immediately effective.

What this Motion proposes is a little different; it is much closer to the super-affirmative procedure applied to legislative reform and regulatory reform orders, which does not seem to have frightened the horses in either House. There is a difference, yes, because in that super-affirmative procedure it is a matter of discretion as to whether the Minister accepts the advice of the sifting committee as to amendments that might be made. Commons Standing Orders 141 and 142 provide for that difference of opinion between the Minister and the sifting committee. The Motion before your Lordships would remove that ministerial discretion—but I find it hard to see how allowing the two Houses to take the decision would be such a dreadful thing, unless of course the Government see it as infringing upon the prerogative of the Executive, which would confirm the worst fears of many.

Whatever one's views on the issue, it is very important to keep a sense of proportion. I cannot imagine the heavy weaponry that is implied by some in this Motion being deployed at all often. The Government, if they had any sense, would want to reach agreement with a sifting committee rather than seeking the adversarial outcome of a vote on the Floor of the House. In any event, what would be so wrong about accepting the view of an all-party committee which had identified in a government proposal hazards for business, the environment, civil liberties or any of the other fields in which Parliament is supposed to be the guardian of our citizens' interests?

The Minister criticised the proposal on the basis that it was novel and untested. If one is going to improve the effectiveness of Parliament, there will from time to time be procedures that are novel. If it were not the case, we would be living the rest of our lives encased in a sort of parliamentary aspic. He also said that it was untested. In a parliamentary environment, you cannot have a novel procedure unless it is untested so, with great respect to the Minister, I would dismiss that criticism.

I conclude with a short look ahead, as the noble Lord, Lord Anderson, invited your Lordships to do, to the further stages that might ensue. There is an urban myth to the effect that two exchanges is the limit. I had some involvement with the Corporate Manslaughter and Corporate Homicide Bill in 2007, and on that occasion there were seven exchanges between the two Houses. Other Bills have demonstrated more than two exchanges on a number of occasions. On something that raises an issue of constitutional principle—and I borrow the description of the noble Lord, Lord Anderson, in speaking to his Motion—it would be right if the Commons were invited on several occasions to consider whether it had got this right after all.

Lord Hamilton of Epsom (Con): I congratulate the noble Lord, Lord Anderson, as did the noble Baroness, Lady Ludford, on the work that he has put into this. As he knows, I supported the original amendment and put my name to it, and I congratulate him on all the work that he has done since. I totally sympathise with all the sentiments that everybody has expressed. It is most regrettable—and I say this as somebody who campaigned to leave the EU—that we took the very undemocratically imposed EU law given to both Houses of Parliament, which we could neither amend nor reject, and now we are replacing that by giving that power to the Executive through statutory instruments under the negative procedure, which means that we cannot amend them or do anything about them at all. I do not think that that was what people voted for when they voted to leave the EU; I think that they wanted to restore parliamentary sovereignty, and this does not do it.

Having said all that, we are a revising Chamber; we asked the Commons to think again; they have thought again. It is a matter of regret to me that I have not even persuaded my leave colleagues in this House to support the amendment, let alone in the other place, and I do not think it is our job to play endless ping-pong. The House of Commons is elected; it has spoken, and I think we should go along with what it says.

3.45 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I strongly support this Motion and I disagree with the noble Lord who has just spoken, because it is our job

not to let things through that are actually dangerous or damaging for our constitution and for the British people. I think the Bill has a huge number of flaws. I know the Minister to be an honourable man and I am sure he believes what he is saying, but the point is that he cannot tell us that this Motion is not necessary and he cannot say he gives us all the reassurance: how do we know he is going to be in post within a few weeks?

And of course, then we have the next Government. One of the things that staggers me about the Bill is just how much power the current Government are giving into the hands of the next Government, which could of course be a Labour Government. Surely, when the next Government come into power, those opposite will bitterly resent the powers they have put into the Bill. Personally, I think it is a dereliction of MPs' duties as legislators to allow this to happen, so I thoroughly support the Motion in the name of the noble Lord, Lord Anderson. I think we have to be very responsible here and say, no, we will not let this pass.

Lord Cormack (Con): My Lords, "Do not take to yourself powers that you would not wish your opponents to have" is the substance of the noble Baroness's speech, and I agree with that. I greatly admired the speech made by my noble friend Lord Hamilton at Second Reading. I admired his courage in putting his name to the amendment and I totally respect his view that one has to consider and judge how long ping-pong should go on. So, there is no disagreement between us on this issue, even though we were on opposite sides in the Brexit argument.

But I come down very strongly in favour of the points made by the noble Lord, Lord Lisvane, who, remember, is a very distinguished former clerk of the House of Commons and understands these procedural matters perhaps more than any of us. The noble Lord, Lord Anderson, called in aid the noble and learned Lord, Lord Judge, and we do indeed all miss his presence today and wish him a speedy return to full health and to vigorous debating in this Chamber. He has, perhaps above all of us, talked of the danger of Parliament becoming the creature of the Executive. That is to turn our constitution on its head, and it is something that none of us should be complicit in.

We do have a duty in this House, if we think the other place has got it wrong, to say, "Please reconsider", and it is not in any way an aggressive use of our limited powers if we think their rethink, which did not take very long, has not been adequate. Therefore, I believe it would be entirely consistent with our relationship with the other place, and with our duty to Parliament, of which we are the second House, to say to our friends and neighbours along the Corridor, "We think you have got this wrong: you are giving power to the Executive which no Executive, be it Labour or Conservative, should have". I do not want them to have it if they come into government, and I do not think it is right that we should have it. For those reasons, I shall support the noble Lord, Lord Anderson.

Lord Jackson of Peterborough (Con): My Lords, I oppose the Motion in the name of the noble Lord, Lord Anderson of Ipswich. For what it is worth, I support the new iteration of Amendment 16, to which I put my name on Report, in Motion D.

I very much respect the noble Lord, Lord Lisvane, and indeed my noble friend Lord Cormack, but I think we are missing the bigger picture here. We are effectively asking the other place to invalidate a Bill, for reasons I will develop shortly, which it passed by 53 votes when the will of that House was last tested. As I have said before in this House, I think there is a danger of legislative overreach—of assuming powers and of imposing responsibilities and obligations on the elected House, fettering its discretion and, by so doing, interfering in its rights and obligations. Notwithstanding what my noble friend Lord Cormack said, yes, it is our duty and responsibility to ask the other place to think again, but we have already done that. It has thought again and debated the issue. I have to agree with my noble friend the Minister. He is far too polite to describe the approach outlined by the noble Lord as it truly is: extremely radical. He described it as a "novel" approach.

Let us think about what this Motion would mean in practice. If we are in the business of improving governance by scrutiny and oversight, unless we vote for a fatal Motion to kill the Bill—which is very unlikely, because the Opposition Front Bench would not support such a move—surely the logical corollary is that we want to improve it. The perverse application of the noble Lord's amendment would result in quite the opposite. The opportunities to revoke and, importantly, to reform the caucus of EU retained legislation would be slowed. There would be a process of delay and obfuscation, and it would not be effective government. In fact, it would be a betrayal of the responsibilities and duties we have as the upper House in scrutiny and oversight. Indeed, even above that, the Motion would invalidate the very raison d'être of the Bill, which has to exist. The noble Lord's amendment is too rigid. It is instructive, and it would assume the powers of Ministers. In some respects, it would make this House itself part of the Executive in a way that Amendment 16 did not, which was much more permissive, declaratory and flexible in seeking to get to the same objectives.

For those reasons of legislative overreach, inadequate scrutiny and oversight, and delay and obfuscation if we were to go down the path of this Motion, I respectfully ask your Lordships' House to reject it and support the Government.

Lord Inglewood (Non-Afl): My Lords, having sat quietly listening to the debate, which has focused on all kinds of minutiae over the past few weeks, I cannot help but conclude, taking an overview, that if we look at the history of Parliament we see that for hundreds of years it has had a tense relationship with the Executive. Over that period, it has developed a framework within which, in the interests of the British people as a whole, the Executive exercise their powers. We have had civil wars over it; people have died in that cause. Now we are being asked, it seems to me, to put that process into reverse. We are being asked that Parliament should move in the opposite direction and return to a system of governance where the Executive have ever more increasing control over everyone's lives. I do not think that is the way we in this Parliament should respond to those kinds of circumstances, and it is my personal view that to do so is craven.

Baroness Altmann (Con): My Lords, from my perspective, the way in which the noble Lord, Lord Anderson, moved and explained his Motion was extraordinarily powerful. My summation is that this is an existential issue—we are way down a slippery slope. I respect the views of the elected Chamber. Had we been subject to a general election or a referendum which asked the British people whether they wanted control given to an Executive, consisting of a number of Ministers, or to each of their elected Members of Parliament equally, and the British people had supported the idea that we become an elected dictatorship of some kind, that would be a different matter. However, I do not believe that that has been put to the British people. I believe that the constitutional safeguards which this House represents, and which are there to protect ordinary citizens, need to be better safeguarded. I will therefore support Motion B1.

Viscount Stansgate (Lab): My Lords, I was not intending to speak so I shall be brief. This House is not elected—we know that—but that is not to say that it does not have a role, which it does. We heard a speech just a moment ago suggesting that ping-pong, the stage in which we are at the moment, is a game that should have just one exchange and leave it at that. There is no urgency about the time that it might take to ask the elected Chamber to think again. I am in favour of allowing the other place to think again. When you consider the wider history—we have just had reference made to it, quite rightly—we are going to allow a Bill of such magnitude to go through, shifting the balance of power between the Executive and the legislature in such a way, that people later on will look back and wonder why on earth the House did not express some degree of steadfastness in its view that the Government should think again. I shall vote for the amendment for that reason.

Lord Fox (LD): My Lords, this has been a fascinating debate, and I will not prolong it much. On Motion B1, the noble Lord, Lord Anderson, and indeed the noble and learned Lord, Lord Hope, who is unable to be here today, deserve, as they have already received, great congratulations. The Minister also should be commended on his flexibility in assuring and reassuring us that we will get the information we need. I hope the Minister can either talk to my noble friend's question as to the timing and mechanics of keeping the dashboard up to date or give us a detailed letter at some point to let us know how that would happen; that would be helpful.

The substantive debate is around Motion E1. Again, the noble Lord, Lord Anderson, outlined with great detail and clarity the mechanics of how his amendment would work. He made it very clear that the debate in the Commons on the previous amendment has been taken on board very thoroughly in the formulation of this further amendment.

The noble Lord, Lord Jackson, used the word "invalidate" twice, but if he looks at this amendment again he will find that it does not invalidate anything around the purpose and intent of the Bill. What it would do is bring Parliament back into the frame, which is what the majority of your Lordships have been talking about today. That is important. Clause 15 takes very wide powers to revoke and replace retained EU regulation, and as the noble Lord, Lord Anderson, said, the level of this regulation is not normal bits-and-pieces regulation but is essentially primary law. It is not appropriate for statutory instruments to be used to not just change but completely replace primary law without a substantial role for Parliament.

The Minister talked about parliamentary scrutiny being at an appropriate level. It is clear that your Lordships have set out that we do not consider the current level to be appropriate, which is why this amendment is very important. The Government see it as a slippery slope, and will use that argument, but clearly, the exceptional nature of this situation means that it is not so.

4 pm

Through this debate, I have come genuinely to respect the consistency and thoroughness of the view of the noble Lord, Lord Hamilton. He has been absolutely right about where the power should be in this argument. He talked about endless ping-pong, and I respectfully suggest that we are not proposing that; we are proposing one more ping and one more pong, and that is what we are debating now. That is why I side very much with the argument of the noble Lords, Lord Lisvane, and Lord Cormack, and others, and that is why we on these Benches will be supporting the amendment.

Baroness Chapman of Darlington (Lab): My Lords, I want to speak briefly to Motion E1 and to start by thanking the noble Lord, Lord Anderson, for his work on this amendment and throughout consideration of the Bill. Noble Lords will be aware that the amendment differs from the one we debated in Committee and on Report. They will also know that, since the Bill was first published, we have been concerned that it gives Ministers far too much power without reference to Parliament. Clause 15 was especially difficult for parliamentarians to accept, given the extraordinarily wide-ranging powers to rewrite regulations which, in effect, could have similar power to primary legislation. This point was made by the noble Lord, Lord Anderson, but it is worth repeating.

Motion E1 allows for a committee to consider regulations when they are rewritten by Ministers and, where necessary, to refer them to the House for consideration. This is a more modest suggestion than that proposed and agreed by this House at Report. As we have heard, a not dissimilar process was used for the Civil Contingencies Act 2004 and, as the noble Lord, Lord Lisvane, informed us, the Census Act.

Our view is that this approach is proportionate, not obstructive of the Government's intentions and should be acceptable to them. We are concerned that the Commons has so far continued to push back on parliamentary scrutiny and views the procedure proposed by this House as inappropriate, but we hope that the newly constructed amendment proposed by the noble Lord, Lord Anderson, will be welcomed by the Government and the other place.

The Commons has expressed a view, but we are returning to it a compromise. We on these Benches consider it to be the appropriate, reasonable and

responsible thing to do. Following the question of the noble Lord, Lord Jackson, about whether we are imposing ourselves on the other place, I note that it adjourned a couple of hours ago and seems to have adequate time in its schedule to consider a rather modest suggestion from this House.

Lord Callanan (Con): My Lords, once again, we have had a full, worthy debate on the Bill. I will keep my response brief, as many of these points are well worn and we have largely covered them in opening the debate.

I say to the House that this is not just an ordinary legislative amendment; it is about the procedures of Parliament. It is not even about the procedures of this House; it is about the procedures of the other place. The amendment seeks for this House to say to the House of Commons, "We think that you should set up by legislation an entirely untested and novel way of conducting your scrutiny of secondary legislation", when the House of Commons has already said it does not wish to do that and does not think it appropriate. It is entirely inappropriate for us to do that when we have already heard the answer once.

The Bill is vital, and now that we have taken back control of our statute book, it is essential to update and modernise by amending, repealing or replacing those rules and regulations that are no longer fit or were never fit for the UK. This will allow us to create a new pro-growth, high-standards regulatory framework to give businesses the confidence to innovate, invest and create jobs. It will provide legal certainty and clarity across the statute book, ensuring we have consistent rules of interpretation across the UK body of law.

Let me mention briefly some of the points raised in the debate. On Motions B and B1, I thank the noble Lord, Lord Anderson, for his speech. I hope that the House will move forward with Motion B.

Let me reply briefly to the question from the noble Baroness, Lady Ludford, on the timescale for this work. We will add Section 4 rights to the dashboard as identified at least as frequently as every six months, as per the reporting requirement clause that is already in the Bill.

With regards to Motion E1, as I have already said, the Government listened to the views of this House on a number of issues in the Bill. We have already modified the schedule massively to take account of the many concerns that were addressed. I have to say, I consider it an unfair characterisation that the Government have ignored this House—far from it. It is much to the contrary.

On the Motion itself, I can only stress to the House that we believe this proposed novel scrutiny procedure to be unnecessary. The House of Commons has said that it also believes it to be unnecessary. With the reporting requirements already in the Bill and the proven sifting committee procedure that we have already agreed, Parliament will have strong provisions to scrutinise any legislation that is brought forward under this Bill. In the Government's view, the appropriate balance between the need for scrutiny and the need for reform has been struck. I therefore hope that noble Lords will not push forward this amendment.

Motion A agreed.

Motion B1 not moved.

Motion B

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 6, to which the Commons have disagreed for their Reason 6A.

6A: Because the retention of anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 would be inconsistent with the abolition of the principle of supremacy of EU law.

Motion B agreed.

Motion C

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 15, to which the Commons have disagreed for their Reason 15A.

15A: Because the Commons do not consider the Lords Amendment necessary in order to maintain environmental protection or food standards.

Lord Callanan (Con): My Lords, in moving Motion C, I will also speak to Motion C1, both of which relate to Lords Amendment 15.

We have had myriad discussions on environmental protections during the passage of the REUL Bill. I can only stress once again that the Government have no intention of lowering environmental standards, nor of breaching their international obligations. This not only makes the restrictions that this amendment places on the usage of the reforming powers with regard to the environment unnecessary; it also risks delaying or even preventing reform where it would be beneficial to do so. Indeed, as drafted, this amendment may in fact also make it more difficult for departments to ensure that the policy effect of environmental regulations can be maintained at the end of the year through exercising the restatement power. By doing so, it could actively undermine the purpose that it seeks to achieve.

As I and Ministers in the other place have set out previously, the Government are fully committed to upholding environmental standards. Defra has already reformed retained EU law in a number of key areas through flagship legislation, such as the Fisheries Act 2020 and the Agriculture Act 2020. In addition, since leaving the EU, the Government have also passed the landmark Environment Act 2021 and published strategies including the *Environmental Improvement Plan 2023*. Any changes to legislation will need to support these ambitions as well as be consistent with our international obligations. Furthermore, Defra has in many areas already reformed its retained EU law to streamline and update it without diminishing—in fact, strengthening in some cases—our levels of environmental protection.

We are very clear that this sets a direction of travel on environmental regulation that makes this amendment unnecessary and, as I said, the amendment may make it more difficult to reach the ambition on environmental

[Lord Callanan]
protections that I am sure is shared widely across the House. I therefore ask the House to support Motion C and the noble Lord, Lord Krebs, to withdraw his Motion C1.

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Krebs***

At end insert ", and do propose Amendment 15B in lieu—

15B: After Clause 16, insert the following new Clause—

"Environmental protection

(1) Regulations may not be made by a relevant national authority under section 12, 13, 15 or 16 unless the relevant national authority is satisfied that the regulations do not—

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

(b) conflict with any relevant international environmental agreements to which the United Kingdom is party.

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

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

(b) publish a report setting out—

(i) how the provision does not reduce the level of environmental protection in accordance with subsection (1), and

(ii) how the authority has taken into account the advice from the persons referred to in paragraph (a) of this subsection.

(3) In this section "relevant international environmental agreements" includes but is not limited to—

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

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

(c) the UN Convention on Biological Diversity (Rio, 1992);

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

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

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

Lord Krebs (CB): My Lords, my proposed new clause represents a simplified and shortened version of the amendment passed by your Lordships' House on Report on 15 May. Before I explain the simplification, I want to thank the noble Baroness, Lady Neville-Rolfe, and officials from the Bill team for their helpful discussion—although I am disappointed that we did not manage to reach a compromise, which I had hoped we would be able to do.

I will briefly recap the purpose of the amendment and explain the differences between my new proposal and the previous version. The core purpose remains the same: to ensure that any changes to EU laws do not dilute environmental protection or contravene relevant international environmental agreements, to ensure that expert advice is sought and to ensure transparency by requiring the publication of an explanation of how any changes do not reduce environmental protection and how expert advice supports this assertion.

The principles embodied in the amendment—non-regression, expert advice and transparency—are so non-controversial that I am at a loss to understand why the Government find them unacceptable. The new amendment differs from the version on Report in three principal ways. First, it leaves out food standards and is concerned exclusively with environmental protection. I would have preferred to leave food in, but the chair of the Food Standards Agency said it was unnecessary, and I defer to her advice. Secondly, the requirement to consult experts is less prescriptive than in the earlier version and is modelled on the wording in Sections 112(7) and 4(1) of the Environment Act 2021. Thirdly, acknowledging a point made on Report by the noble Lord, Lord Benyon, the new version of the amendment recognises that the list of international environmental agreements is not exhaustive; they are simply examples.

What are the Government's arguments against the amendments? On Report the noble Lord, Lord Benyon, for whom I have the highest regard, said that my amendment was "burdensome" and "unnecessary". As my noble friend Lord Kerr of Kinlochard pointed out to me, it is difficult for the amendment to be both at once. If it is unnecessary because it happens anyway, it cannot be burdensome. If it is imposing an extra burden on Ministers by introducing further steps required before changing the law, that may well be a good and necessary thing.

In explaining in the other place why the amendment should be rejected, the Solicitor-General said:

"Ministers have made it clear repeatedly at every stage of this Bill's passage in both Houses that we will not lower environmental protections or standards".—[*Official Report*, Commons, 24/5/23; col. 328.]

The Minister made essentially the same point a few moments ago. The question for me is whether the assertions that Ministers have made are matched by the reality. If they are not, surely there is a case for securing an extra layer of guarantee in the Bill.

What does the Government's own statutory watchdog, the Office for Environmental Protection, say about current environmental standards? Are the Government living up to their promises? The 2023 statutory report from the Office for Environmental Protection, *Progress in Improving the Natural Environment in England, 2021/2022*, makes for grim reading. It says:

"We have little good news to report … We assessed 32 trends across the breadth of the natural environment; nine trends were improving, eleven were static, and eight were deteriorating … We assessed 23 environmental targets and found none where Government's progress was demonstrably on track … Overall, we do not think the current pace and scale of action will deliver the changes necessary to improve the environment in England significantly, as required by the Environment Act 2021".

It is no use saying, "We already have an Environment Act, and therefore the amendment is unnecessary", because the Government's own watchdog is saying that action is not matching the rhetoric. We are not on track to meet the targets in the Environment Act.

While I have the highest confidence in the noble Lord, Lord Benyon, as an Environment Minister and in his commitment to the environment, the OEP's report shows that, more widely, the Government are failing miserably to protect our environment.

Furthermore, this is about the longer term. As was said in a previous debate, even if present Ministers may be committed to not diluting environmental standards, how do we know what future Administrations might decide to do? In its briefing for this debate, the Law Society said:

"It is imperative that business and the public can be certain that following the revocation of the EU laws, environmental protections and standards are upheld. Uncertainty is not only detrimental to the UK's transition to net zero but also this country's status as an attractive place to do business. Unless these standards are protected in law, we are concerned that future administrations could roll back on our commitments, thus creating uncertainty".

In my view, there is thus an indisputable case to add a clause that would help to ensure that future changes to retained EU law do not further harm our already badly damaged natural environment. I will listen carefully to the Minister's reply but, at the moment, my intention is to test the opinion of the House. I beg to move.

4.15 pm

Baroness Jones of Moulsecoomb (GP): I support Motion C1. It is interesting, because all the constitutional arguments we heard earlier apply equally to this Motion. It gives Ministers the powers to delete or rewrite thousands of laws almost without any parliamentary scrutiny.

There is a vast ecosystem of about 1,600 environmental laws that are threatened by this Bill. These laws protect humans, animals and the broader environment. The Minister stood up and—forgive me for using this word—boasted about the Government's credentials on environmental issues. I am sorry to inform him that, among the environmental lobby within the UK and worldwide, this Government have zero credibility on environmental issues. I am very happy to list them if necessary.

I accept that some of these laws are probably defunct or could be improved; that would be acceptable. What would be unacceptable is for the Government to weaken or delete laws that we need and that protect us and our environment. Although this is a constitutional issue, it is also about life. Forgive me if I am a bit emotional about this, but this is about the health of people and the planet. Without the planet, we do not exist. If we do not support our bees, we do not exist. If we do not think about our food standards, we will cease to exist. So it is incredibly important that this Motion is agreed to. We have to say to the Commons that it has got this dreadfully wrong.

Lord Hamilton of Epsom (Con): My Lords, on Report I had a bit of a spat with the noble Lord, Lord Krebs, on this issue. It strikes me that it would be very odd if the Government wanted to put the health of their citizens at risk by not adopting these measures, so I am sure that they will. On top of that, not adhering to high food standards would completely undermine our exports to other countries. I do not quite see the point of this amendment and I will certainly vote against it.

Lord Fox (LD): My Lords, the debate on this amendment has been somewhat shorter. It would be easier to support the amendment from the noble Lord, Lord Krebs, were it not for the very explicit reference to regulatory burden. It is very clear in the Bill as it is now that the regulatory burden cannot increase. It is not clear how it is measured, whether as a particular regulation, a range of regulations or an entire statute book of regulations. But, in total, financial costs cannot go up; administrative inconvenience cannot go up; obstacles to trade or innovation cannot go up; obstacles to efficiency, productivity or profitability cannot go up; and a sanction that affects the carrying out of a lawful activity cannot go up.

It is in that context—the context of the Bill—that those of us who have heard the very reassuring words of the noble Lord, Lord Benyon, whom we all respect in this House, are caused to be suspicious. When the Government kick back so hard and so thoroughly on what I think the noble Lord, Lord Krebs, very rightly characterised as a modest amendment, we become more suspicious yet. The very fact that the Government are resisting this amendment is the reason we need it.

Lord Deben (Con): My Lords, I wonder whether we could reflect on the House of Commons Select Committee's report on the state of things at the moment in Defra. One of my worries is whether the Government are in a position, frankly, to understand just where we are on this. After all, it turns out from that very powerful Select Committee report that Defra actually transacted 14 million transactions manually because its systems do not actually cover what needs to be done. In those circumstances, I am not sure that any of us can be sure that the Government can assess where they are on these matters, because of the difficulties which they have with not funding satisfactorily the department which is supposed to deal with this, or any of its agencies such as the Environment Agency and Natural England. In those circumstances, I very much hope that the Minister will be kind enough to help me on this, in his usual charming way—

Noble Lords: Oh!

Lord Deben (Con): I say that to try to make sure it continues to be a good-natured debate. There is no doubt that many people who are not antagonistic to the Government do not want to rely on the excellence of the present Minister, but want to make sure that future Ministers do this job as he, I am sure, would hope to do it himself. Therefore, the question here is: given that we have doubts about the efficacy of the department most responsible for it—not because of our own concerns but because of the House of Commons Select Committee—and given that he will surely want other Ministers to follow him in the attitudes which he has displayed, would it not be more sensible to put this into the law, as indeed the Law Society itself has suggested? I think I am right in saying that every exterior independent body, including the Government's own watchdog on this matter, agrees. I remind the House of my own interests, as declared in the register of interests: not only the things I do outside but also my chairmanship of the Climate Change Committee. I just feel that the world would be more assured that

[LORD DEBEN]
the kind of attitudes which we have heard from the noble Lord, Lord Benyon, for example, will be the attitudes enforced in the future. That is all we are asking, and I do not quite understand why that is unreasonable.

Baroness Lawlor (Con): My Lords, I listened with great interest throughout Committee to the noble Lord, Lord Krebs, and his very reasonable and constructive proposals for protecting our environment. But it is time to move on to UK law, which is more transparent and will save the taxpayer the cost of having to pay for a dual system of EU and UK law. Yes, we are already committed by international obligation to our international treaties, but it is ironic that many of the problems which we hear considered have arisen under this dual system of arrangements. I am afraid that I will not support the noble Lord's amendment. I hope the Government will get on with it, and we will move to restoring UK law over this vital environmental sector so we can all have the protections we need for the environment and hold the Government to account.

Baroness Hayman of Ullock (Lab): I thank the noble Lord, Lord Krebs, for bringing this amendment forward and assure him of our full support. We heard from him that, in response to comments made by Ministers on Report, the amendment has been altered to focus on enshrining a legal commitment to maintain existing levels of environmental protection, and that he has taken into account much of what was said during that debate.

One of the things that we debated is how much of the Bill has significant implications for environmental law and for many regulations of significant public interest protecting our natural environment and many aspects of our health so, as the noble Lord, Lord Krebs, said in his introduction, and others have said, it has been pretty disconcerting to hear the Government describe commitments to maintain existing levels of environmental protection as burdensome. I find that quite shocking. We know that there is wide-ranging support for an environmental non-regression principle. Amendment 15 would give legal substance to what Ministers have been saying they want to achieve. In fact, in his introduction, the Minister said that the Government are committed to maintaining high environmental standards; the noble Lord, Lord Benyon, said that; and the Minister in the other place, Trudy Harrison, said that. However, as a matter of law, just because somebody says something provides no assurances or protections and, however welcome it is, it cannot bind the hands of any future Ministers, as the noble Lord, Lord Deben, has just said.

The noble Baroness, Lady Jones, mentioned concerns that some regulations that we need may well be lost. I want very briefly to give an example, which is the intention to remove some items relating to the national air pollution control programme—the NAPCP. Removing the obligation to draw up and implement the programme strips away any clear duty on the Government to show how they will reduce emissions in line with their legally binding emissions targets. The Government say that by repealing this item they can better focus on what will help clear the air, such as delivering on the targets set in the Environment Act. In this debate, the Government repeatedly cite the existence of the Environment Act as the reason why such amendments are not necessary, and no doubt the Minister will repeat that shortly. However, if we look at Regulation 10 of the National Emissions Ceilings Regulations 2018 and the associated implementing decision, we see that the Government are clearly required to consult the public as part of the process of preparing and revising the NAPCP. This is in stark contrast with the approach they took with the revised environmental improvement plan earlier this year where there was no public consultation, very limited stakeholder engagement and limited transparency over which stakeholders were contacted—yet the Minister in his introduction held the EIP up as something to which we should aspire. Given that there is currently no provision in the Environment Act to require any public consultation in relation to future revisions of the EIP, how will the Government ensure that the public do not lose their ability to contribute and to have their say?

I also want to look at some of the powers in the Environment Act and how they are constructed. For example, it includes a non-regression commitment in respect of one piece of REUL, the habitats regulations. This empowers the Secretary of State to make regulations to amend part of the habitats regulations

"only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations".

So I consider it relevant in today's debate to look at why the Government opted to include this non-regression safeguard in law.

4.30 pm

During the passage of the Environment Act, the Minister, at that time the noble Lord, Lord Goldsmith, explained that

"the clause includes a number of safeguards that are designed to retain our existing protections",

recognising the importance of underpinning commitments in law. He went on:

"Ministers will have to be satisfied and explain to Parliament that any change would not reduce our existing environmental protections, and Parliament will have a vote on any use of the powers".

He also explained that consultation on any proposals would be comprehensive and that there would be

"a full impact assessment of any regulations made under the powers, when bringing them forward".—[*Official Report*, 12/7/21; cols. 1620-21.]

If the Government were committed to such a safeguard in the Environment Act, which was brought in only in 2021, why are they so against making a similar non-regression commitment on maintaining existing levels of environmental protection in law in this Bill?

As the noble Lord, Lord Krebs, said, this is very uncontroversial. I await the Minister's response with interest, but if the noble Lord, Lord Krebs, wishes to test the opinion of the House, he will have our strong support.

Lord Callanan (Con): My Lords, I can keep my response brief. I have lost track of the number of times during the passage of the Bill that we have had this debate. We had it in Committee, on Report and we are

having it now—and of course it was repeated in the House of Commons. The House of Commons has heard the assurances of the Government. I suspect that nothing else I can say will change most Members' minds but, for the benefit of the noble Lord, Lord Krebs, I will repeat the arguments again.

The noble Lord's Motion proposes to insert additional measures into the Bill on environmental protections. I appreciate the sentiment, and we recognise the importance of maintaining our environmental standards, but the Government do not believe this amendment to be necessary. The UK is a world leader in environmental protection, despite what the noble Baroness, Lady Jones, wants to tell us, and we will continue to uphold our environmental protections. Furthermore, in a debate in the other place, the House of Commons rejected essentially a similar amendment by a majority of 77.

We are committed to our environmental protections. Nothing in this Bill changes that commitment. As I referenced in my opening speech, we have substantive concerns that this amendment, in the way that it is worded, would actually make it more difficult to uphold those environmental commitments. I hope that, if the Motion is moved to a vote, the House will reject it.

Lord Krebs (CB): I thank all noble Lords who have taken part in this short debate, and I thank the Minister for his response. I will not speak for very long but I want to make three specific comments in response to particular points that have been made.

The noble Lord, Lord Hamilton, referred to food standards. I remind noble Lords that this version of the amendment does not include food, so the noble Lord can relax in his seat and not worry about food.

The noble Baroness, Lady Lawlor, seemed to imply that the amendment would somehow fossilise existing regulations in relation to the environment. It is not about fossilising existing regulations; it is about allowing change and improvement as long as they do not dilute environmental protection and as long as they are made in consultation with, and on the advice of, experts, and that that advice is published. This is not trying to freeze things in 2023 at all. I hope that provides reassurance.

As a final point, in response to the Minister, who repeated the oft-quoted mantra that the UK is "world-leading" in environmental protection, I remind him of what I read out less than half an hour ago from the Government's own watchdog. It makes grim reading. We are failing on all the targets that the OEP looked at. We are not world-leading; we are struggling. This simple and modest amendment aims to put further legal protections around what the Government claim they are doing anyway; it is simple, modest and straightforward.

I would not like to be the one going home to explain to my children and grandchildren that I stood up and voted against protecting our environment. I hope that other noble Lords feel the same—that those who have children or grandchildren and are thinking of the future would want to protect the environment on their behalf. Therefore, I wish to ask the House to agree to Motion C1.

4.34 pm

Division on Motion C1

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Motion C1 agreed.

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4.46 pm

Motion D

Moved by ***Lord Callanan***

That this House do disagree with the Commons in their Amendment 16A, do agree with the Commons in their Amendment 16B, and do propose Amendment 16C as an amendment to Lords Amendment 16 in lieu of Commons Amendment 16A—

16A: In subsection (2)(c), at end insert "including specifying in a list such provisions of retained EU law as is intended to be revoked or reformed"

16B: Leave out paragraphs (3)(b) to (3)(d) and insert—

"(b) each subsequent period of 6 months, subject to subsection (3A).

(3A) The last reporting period ends with 23 June 2026."

16C: After subsection (2) insert—

"(2A) The plans that must be set out under subsection (2)(c) must include a list of the provisions of retained EU law which His Majesty's Government intends to revoke or reform."

Motion D agreed.

Motion E

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 42, to which the Commons have disagreed for their Reason 42A.

42A: Because the Commons consider the scrutiny procedure imposed by the Lords Amendment to be inappropriate.

Motion E1 (as an amendment to Motion E)

Moved by ***Lord Anderson of Ipswich***

At end insert ", and do propose Amendment 42B in lieu—

42B: After Clause 15, insert the following new Clause—

"Parliamentary scrutiny

(1) A Minister of the Crown may not make regulations under section 15 unless—

(a) a document containing a proposal for those regulations has been laid before each House of Parliament,

(b) the document has been referred to, and considered by, a Committee of the House of Commons ('the Committee'), and

(c) a period of at least 30 days has elapsed after that referral, not including any period during which Parliament is dissolved or prorogued or either House is adjourned for more than four days.

(2) If the Committee determines that special attention should be drawn to the regulations in question, a Minister of the Crown must arrange for the instrument to be debated on the floor of each House and voted on before the period in subsection (1)(c) elapses.

(3) If any amendments to the regulations, whether or not proposed by the Committee, are agreed by both Houses of Parliament, the regulations must be made in the form so amended.

(4) If one House agrees amendments to the regulations under subsection (3), the regulations may not be made until the other House has debated and voted on a motion to agree or disagree with those amendments.""

Lord Anderson of Ipswich (CB): My Lords, it has all been said. This is a Motion on parliamentary scrutiny. I beg to move Motion E1.

4.46 pm

Division on Motion E1

Contents 257; Not-Contents 182.

Motion E1 agreed.

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Financial Services and Markets Bill

Report (1st Day)

Relevant documents: 23rd Report from the Delegated Powers Committee

5 pm

Clause 1: Revocation of retained EU law relating to financial services and markets

Amendment 1

Moved by ***Lord Sharkey***

1: Clause 1, page 1, line 6, leave out subsection (1) and insert—

"(1) A Minister of the Crown may by regulation revoke or replace any legislation referred to in Schedule 1 provided that—

(a) a document containing a proposal for those regulations has been laid before each House of Parliament,

(b) the document has been referred to a Joint Committee of both Houses, and

(c) a period of at least 40 days has elapsed after that referral, not including any period during which Parliament is dissolved or prorogued or either House is adjourned for more than four days.

(2) If the Joint Committee, after considering any regulations laid under this paragraph, finds that—

(a) the regulations represent a substantial change to the preceding retained EU law, or

(b) the Government have not carried out sufficient public consultation lasting at least six weeks before laying the draft before Parliament, a Minister of the Crown must arrange for the instrument to be debated on the floor of each House and voted on before the period in sub-paragraph (1)(c) elapses.

(3) If any amendments to the regulations, whether or not proposed by the Joint Committee, are agreed by both Houses of Parliament the regulations must be made in the form so amended.

(4) If one House agrees amendments to the regulations under sub-paragraph (3) the Minister may not make the relevant statutory instrument until the other House has debated and voted on a motion to agree or disagree with those amendments."

Lord Sharkey (LD): My Lords, I shall speak first to Amendment 1 and then to Amendments 116 and 117. The Bill gives the Ministers and regulators power to shape our financial services regimes, but it does not allow for any meaningful parliamentary scrutiny of the changes that Ministers and regulators may introduce into law. This is another very clear example of what the noble Lords, Lord Hodgson of Astley Abbotts and Lord Blencathra, and their committees, warned about—the significant and continuing shift of power from Parliament to the Executive. The DPRRC report says in its introduction:

"We have concluded that it is now a matter of urgency that Parliament should take stock and consider how the balance of power can be re-set".

It goes on to highlight the problem of what it calls

"Legislative sub-delegation of power: where ministers can confer powers on themselves or other bodies",

which is precisely what this Bill is about. The report, called *Democracy Denied?*, goes on to say:

"we conclude that conferring legislative sub-delegation of power is potentially a more egregious erosion of democratic accountability than a simple delegation to a minister".

The Minister is aware of these concerns. In our previous discussions, she has noted, by way of compensation no doubt, that there will be opportunities for Parliament to be consulted and for post-hoc accountability reviews. Neither of those things, desirable though they may well be, is a substitute for meaningful legislative scrutiny. This scrutiny is what Amendment 1 proposes to introduce, and I am very grateful to the noble Lords, Lord Hodgson of Astley Abbotts and Lord Lisvane, and the noble and learned Lord, Lord Thomas of Cwmgiedd, for adding their names to the amendment.

The amendment is based on the Amendment 76 of the noble and learned Lord, Lord Hope, to the REUL Bill, which your Lordships agreed to on 17 May by 231 votes to 167. This amendment was discussed at ping-pong in the Commons 10 days ago, and was rejected by the Government on three grounds. The first was that the Government do not accept the principle that Parliament should be able to amend statutory instruments. The second was that the scrutiny proposed would take up too much parliamentary time. The third is the really rather astonishing and disappointing view of the reach and capability of our Joint Committees. I shall not comment on that last point, except to say that it is obviously mistaken, as many of us here could attest.

The objection against taking up too much parliamentary time seems pretty odd, as scrutiny is obviously the essence of our role. In any case, that objection may, if one is charitable, have some force in the case of the monster that is the REUL Bill, but surely has none in the case of this much shorter and more coherent Bill.

As for the Government's not accepting the principle that Parliament should be able to amend statutory instruments, that surely needs qualification. We have heard that qualification discussed in the preceding business. There are two examples of Acts of Parliament containing provisions for the statutory instruments that they generate to be amended—the Census Act 1920 and the Civil Contingencies Act 2004. Both those Acts allow for SIs to be amendable in the way

[LORD SHARKEY]
that our Amendment 1 proposes, only by agreement of both Houses. There are no free-standing or wide-ranging powers.

The Government seem to be sticking to this rather confected set of objections to parliamentary scrutiny. Noble Lords who were here for the preceding ping-pong on the REUL amendments from the noble Lord, Lord Anderson, will have heard the repeated resistance to parliamentary scrutiny. That is despite the SLSC's calling for the REUL Bill to contain

"an enhanced scrutiny mechanism that enables Parliament to decide that an instrument makes changes of such policy significance that the usual 'take it or leave it' procedures—even if affirmative—relating to statutory instruments should not apply but that a further option should be available, namely a procedure by which the Houses can either amend, or recommend amendments to, the instrument".

The Bill before us is essentially a financial services carve-out from the REUL Bill and it suffers from the same lack of effective scrutiny provisions. What was necessary for parliamentary scrutiny of the REUL Bill is also necessary for this. Our Amendment 1 responds to the SLSC's call. It brings in a sifting process. It allows a Joint Committee discretion over what constitutes substantial change to preceding retained EU law. It requires a debate on the Floor of each House if the Joint Committee makes a finding of substantial change or that there has been insufficient public consultation. It also allows SIs generated by the Bill to be amended if, and only if, both Houses agree. This is not a prescription for frequent and casual intervention but a narrowly drawn means of altering SIs on those rare occasions when both Houses find the case compelling.

The amendment returns a measure of meaningful parliamentary scrutiny to the Bill. It allows careful parliamentary scrutiny of proposed changes to our critically important financial services regime. Without it, there would be none; Ministers and regulators would decide, and Parliament would be bypassed yet again.

I turn to Amendments 116 and 117. These amendments, taken together, would allow either House to insist on an enhanced form of scrutiny for SIs it deemed likely to benefit from more detailed examination and debate, as well as from recommendations for revision. The usual SI procedures, as we all know, do not allow this and do not constitute parliamentary scrutiny in any meaningful sense: we cannot amend and we do not reject. The super-affirmative procedure set out in Amendment 117 would allow a measure of real, detailed scrutiny, a means of hearing evidence and a means of making recommendations to Ministers. It would not allow the amendment of SIs: that power remains exclusively with the Minister.

Identical amendments were debated in Committee. The noble Baroness, Lady Noakes, who is not in her place, added her name to the amendments and spoke in support; so did the noble Viscount, Lord Trenchard, and the noble and learned Lord, Lord Thomas of Cwmgiedd. The noble Lord, Lord Tunnicliffe, also not in his place, commented:

"If a piece of legislation is proposed and supported by the noble Lord, Lord Sharkey, the noble Baroness, Lady Noakes, and the noble Viscount, Lord Trenchard, you have to think that it is pretty wide-ranging—in fact, close to impossible".—[*Official Report*, 23/3/23; col. GC 329.]

I think he meant that as a compliment, but it is not entirely clear.

The super-affirmative procedure is appropriate here because, for example, Clause 3 allows for very significant policy changes to be made that could be significant in the context of the restatement of EU law, as the noble Baroness, Lady Noakes, noted in the debate. The Minister thinks that the super-affirmative procedure is unnecessary and promises instead that

"the Government will seek to undertake a combination of formal consultation and informal engagement appropriate to the changes being made".—[*Official Report*, 23/3/23; col. GC 331.]

That is not even a real commitment, with the phrase "will seek to undertake", and it is certainly nothing close to meaningful parliamentary scrutiny. We need the super-affirmative procedure, and I commend these amendments to the House. I beg to move Amendment 1.

Viscount Trenchard (Con): My Lords, I declare my interests as a director of two investment companies as stated in the register. I listened with interest to the noble Lord, Lord Sharkey, in bringing forward his Amendment 1 and other amendments. I feel strongly, as he has suggested, that what has been agreed for the REUL Bill should also be acceptable for this Bill. Indeed, one of my later amendments makes the same point. As he said, the Bill is in some sense a carve-out from the REUL Bill dealing exclusively with financial services. As for his other amendments, I will not repeat the arguments I made in Committee, but I look forward to hearing whether the Minister can give any greater assurance to the House today than she did at that time.

Lord Hamilton of Epsom (Con): My Lords, I support Amendment 1. My noble friend Lord Hodgson of Astley Abbotts does not seem to be with us, but I have collaborated with him over the retained EU law Bill, and I know his views are that Parliament has been collectively losing control of its agenda and that parliamentary sovereignty has been undermined. He has been chairman of the Secondary Legislation Scrutiny Committee, and he notices that more and more business goes through both Houses under statutory instruments. That is not really what we should be going along with in either House, and it is disappointing that the other House does not seem to worry too much about the fact that it is losing its sovereignty and its power to control legislation. That seems to be a fact we have to deal with.

I have repeated this very often, but unlike most people in your Lordships' House, I campaigned to leave the EU. I often wonder what would have happened if the people who were really concerned about the fact that we were getting all this legislation from the EU—inevitably, I accept—which we could neither amend nor reject knew that we would substitute it with stuff in respect of which the Executive are given all the power that had previously lain in Brussels. If we had campaigned in the country and told people that that was what was going to happen, I am not at all certain that the referendum would have been won by the leave campaign.

It strikes me as very odd that when we talk about taking back control, it seems to exclude Parliament. It does not seem to have a desire—particularly the other

place—to actually take back control of legislation, which is what I think we should be doing. It is time we brought this to a halt. I do not have any great optimism that that is going to happen, but I would be more than happy to support the noble Lord's amendment if he presses it to a Division.

Lord Lisvane (CB): My Lords, I am a signatory to this amendment, although some quirk of technology has meant that my name does not appear on the Marshalled List today. I am delighted to join other noble Lords whose names are on the amendment. This is déjà vu all over again, as they say, because this amendment is very similar to one proposed to the retained EU law Bill by the noble and learned Lord, Lord Hope of Craighead, which was approved by this House, sent to the Commons, sent back to us and returned in a slightly different form in the Motion moved by the noble Lord, Lord Anderson of Ipswich, and agreed today.

Perhaps I may very briefly recall what I said on that Motion, because it applies equally to this amendment. This would not set up an entirely new category of amendable SIs which form a new legislative family, as it were. To suggest that it does as a reason for opposing the amendment is to be frighted with false fire, to borrow Hamlet's phrase. There are two statutes, as referred to by the noble Lord, Lord Sharkey, that have the power to amend SIs where the amendments are immediately effective. In my view, this is much more like the super-affirmative procedure, which is set out in some detail in the proposal contained in Amendment 117. The difference is that Ministers would not have the discretion to refuse the amendment which is suggested. It does not seem to me outrageous that Ministers should be subject to the will of Parliament, especially if a proposal might seriously disadvantage businesses or individuals. I commend the amendment to your Lordships.

5.15 pm

Lord Naseby (Con): My Lords, I would just like to refer back to the fact that from 1992 to 1997, I had the privilege in the other place of being Chairman of Ways and Means and Deputy Speaker. At that time, I received considerable briefing from the Officers of the House and other senior parliamentarians, and the procedure we have in Amendments 116 and 117 is, in my judgment, entirely appropriate in instances where a Bill of what I might refer to as super-national importance is going through. I cannot think of any Bill at this stage in a Parliament that is more important than this one. We have the whole of the City of London in favour of the principle of the Bill. That is absolutely fundamental to the success and growth of our nation, and to have the financial sector behind it, alongside His Majesty's Government, seems to me entirely appropriate. Here, we have a situation that may occur—I hope it does not. However, if it is felt strongly by parliamentarians that something that His Majesty's Government and Ministers are bringing forward should go through the super-affirmative procedure, that is to be welcomed and recognised. If it does—and I assume it would go through—all that does is strengthen the Government of the day, which is why I very much support this amendment.

Lord Thomas of Cwmgiedd (CB): My Lords, I had the privilege of adding my name to this amendment because it seems to me, as has just been said, that this is such an important Bill for our nations. It also has this distinguishing feature. Regulation of financial services and matters of this kind is extremely complicated; it is very easy to get them wrong. Why do the Government not feel that they need the expertise of this House, which was so evident during the Grand Committee hearing on aspects of financial services? That completely defeats my understanding of the way in which we should have good government.

Baroness Altmann (Con): My Lords, I add my support to the amendment so excellently moved by the noble Lord, Lord Sharkey, and I thank my noble friends Lord Hamilton and Lord Naseby, who have spoken about the dangers that are entailed if we do not introduce measures such as this amendment into the Bill. There is a risk of executive power-grab. I am not at all saying that that is the intention, but the possibility of that would be opened and surely, as we have just argued in the previous legislative discussion, it is so important that we ensure that Parliament has control, not a few Ministers. That is what I hoped we were going to do when we were revising the laws that had been adopted from the EU.

Baroness Kramer (LD): My Lords, I can add very little to the extraordinary speeches we just heard, many of them quite brief but absolutely targeted and to the point. I simply want to add just two more issues that perhaps have been mentioned but not stressed.

The first is that a carve-out of financial services from the REUL Bill is not the carve-out of some minor area of insignificant interest. Financial services are in effect our largest and most significant industry at this point in time in the UK and will be for many years in the future, and indeed the products that come from financial services are the lifeblood of our economy, both for businesses and for ordinary people. Therefore, scrutiny of decisions that are made within this arena surely has to be a central and significant responsibility of Parliament.

I say to the Minister, who always prays in aid consultation, both formal and informal, in the process of making change, when did consultation replace scrutiny in the mind of this Government? Parliament is not a consultee but the body that is democratically elected to make the key legislative decisions about the future of our country. Its relegation to the role of a consultee, which in effect happens and which this legislation would in some ways counter, is, I believe, completely unacceptable to most people when they have the opportunity to face up to it and think through this issue. Therefore, we on these Benches are very much in support of these amendments, and if necessary we will go through the Lobbies if the Minister is unable to accept at least a significant one of them.

Baroness Chapman of Darlington (Lab): My Lords, before I address the amendments, I want to acknowledge the work of my noble friend Lord Tunnicliffe, who had been leading for these Benches on this Bill until very recently, and thank him for his hard work and

[Baroness Chapman of Darlington]
generosity in the way he has handed over custody of the Bill to me and my noble friend Lord Livermore. We are very grateful to my noble friend for everything he did, and he continues to advise and support—as noble Lords who know him can well imagine.

However, we are on Report, and this is the stage where we cut to the chase and pick our battles. I have been leading on the retained EU law Bill and am very familiar with the arguments raised in this debate, but we are treating this Bill slightly differently to the retained EU law Bill because our concerns on that Bill revolved around the lack of certainty created by the Government's approach. There was no definitive list of the terms of retained EU law that would be revoked at the end of the year, and the absence of that list meant limited scope for meaningful engagement, scrutiny or consultation. That was our fundamental objection to that Bill.

The process set out in this Bill is different, with most of the retained law listed in the legislation and to be repealed and revoked only once replaced by regulations that are UK-specific. Fundamentally, we think that changing the process outlined in the Bill at this stage in a manner that the sector has not asked for—it is very different to the engagement that we had on the retained EU law Bill, where there was strong demand from various sectors for change—would introduce uncertainty.

The Lords were right to ask the Government to think again on the retained EU law Bill, but amendments to one Bill do not automatically work for another and, in any event— as I know from having worked on the retained EU law Bill—the version of the amendment we are considering today has already been convincingly overturned by the elected House and we have had to come back with another. As we need to pick our battles and to prioritise at this stage in our proceedings, we on these Benches will not be participating should the issue be put to a Division today.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, before turning to the amendments at hand, I add my thanks to those of the noble Baroness, Lady Chapman, for the contribution of the noble Lord, Lord Tunnicliffe, to this Bill and the Labour Front Bench on Treasury matters. The noble Baroness referred to the noble Lord's generosity; I have definitely found that to be the case. He has always had a very constructive approach and approached his work with kindness and wisdom, which is a great combination to bring to this House.

The amendments before us from the noble Lord, Lord Sharkey, Amendments 1, 116 and 117, would introduce new parliamentary procedures when exercising the powers in the Bill. As noble Lords have noted, very similar amendments were proposed to the retained EU law Bill, passed and then reversed by the Commons. We have just had a debate this afternoon on a modified version of those amendments, to which I listened very carefully, although I am not as expert in the passage of that Bill as some other noble Lords in the Chamber.

Many of the arguments covered in that debate also apply here, so I do not intend to repeat them at length. I want to focus on some specific considerations in relation to this Bill, which, as the noble Baroness, Lady Chapman, noted, takes a different approach to repealing retained EU law for financial services. That is because it enables the Government to deliver fundamental structural reform to the way in which the financial services sector is regulated.

The Government are not asking for a blank cheque to rewrite EU law. This Bill repeals EU law and creates the necessary powers for it to be replaced in line with the UK's existing Financial Services and Markets Act 2000—FSMA—model of regulation, which we are also enhancing through this Bill to ensure strong accountability and transparency. A list of retained EU law to be repealed in Schedule 1 was included in the Bill from its introduction in July 2022 to enable scrutiny of this proposal.

Going forward, our independent regulators will generally set the detailed provisions in their rulebooks instead of firms being required to follow EU law. The Bill includes a number of provisions to enable Parliament to scrutinise the regulators; the Government have brought forward amendments to go further on this, as we will discuss later on Report.

Amendments 1, 116 and 117 would introduce rare parliamentary procedures, including the super-affirmative procedure, and create a process to enable Parliament to amend SIs. As I said in Committee, those procedures are not justified by the limited role that secondary legislation will have in enabling the regulators to take up their new responsibilities. The Government have worked hard to ensure that every power in the Bill is appropriately scoped and justified. As I noted in Committee, the DPRRC praised the Treasury for a

"thorough and helpful delegated powers memorandum".

It did not recommend any changes to the procedures governing the repeal of EU law or any other power in this Bill.

The powers over retained EU law are governed by a set of purposes that draw on the regulators' statutory objectives. They are limited in scope and can be used only to modify or restate retained EU law relating to financial services or markets, as captured by Schedule 1. However, of course, the Government understand noble Lords' interest in how they intend to use the powers in this Bill and are committed to being as open and collaborative as possible when delivering these reforms.

The Government have consulted extensively on their approach to retained EU law relating to financial services and there is a broad consensus in the sector behind the Government's plans. As part of the Edinburgh reforms, the Government published a document, *Building a Smarter Financial Services Framework for the UK*, which describes the Government's approach, including how they expect to exercise some of the powers in this Bill. It also sets out the key areas of retained EU law that are priorities for reform. Alongside this publication, the Government published three illustrative statutory instruments using the powers in this Bill to facilitate scrutiny.

When replacing retained EU law, the Government expect that there will be a combination of formal consultation, including on draft statutory instruments, and informal engagement in cases where there is a

material impact or policy change, such as where activities that are currently taking place in the UK would no longer be subject to a broadly equivalent level of regulation. The Government will continue to be proportionate and consultative during this process, just as we have been up to this point.

Through the retained EU law Bill, the Government have also committed to providing regular updates to Parliament on progress in repealing and reforming retained EU law. I am happy to confirm that these reports will also cover the financial services retained EU law listed in Schedule 1 to this Bill.

I hope that I have satisfied noble Lords that the Government are committed to an open, transparent and consultative approach to implementing the reforms enabled by this Bill. I ask the noble Lord, Lord Sharkey, to withdraw his Amendment 1.

Lord Sharkey (LD): I thank all those who have spoken in this brief debate—some more warmly than others, perhaps. In my initial speech, I forgot to be especially nice about Denis, the noble Lord, Lord Tunnicliffe; I regret that. I am of course disappointed by both his absence and the response of his successors. I repeat: when it comes to the need for real parliamentary scrutiny, the contents of this Bill are quite as important as the contents of the REUL Bill. That seems to me to be the essence of the matter. All the other arguments about the need to focus and get on with it on Report seem mechanistic; indeed, they are close to being excuses, in some ways.

The essential problem is that Parliament will be unable to scrutinise revocation and replacement, as it is set out in this Bill. I accept that it is not likely that we will revolutionise the way we treat these things as a result of this intervention, but perseverance is the only way of making any progress towards making certain that Parliament recovers its ability to scrutinise properly and does not continue to lose that ability. Although on some occasions—this is one of them—the outcome may be unsatisfactory in the short term, I am convinced that, over time and with enough persistence, we can find a way to do what the DPRRC recommended, which is restoring the balance between Parliament and the Executive. Having said all that, I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

5.30 pm

Schedule 2: Transitional amendments

Amendment 2

Moved by ***Lord Harlech***

2: Schedule 2, page 128, line 38, at end insert—

"(5) Paragraph (6) applies where—

(a) a central counterparty (A) was taken to be recognised pursuant to Article 25 of the EMIR regulation in accordance with regulation 19A(3), and

(b) A ceased to be taken to be so recognised by virtue of the relevant period in the case of A having expired before the commencement day.

(6) The Bank of England—

(a) may determine that the relevant period in the case of A is (in spite of its expiry) to be treated, as from the making of the determination, as not having expired, and

(b) may accordingly exercise its power under this regulation to vary the relevant period on or after the commencement day.

(7) In paragraphs (5) and (6) "the commencement day" means the day on which Part 5 of Schedule 2 to the Financial Services and Markets Act 2023 comes into force.

(8) Paragraphs (5) to (7) expire at the end of 31 December 2025 (but without affecting any variation of a relevant period made under this regulation by virtue of paragraph (6)(b) before that time)."

Member's explanatory statement

This amendment would enable the Bank of England to restore a third country CCP to the run-off regime in cases where the regime has ended in the case of that CCP before the coming into force of the amendment made by paragraph 51 of Schedule 2 to the Bill.

Lord Harlech (Con): My Lords, I beg to move government Amendment 2 and will also speak to the other amendments in this group. These are a set of minor amendments that the Government have tabled to ensure that all provisions of the Bill and the Financial Services and Markets Act 2000 operate effectively and fully achieve their intended policy effect.

Turning first to Amendments 2 and 118, central counterparties, or CCPs, are a type of financial market infrastructure and are crucial to global financial stability. Following the UK's exit from the EU, the Treasury established a temporary recognition regime to enable eligible non-UK CCPs to continue providing important clearing services to UK firms while equivalence and recognition decisions were ongoing. To allow CCPs exiting the temporary recognition regime without recognition time to wind-down exposures to UK firms, a run-off regime was also established. The length of the run-off is determined by the Bank of England for each CCP, with a current maximum period of one year. As a result of provisions in this Bill tabled in Committee, the Bank of England will have the ability to extend the maximum run-off period for CCPs from one year to three years and six months. This would allow overseas CCPs currently due to exit the run-off regime at the end of June 2023 further time to apply for recognition if desired, and to remain able to offer services to UK firms during that period.

Amendments 2 and 118 seek to facilitate continuity of services under the run-off regime in the event that Royal Assent of this Bill occurs very close to or after 30 June. Amendment 118 provides that the Bill provision that gives the Bank the power to extend the run-off period comes into force on Royal Assent. This will allow the Bank of England to extend the run-off for those CCPs that wish to continue providing services to UK firms but need more time to apply for recognition, as was set out in Committee. However, if Royal Assent is secured after relevant CCPs have exited the run-off, government Amendment 2 will give the Bank of England the ability to reinsert a CCP into the run-off regime by determining that a CCP's run-off is to be treated as not having expired. This will allow the Bank of England to extend the length of a CCP's run-off period even in cases where a CCP has already exited the run-off. This

[Lord Harlech]
will avoid any potential disruption that could otherwise arise if CCPs exited the run-off period before the Committee stage amendment had come into force.

Amendments 3, 16, 17, 21, 22, 34, 53 and 54 ensure that the references to the regulators' objectives in the Bill and the Financial Services and Markets Act 2000 include the new competitiveness and growth secondary objectives for the PRA and the FCA, and the Bank of England's new secondary innovation objective.

Turning to Amendments 5 and 6, Schedule 5 to the Bill makes amendments to FSMA to ensure that the regulatory gateway for financial promotions legislated for in this Bill can be implemented and operated. One way that it does this is by applying other relevant parts of FSMA to ensure that the FCA can oversee the gateway effectively. Amendment 5 aligns the wording between a provision introduced by Schedule 5 and a similar existing provision within FSMA. These provisions relate to the issuance of notices to vary permissions or to impose requirements. The amendment will ensure that the regulator is required to provide notice when it proposes to vary a permission in all cases, and avoid any potential duplicatory requirements to provide notices. Amendment 5 replaces the relevant provisions in Schedule 5 and in FSMA with a single new provision. This will help to ensure that these similar provisions are interpreted consistently and achieve the intended policy effect. Amendment 6 is consequential on Amendment 5.

Amendment 49 ensures that the CBA panel's statutory remit includes cost-benefit analyses for rules for critical third parties, and that it is therefore able to provide advice to the Bank in relation to this. Amendment 86 corrects a drafting error, ensuring that Schedule 11, regarding the central counterparties resolution regime, functions as intended. It provides clarity over the Treasury's power to lay regulations restricting the making of partial property transfers. Amendments 87, 88 and 89 make technical corrections and clarifications to the insurer insolvency provisions in Schedule 12 to the Bill. Amendment 89 provides a clarification to make clearer the amount of FSCS top-up compensation that policyholders will be eligible to receive following a write-down order, meeting the stated policy intent. Amendment 87 clarifies that a liability is, to the extent of its reduction by a write-down order, to be treated as extinguished unless and until revived by the variation or revocation of the order. This helps to ensure that the intent of the provisions is achieved by increasing legal certainty about the treatment of written-down liabilities.

All these amendments seek to ensure that the provisions in this Bill achieve the policy intent and minimise potential disruption to the UK financial services sector. Therefore, I beg to move Amendment 2 and intend to move the remaining amendments when they are reached.

Baroness Kramer (LD): My Lords, I will make very few comments on this group of amendments. I accept that they are technical. I find some of them distasteful, particularly those that enhance the scope of the competitiveness and economic growth agendas. I fear very much that the underlying concept and construct will lead us back in the direction of the kind of risk taking that created the crisis that we went through so badly in 2008 and 2009. However, given that our attempts to turn around those objectives have not won support from other parts of the House, there is no sensible reason for me to object to these more technical amendments, other than to say that it is a sad day and that many of us will be revisiting this, if we live long enough, when we hit the next financial crisis.

Lord Eatwell (Lab): My Lords, I will make two points on these technical amendments. As the Minister said, central counterparties are fundamental institutions in maintaining the stability of financial markets. This measure, to continue the role of overseas-based central counterparties, is enormously sensible. But there is an issue that has not been addressed. What if the overseas central counterparties decide not to provide services to UK firms—if they decide, following the UK exit from the European Union, that they will withdraw from providing such a service? What provision has His Majesty's Government made for providing those services in those circumstances?

Secondly, I echo the point that the noble Baroness, Lady Kramer, made about the competitiveness and economic growth objective that is being incorporated as a subsidiary objective. As a subsidiary objective, it is unobjectionable. What is striking in the government amendments that we will debate is the way in which it is continuously privileged, such that it no longer remains subsidiary; extra reports and consideration will now be required, all focused on one objective. This is a serious mistake, because the statutory objectives of the regulatory authorities will change with circumstance over time. Writing into law that one objective should be privileged is a significant error. The primary and secondary objectives make sense, but overegging the position of a subsidiary objective is a mistake.

My main point at this time is to ask the Minister what measures provide central counterparty provision in those areas where overseas central counterparties decide not to act for UK firms.

Lord Harlech (Con): My Lords, I am grateful for both contributions to this short debate. The noble Lord, Lord Eatwell, brought up the competitiveness issue, which is something we will come on to at a later stage in the proceedings on the Bill. In answer to his point about overseas CCPs, that would be a commercial decision for that institution to make. However, the idea of the run-off regime is to provide time for UK firms to wind down their operations and make alternative arrangements.

Amendment 2 agreed.

Clause 6: Restatement in rules: exemption from consultation requirements etc

Amendment 3

Moved by ***Lord Harlech***

3: Clause 6, page 6, line 29, after "section 1B(1)" insert ", (4A)"

Member's explanatory statement

This amendment would ensure that Clause 6(10)(a) of the Bill includes a reference to the duty relating to the competitiveness and growth objective, as inserted into section 1B of the Financial Services and Markets Act 2000 by Clause 24.

Amendment 3 agreed.

Amendment 3A

Moved by ***Viscount Trenchard***

3A: After Clause 6, insert the following new Clause—

"Report on retained EU law

(1) Within six months of the passing of this Act and every six months thereafter the Treasury must prepare a report containing, for each of the items of retained EU law listed in Schedule 1, whether it has been revoked and, if not, when it is expected that it will be revoked.

(2) The report must be laid before each House of Parliament.

(3) This section ceases to have effect after a report showing that all the items of retained EU law listed in Schedule 1 have been revoked."

Member's explanatory statement

This amendment requires a progress report on the revocation of EU law covered by the Bill.

Viscount Trenchard (Con): My Lords, Amendment 3A requires the Treasury to report every six months on the progress it is making in its challenging task of revoking, improving or retaining each of the items of retained EU law listed in Schedule 1 to the Bill.

This amendment and my other amendment in this group were originally tabled by my noble friend Lady Noakes, who is not in her place today. She is providing support to her husband, who is to undergo an operation this week, and she is unable to participate in our Report debates. Noble Lords on all sides of the House will miss her wise counsel and informed contributions to the Bill and to other Bills before your Lordships' House. I am sure all will join me in sending our very best wishes to my noble friend's husband for a successful procedure and a full recovery, and we look forward to welcoming her renewed participation in our work when she is able to resume her attendance.

In Grand Committee my noble friend moved an amendment that would, on 31 December 2026, have activated an automatic revocation of the legislation listed in Schedule 1 in order to incentivise the Treasury and the regulators to get on with the job. This would have been more consistent with the scheme of the retained EU law Bill as it was then drafted. Needless to say, my noble friend the Minister rejected the sunset clause and, during that debate, we learned that, while the Government have identified some priority areas, they have absolutely no plan or timetable for completing the task.

Noble Lords will be aware that my noble friend Lord Callanan indicated the Government's support for my noble friend Lady Noakes's recent amendment to the REUL Bill, which was adopted by your Lordships' House at Third Reading. This requires reports on progress and future plans for retained EU law, until the Bill's powers expire—at which point anything left remains on the statute book as assimilated law. The amendment also requires the Government to keep the retained EU law dashboard to be updated until 2026. These requirements seem to cover financial services legislation, so we shall have visibility of the status of that legislation and the Government's plans until the last report under the retained EU law Bill, the report to 23 June 2026. In addition, there will be no obligation to update the dashboard after that date.

5.45 pm

Since the Government have been reasonably clear that they do not intend to finish the task of the revocation and reform of financial services legislation by any particular date, it seems likely that the task will not be complete by June 2026. Accordingly, Parliament will get no comprehensive account of what has happened to the legislation listed in Schedule 1.

My noble friend Lord Callanan confirmed the Government's commitment to continue to take advantage of our regulatory freedom to identify further opportunities for reform. He restated their commitment to reduce the burdens on business to unlock the economic growth that will flow from that. I am not advocating and would not support a regulatory race to the bottom, because I believe that the secret of the City's past success has been London's reputation for good and proportionate regulation, the rule of law, high standards, and efficient and transparent markets. It is essential that our regulators continue to move to protect the market's reputation when it is necessary to do so.

However, the regulatory burden placed on financial firms in recent years has continued to grow inexorably. This has undoubtedly dissuaded many international firms from setting up shop in London and from listing their shares on the London Stock Exchange, as so clearly shown by the listings review undertaken by my noble friend Lord Hill of Oareford. As my noble friend Lady Noakes said in moving her Amendment 1 at Third Reading of the REUL Bill, it is important that the Government show more transparency about the progress they are making in dealing with retained EU law. I ask my noble friend the Minister to confirm that this applies as much to retained financial EU law as to all other retained EU law dealt with by the REUL Bill.

This Bill also represents a once-in-a-generation opportunity to achieve significant regulatory reform. Does my noble friend the Minister not agree that this amendment, in its effect, places a similar obligation on the Treasury in respect of financial services law to that which the Government have accepted in the case of other retained EU law? This amendment provides for slightly different information to that in the REUL Bill; it focuses on each of the items listed in Schedule 1 and asks for information on whether each has been revoked and, if not, when it is expected to be. This should not be onerous information to produce either before June 2026, when in any event it should be available by virtue of the requirement in the retained EU law Bill, or thereafter.

Does my noble friend not agree that the adoption of my amendment would strengthen the effective accountability of the Government and the regulators to Parliament, and would improve Parliament's ability to oversee how well the Treasury is doing in carrying out its commitment to sensible and proportionate reform? It would also oversee how well the regulators are doing in applying their new competitiveness and

[Viscount Trenchard]
growth objectives, as they remove many pieces of EU legislation that damage and work against the interests of our financial services industry.

I turn now to Amendment 3B, again originally tabled by my noble friend Lady Noakes. She tabled a similar Amendment 31 in Committee which sought to ensure that the FCA's designation of activities did not go beyond its operational objectives. The Minister reassured my noble friend that

"the FCA will be required to make rules relating to designated activities in a way which, as far as is reasonably possible, furthers one or more of its operational objectives. Simply put, the FCA will not be able to make rules about a designated activity unless doing so is in line with its objectives under FSMA." [*Official Report*, 25/1/23; col. GC 99]

However, it seems to me that this may not require the FCA to make rules under the DAR in a way which furthers the new competitiveness and growth objective, for this is, unfortunately, only a secondary objective.

As other noble Lords have noted throughout the debates on this Bill, the culture and behaviour of the FCA suggests that there is a danger that it will find it easy to subjugate the need to have regard to the competitiveness objective, in order to reduce divergence from the EU regime whenever possible. It is not just the content of much EU regulation which has damaged the UK's competitive position; it is the codified nature and prescriptive style of the regulation. So, as my noble friend had intended to do, I have tabled Amendment 3B, which at least requires the Treasury to consult those affected by new regulations under the DAR unless the Treasury, using its own judgment, believes that designation of an activity is so urgent that it is impossible to carry out appropriate consultation. As my noble friend Lady Noakes said in Committee,

"it is important that when the Treasury brings forward designated activity regulations, it demonstrates that the activity is needed for these objectives and that it would not result in mission creep for the FCA". [*Official Report*, 25/1/23; col. GC 92]

She explained that she was worried that the indicated designation of short selling would result in disproportionately cumbersome rules.

There is a belief held by some within both regulators and the Treasury that if something moves in financial markets, it ought to be regulated somehow. However, I cannot see the logic in regulating professional trades in short positions but not in long positions, because the risks are the same. If all risk in markets is to be eliminated, the City would assume the stability of the graveyard. I fear that if something was regulated in the EU, it will end up being regulated again, and some of the upside of our having left the EU will simply not be realised because there is believed to be a mindset, in particular in the Treasury, that what happened during the period of our EU membership has to be preserved if at all possible. We still have a leading position as one of the two leading global financial markets and we should ensure that we have the right regulatory regime for our markets, to aid innovation and competition, as well as maintain the best possible standards, for which we are highly regarded. As we diverge where we need to, the EU authorities may think we have adopted new rules which they should also follow, and may take their lead from us.

Besides, there is now every prospect that the EU-UK Forum, established pursuant to the agreement of the MoU on financial services co-operation, finally published on 19 May, will soon be operative. I note that the Government look forward to holding the first meeting of the forum as soon as possible, but it is depressing to read on the government website that the MoU itself is still subject to the internal processes of the European Union.

I had tabled Amendment 35 in Committee to remove the admission of securities to listing on a stock exchange from the list of designated activities. As I said then, there is

"no reason why unregulated firms may not act as sponsors for stock exchange listings"

and I

"therefore would question why the arrangement of listings should be a regulated activity". [*Official Report*, 25/1/23; col. GC 93]

Further, as the *UK Listing Review* shows, the London Stock Exchange has tumbled down the list of global rankings in terms of the number of new admissions, market capitalisation and turnover volume in recent years. The standing and influence of the LSE has been greatly damaged by the loss of its ability to make its own listing rules and apply them. Does the Minister really believe that subjecting listings to the FCA will do anything to restore the lost position of the LSE?

My noble friend the Minister sought to reassure me in Committee, noting that

"the Government are in the process of a fundamental overhaul of the prospectus regime".

She acknowledged that they are

"committed to deliver the outcomes of the *UK Listing Review* from the noble Lord, Lord Hill".

She argued that

"the Government plan to use the DAR to put in place a simpler, more agile and more effective listing regime". [*Official Report*, 25/1/23; col. GC 100]

However, does she not acknowledge that there is great scepticism among practitioners that regulation by the FCA is likely to improve the attractiveness and position of the LSE? Does she not agree that the consultation which my amendment would require would at least ensure that further consideration by those affected would be undertaken before any decision which might well have a further negative impact on the LSE?

I greatly regret the decision of SoftBank to list Arm only in New York rather than pursue a dual listing, which should have been the desired course for what is essentially a British company. We cannot afford to miss other similar opportunities for London. The number of companies listed in London has declined by 40% over the last 14 years. I doubt that putting the FCA in charge of listings will reverse that regrettable decline. I apologise for taking so much of your Lordships' time, but all of this is very important. I beg to move.

Baroness Lawlor (Con): My Lords, I support Amendment 3A of my noble friend Lord Trenchard. It is important to keep track of retained, revoked or modified EU law for this important sector. Businesses must know where they stand. Unlike the initial intention behind the REUL Bill to revoke all retained secondary legislation identified on the dashboard—some 4,000 or so laws before the Government changed course—

financial regulation will be under the Treasury, and will not necessarily be revoked or retained. It may be modified; it may be revoked; it may be retained, but it will be for the Treasury and the regulators to decide.

I approach the amendment, as I did in Committee, in the hope that the Treasury will move rapidly to restore UK law for the sector, which has helped this very important sector to lead in the world over 200 years, rivalled only, as my noble friend Lord Trenchard said, by New York. But since leaving the EU, the UK has been burdened by the complications and costs of dealing with two different legal systems, something I have touched on in the REUL discussions. That is the code-based EU law and its precautionary approach, and common law which is, for want of a better word, an enabling law, under the jurisdiction of and tested by UK courts, and capable of being both precise and nimble to accommodate our entrepreneurs.

In Committee, there were amendments to encourage greater openness by the Treasury and the regulators. My concern is that Treasury thinking is in danger of slipping into the EU approach to legal thinking: that code-based precautionary approach, on which my noble friend Lord Trenchard has touched. Not only does that approach lack transparency, but it is not necessarily clear how it will be operated by the regulators. It is unequal to the fast-moving, innovative markets in the UK, and it is at odds with the competitiveness objective in this Bill. As a result, not only may businesses suffer from a lack of clarity about where they stand and how a regulation will be enforced, but they may feel it best to avoid an activity that could grow their business, increase trade and benefit consumers and indeed the wider economy.

6 pm

It is indeed this economy and its people who bear the cost of that dual system on which my noble friend Lord Trenchard touched, the danger being that the lack of competitiveness might stymie the economy. The reporting requirement is important to encourage further reform and transparency. It will enable a determined effort to be made to move rapidly. It matters that we have greater certainty about where things have got to and what still remains to do. Many do not have ready access to legal help to navigate their way through the retained EU law book and the more complex system for the financial sector, so I hope that my noble friend the Minister will look kindly on and support this amendment. It will make for fairness so businesses are clear about the rules, and it would be a means to the prosperity of the whole economy that we need to encourage. In my view we need to move back more rapidly and thoroughly to our common-law system, and I urge the Minister and the Treasury to be equally as receptive to the obligation to report regularly as her colleagues on the Business team.

Baroness Kramer (LD): My Lords, I will be very brief. I have no objection to either of these amendments, although for very different reasons from the previous two speakers. On the first, which is about the report on retained EU law, it seems sensible to have a proper and lasting reporting requirement to Parliament, although I point out to those who are very worried about additional burdens that the report itself generates a huge amount of effort, energy and paperwork, so I doubt it goes very far in reducing any burden on anybody.

I am more interested in the second amendment tabled by the noble Viscount, Lord Trenchard, Amendment 3B, because it embeds the principle of accountability to Parliament and the wider world and states that, where changes are made in regulation, other than in situations of genuine urgency—I underscore "genuine" because we have seen that flex a great deal, with things said to be very urgent that seem to have no urgency whatever attached to them—the Treasury should carry out consultations.

I say to both previous speakers that if they speak to the industry they will find that the struggles that the financial sector has been facing in the UK—the decline in listings, virtually the complete loss of the European swaps market, our gradual exclusion from a significant range of activities that are international and certainly pan-European and fintech outsourcing extensively into Europe—are post-Brexit consequences. Frankly, I do not think that amendments such as this, in the hope that there will be much lighter-touch regulation, which is what common law really means, are going to remedy that problem. We built our reputation on quality and consistency and, like it or not, those are quite demanding standards that light-touch standards do not achieve.

Baroness Chapman of Darlington (Lab): My Lords, we are grateful to the noble Viscount, Lord Trenchard, for bringing these amendments forward and we ask him to pass on our very best wishes to the noble Baroness, Lady Noakes, and her husband. I am sure she will be impressed by the way he introduced her ideas this afternoon. I feel somewhat that we are intruding on a bit of a family squabble on the Government Benches with this group in that, in the retained EU law Bill, the amendment that she brought forward was as a consequence of her deeply felt disappointment—shared by the noble Baroness, Lady Lawlor, if I remember her speech at the time, and others—at the Government's change of approach to that Bill. The change of approach was one that we had been calling for and very much welcomed, and we did not feel on that Bill and we do not feel on this Bill that there is an awful lot to be gained by these amendments. There is not a huge amount to be lost either, particularly with Amendment 3A. We are interested in what the Government have to say about them, but they are not amendments that we take a particularly firm view on either way because we think they are designed with a rather different purpose in mind, which is to hold the Government's feet to the fire.

Baroness Penn (Con): My Lords, I join noble Lords in wishing my noble friend Lady Noakes and her husband well, and I look forward to her return to this House. As my noble friend Lord Trenchard noted, she worked with our noble friend Lord Callanan on amendments to the retained EU law Bill to introduce similar reporting standards to those in Amendment 3A. I can confirm that the reporting requirements in the retained EU law Bill already apply to the retained EU law repealed through Schedule 1 to this Bill, so the reports that the Government prepare under that obligation will include the Treasury's progress in repealing retained EU law in Schedule 1.

[Baroness Penn]

I reassure my noble friends that through the Bill the Government are asking Parliament to repeal all legislation in this area, and we expect to commence it fully. The revocation is subject to commencement, and each individual piece of legislation listed in the Bill will cease to have effect only once the Treasury makes an SI commencing the repeal. As I noted in Committee, this is being taken forward in a carefully phased and prioritised way to deal with retained EU law, splitting it into tranches and prioritising areas that will provide the most concrete benefits to the UK. The implementation will take place over a number of years, which means that we are prioritising those areas with the greatest potential benefits of reform. We have demonstrated intent and action in this area. We have conducted a number of reviews into parts of retained EU law, including the Solvency II review, the wholesale market review and the UK listings review by my noble friend Lord Hill of Oareford, which my noble friend Lord Trenchard referred to in his Amendment 3B. The wholesale markets review reform in Schedule 2 demonstrates the Government's pace and ambition for reforming retained EU law, and that is very much the case.

I turn to Amendment 3B. Of course the Government must think carefully before choosing to replace EU law, and understand the impact of any replacement. The Government have consulted extensively on their approach to retained EU law relating to financial services, and there is broad consensus in the sector behind the Government's plans, as I have already noted. However, I do not believe that an explicit mandatory statutory obligation to consult impacted parties is required. The powers in the Bill to designate activities under the designated activities regime are closely modelled on the secondary powers which already exist in FiSMA, especially the power to specify regulated activities. This existing power does not have an explicit statutory obligation to consult. I think the Government have already demonstrated that they will always consult when appropriate and will always approach regulating a new activity carefully. We can see this in the Government's consultation on the regulation of funeral plans in 2019, and in draft legislation related to "buy now, pay later" published in February.

My noble friend Lord Trenchard referred to the listings review and implementing its results but, again, the Government have already consulted extensively. They launched a consultation in July 2021 that ran until September this year, and the proposals on listing reforms received broad support across the industry. The Government have already published a draft statutory instrument to illustrate how the new powers in the Bill could be used to bring forward a new regime in this area, so I believe that the Government have already demonstrated that they will consult properly when using the regulated activities order power. Therefore further amendments in this area are not necessary, so I hope my noble friend is able to withdraw Amendment 3A and will not move Amendment 3B.

Viscount Trenchard (Con): My Lords, I thank all noble Lords who have taken part in this debate. In particular, I thank my noble friend Lady Lawlor for her support, and I entirely agree with what she said about the need to move back to our former common law-based approach. The noble Baroness, Lady Kramer, suggested that this would mean not just common law but going back to a simple, light-touch regulatory system. I am advocating going back not to a light-touch regulatory system but to a system based on common-law principles which also maintains the high standards for which the City is renowned across the world. Such a system is pursued also in the United States, Australia and many other countries with which we are doing more and more in financial services, including many CPTPP countries.

I am nevertheless grateful for the noble Baroness's support, at least on Amendment 3B. I was not sure about the noble Baroness, Lady Chapman, but she was at least interested in both amendments and, I think, supported the need for increased accountability to Parliament.

I speak to the financial services industry and know many people in it. I have some outside interests, which I have declared, which involve me in it. I simply do not agree that all participants in the industry blame Brexit for the difficulties it faces. Rather, there are large parts of the financial services industry—in banking, insurance and asset management—which are waiting for us to reap the benefit of the upside of being free to develop our own regulatory regime. We have suffered the downside, which we knew would happen; we believe that reaping the benefits of the upside will be necessary to ensure that London can maintain its leading position. I very much hope that we can rely on the support of the parties opposite, as well as my noble friends, in seeking to ensure that that happens.

I am to some extent reassured by my noble friend the Minister's words and her response to these amendments. She went further than I have heard her go before in saying that it is the Government's intention to repeal all the EU retained law in—I think—Schedule 1, and that she has prioritised some areas. However, there are other areas that she has not prioritised. One of the those is the alternative investment fund managers directive and all its associated legislation, which was opposed universally by practitioners and—at the time—by the Treasury as well as by the regulators. Nevertheless, it was foisted on us by the EU for political reasons. I am very disappointed that few people in the Treasury seem to recognise how many small investment management companies have gone out of business or not succeeded in introducing new products because of the cost and burden of complying with this regulation. This is why, later in the Bill—I will not speak to it today—I have again brought back my amendment dealing with that issue. It is just one example of bits of EU legislation that, six years after the Brexit vote, I believe this Bill should deal with immediately.

I thank my noble friend for her partial reassurance and, in the circumstances, I am happy to withdraw my amendment.

Amendment 3A withdrawn.

6.15 pm

Clause 8: Designated activities

Amendment 3B not moved.

Amendment 4

Moved by ***Baroness Penn***

4: After Clause 20, insert the following new Clause—

"Sustainability disclosure requirements

Sustainability disclosure requirements

(1) FSMA 2000 is amended as follows.

(2) After section 416 insert—

"Sustainability disclosure requirements

416A SDR policy statement

(1) The Treasury may prepare an SDR policy statement.

(2) An "SDR policy statement" is a statement of the policies of His Majesty's Government concerning disclosure requirements in connection with matters relating to sustainability.

(3) In preparing an SDR policy statement, the Treasury must consult the regulators.

(4) The Treasury must publish any SDR policy statement in such manner as they consider appropriate.

(5) The Treasury—

(a) must keep any SDR policy statement under review;

(b) may prepare a revised statement (and subsections (3) and (4) apply in relation to any revised statement);

(c) may withdraw any SDR policy statement.

(6) The Treasury may request a regulator to provide them with a report on any matter that the Treasury require in connection with the preparation of an SDR policy statement.

(7) A request for a report under subsection (6)—

(a) must be made in writing, and

(b) may require a regulator to send the report to the Treasury within such reasonable period as may be specified in the request (or such other period as may be agreed).

(8) A regulator must comply with a request under subsection (6).

(9) Nothing in section 348, or in regulations made under section 349, is to be taken as preventing or restricting the ability of a regulator to disclose information to the Treasury for the purposes of this section.

(10) Subsection (9) does not apply in relation to information provided to a regulator by a regulatory authority outside the United Kingdom.

416B FCA and PRA rules etc

(1) When making rules or issuing guidance in connection with disclosure concerning matters relating to sustainability, a regulator must have regard to any SDR policy statement (within the meaning of section 416A) that the Treasury have published and not withdrawn.

(2) For the purposes of this section, matters relating to sustainability include matters relating to—

(a) the environment, including climate change,

(b) social, community and human rights issues,

(c) tackling corruption and bribery, and

(d) governance, so far as relevant to matters within paragraphs (a) to (c)."

(3) In Schedule 1ZA (the Financial Conduct Authority), in paragraph 11 (annual report), in sub-paragraph (1)—

(a) after paragraph (ha) insert—

"(hc) how it has satisfied the requirement in section 138EA(2) so far as regarding disclosure requirements in connection with matters relating to sustainability;";

(b) after paragraph (ia) insert—

"(ib) how it has satisfied the requirement in section 416B to have regard to any SDR policy statement of the Treasury published and not withdrawn under section 416A (sustainability disclosure requirements: policy statement);".

(4) In Schedule 1ZB (the Prudential Regulation Authority), in paragraph 19 (annual report), in sub-paragraph (1)—

(a) after paragraph (e) insert—

"(ea) how it has satisfied the requirement in section 138EA(2) so far as regarding disclosure requirements in connection with matters relating to sustainability;";

(b) after paragraph (fa) insert—

"(fb) how it has satisfied the requirement in section 416B to have regard to any SDR policy statement of the Treasury under section 416A (sustainability disclosure requirements: policy statement), and"."

Member's explanatory statement

This amendment would support the regulation of disclosure requirements relating to sustainability by requiring the FCA and the PRA to a.) comply with a request by the Treasury to provide a report in order to inform a policy statement by the Treasury on such requirements and b.) have regard to such a policy statement when making rules or issuing guidance about such requirements.

Baroness Penn (Con): My Lords, the UK is a leading jurisdiction for sustainable finance, and the Government are proud of that record and determined to maintain and further that position. Since Committee stage, London has been ranked as the leading global green finance centre for the fourth consecutive time. Government effort, including on sustainability disclosure and reporting, has played a vital role.

The Government's success in green finance has been down also to the responsiveness and technical capability of our independent regulators, who have collaborated to drive forward our policy on sustainability disclosures. The Government's approach was established in the 2021 paper, *Greening Finance: A Roadmap to Sustainable Investing,* where we set out the foundations of sustainability disclosure requirements—or SDR—which build on our world-leading implementation of the recommendations of the Task Force on Climate-related Financial Disclosures, or TCFD. This includes taking forward an approach across the economy to implementing international standards, enabling firms to plan for the transition and ensuring that this information flows to investors and financial consumers. Credible, usable information is a core component of green finance that will allow us to reach our goals on sustainability. When this information is available, market participants can use it to take sustainability into account when making investment decisions. Our plan for SDR is central to delivering this.

In Committee, some noble Lords raised concerns about the Government's ongoing commitment to implementing these important reforms, the legal basis for implementing them, and the timelines for doing so. I am therefore pleased to be able to update noble Lords on a number of substantive developments since then.

Significantly, the Government published an updated green finance strategy on 30 March. This set out next steps across core elements of SDR. The Government will consult on extending the transition planning requirements—a core component of SDR—to the

[Baroness Penn]
largest private companies once the Transition Plan Taskforce has completed its work later this year. The Government will also set up a framework to assess the suitability of the IFRS International Sustainability Standards Board's standards for adoption in the UK. The Government remain committed to delivering a usable and useful UK green taxonomy and expect to consult on this in autumn 2023. They are also committed to setting out further detail on SDR implementation and the timeline for it this summer to reflect the rapid development of international standards.

Alongside this, the Financial Conduct Authority continues to take forward SDR for authorised persons, including consumer-facing disclosure requirements, under its existing objectives and rulemaking powers, which are sufficiently broad for the purpose. The FCA intends to issue its policy statement on SDR and investment labels in the third quarter of this year.

However, the Government recognise that SDR policy has strong links to wider environmental policy and that they therefore have an important role to play in shaping SDR. That should be recognised in legislation. Parliament must be able effectively to scrutinise the actions of government and the regulators in this area.

Amendment 4 will therefore require the FCA and the PRA to have regard to any policy statement made by the Treasury on SDR when they make rules in connection to sustainability disclosures. The amendment obliges the regulators to consider the Government's wider policy goals when bringing forward SDR rules, while still maintaining their independence.

Regulators will also be required to report on how they have satisfied the requirement to have regard to any such policy statement on an annual basis. This will support Parliament in scrutinising the regulator's actions on SDRs. This ongoing reporting will support transparent, structured co-operation between the regulators, government and Parliament to achieve the UK's objectives in this space.

We will be debating a number of other sustainable finance issues today, and disclosures are at the heart of some of the matters that they raise. The amendment is therefore an important measure in that context as well as in its own right. I beg to move.

Baroness Wheatcroft (CB): My Lords, I thank the Minister for her introduction of Amendment 4 and her willingness to engage with Peers on the topic of sustainable disclosure requirements. However, while a government amendment on this important topic is welcome, what we have heard is yet more delay. A cynic might judge the amendment to have a whiff of green-washing about it. It does not do enough and does not do what is required. The amendment seeks to give regulators and Ministers the necessary powers to bring forward rules and regulations on SDRs in fulfilment of commitments that they made in 2019, 2021 and again in the green finance strategy in March this year.

Amendment 114 is an effort to be helpful because, despite making commitments for five years, the Government still do not have the powers to make sustainable disclosure requirements happen. Amendment 4 does not confer those powers. The noble Baroness, Lady Ritchie of Downpatrick, submitted a Parliamentary Question on this issue on 14 November last year, and the Government's response was that:

> "The FCA has extensive powers to … impose some of the Sustainability Disclosure Requirements".

The noble Baroness also asked about the powers available to the Department for Work and Pensions, which would legislate for sustainability reporting by occupational pension schemes. An extensive search of the powers held by the DWP in relation to public reporting and sustainable reporting has found none that is suitable.

Amendment 4 gives the Treasury the power to issue a policy statement on SDRs and to require the regulators to report against it, but it is not an obligation—the Treasury "may" prepare an SDR policy statement. As the Minister admitted in her response last year to the noble Baroness, Lady Ritchie, the FCA does not have the powers to actually implement SDRs. It seems that we are looking at a Whitehall paper trail that keeps everyone occupied but with no meaningful legislation.

I am in favour of easing unnecessary burdens on business. However, repeatedly indicating—as they have for five years—that the Government are planning to legislate but not actually doing it creates a burden in itself for business. Should it invest in data, in systems or in strategy? After so many reassurances but so little progress, and more reassurances today, no one really seems to know the answer.

I noted with interest that the Minister's letter to Peers ahead of tabling this amendment said that

> "the Financial Conduct Authority is taking forward Sustainable Disclosure Requirements (including consumer facing requirements) under its existing objectives and rulemaking powers which are sufficiently broad for the purpose".

I would like to understand the misalignment between that statement and the earlier Answer to the Question from the noble Baroness, Lady Ritchie. Is it because there has been a change of heart and the Treasury has discovered that the powers exist after all? I would be grateful if the Minister could clarify that. Or has the Treasury limited its proposals from its original ones so, while it did not have the powers for the original proposal, it does for the new, limited proposals? Or—and it would be deeply disappointing if this were the case—is the reference in the Minister's letter to the FCA to "taking forward" SDRs intended to mean that the FCA would be merely progressing the work but not actually implementing it? Again, I would be grateful for clarification. The FCA consultation on SDRs closed on 25 January. We are promised a policy statement in the third quarter but, without statutory powers, that would be pointless.

I hope the Minister will be able to answer those questions and now, if we are able to accept the amendment, I hope she will be able to go a little further. While the amendment sets the right tone, it does not do what is needed. It embraces the idea of SDRs but does not make them a reality. The same governmental reluctance to take real action lies behind my Amendment 7, concerning vote reporting. If investors are to make serious decisions on ensuring that their savings are put to work in a sustainable way, it is essential that they be able to see how those who manage the money choose to vote on corporate issues.

That is a crucial part of being an engaged investor. The FCA itself acknowledges that. Earlier this year, its vote reporting group stated:

"Improving transparency of how asset managers vote on behalf of their clients will mean investors can better hold them to account on their stewardship".

We would all want that, but currently it is not possible for investors always to learn how their investments are being voted. Yes, there is now an FCA requirement under the shareholder rights directive that fund managers and insurers produce an annual report on how they have voted, but it is only that they must comply or explain; and even then, the requirement is only that they should report on significant votes. The FCA gives no guidelines as to what should be deemed significant, and what one investor feels is significant may not concur with what a fund manager deems so.

The fund manager is required to report only at group level, so, in terms of the individual funds in which investors and pension funds might be invested, how their votes have been voted in the individual funds cannot be seen; it is only possible to see across the group, which is effectively meaningless for many people who want to find out how their money is being used. A report is required to be made only annually—a hopeless timescale in an industry that moves as fast as this one. Nor is there any standard form for vote reporting. It is not a lot to ask in a digital age. The SEC in the US certainly demands it.

For all those reasons, the current situation does not serve investors as well as it should. Amendment 7 would require FCA-regulated investment managers and insurers to provide clients and those investing with them with voting information that they requested in a standard format and within 30 days. In Committee the amendment on this topic included pension funds in the requirement to report but, mindful of the DWP review of pension fund reporting, the current amendment is much narrower and does not prejudge the review. However, in the meantime it should help pension funds to monitor the way their investments are being voted. It is true that the FCA vote reporting group has yet to reach conclusions, but there is no reason to wait for that. Parliament has the power to put demands on the FCA, and this is a case where it should.

The Government accept the need for good stewardship by investors, and transparency on voting aids that. It is important, indeed crucial, for good corporate governance that decisions taken on behalf of investors should be clear and easily ascertainable. Making voting records available speedily in a machine-readable way would be a service to investors that, thanks to digital innovation, should be easy and relatively cheap to implement. Why would the Government resist that? I beg to move.

Baroness Hayman (CB): My Lords, I declare my interest as chair of Peers for the Planet and apologise for the fact that I may need to speak a little longer than I normally would on Report. This is a very diverse group of amendments on different subjects, some of which are quite technical, but I can be brief in relation to Amendments 4, 7 and 114, which the noble Baroness, Lady Wheatcroft, has just so ably described. I appreciate that the Minister has done what she said she would on SDRs and tried to make some progress, but I fear there is still a legislative gap there—a gap that we could, on this Bill, usefully fill for her. I support what the noble Baroness has said and look forward to the debate on Amendment 91, on forest risk commodities, to which I equally give my support.

6.30 pm

I will focus my comments on the three cross-party amendments in this group, which are in my name. I start by speaking to Amendments 93 and 113 on investment duties, specifically relating to fiduciary duty. They have a parallel with Amendment 114, in that they seek to be constructive by giving the Government the powers they need to advance their own stated policy agenda. These amendments provide powers to the FCA in relation to fund managers and personal pension schemes and to the Secretary of State for DWP in relation to occupational pension schemes, respectively, to issue guidance about consideration of the long-term consequences of investment decisions, the impacts of risk and the impacts of investments on society and the environment. The amendments work alongside each other. I will focus my remarks on Amendment 113 and allow colleagues to provide more insights on Amendment 93 in due course. I am extremely grateful for the support of the noble Baronesses, Lady Altmann, Lady Drake, Lady Sheehan and Lady Wheatcroft.

Both the Principles for Responsible Investment, a UN-funded body with more than 3,000 signatories and more than £80 trillion in assets, and the UK Sustainable Investment and Finance Association, a body with more than 300 members and £19 trillion in assets, have identified a common lack of understanding within financial services on investors' fiduciary duties, and have called for guidance. The Government's green finance strategy, published in March, recognised this. It said that

"trustees would like further information and clarity on their fiduciary duty in the context of the transition to net zero"

and commits to measures to clarify this. My amendment seeks to support that clarification.

The strategy also included announcements of a working group of the Financial Markets Law Committee, a body chaired by the noble and learned Lord, Lord Thomas of Cwmgiedd, and separate government-convened round tables to look at what further action is needed. The Government are right to recognise that this is an issue on which pension fund trustees actively want further information and clarity. I have been extremely grateful to the noble and learned Lord and to members of the FMLC for their engagement on the text of this amendment and helpful input on the subject. However, the wording of the amendment is of course my own.

Given the Government's agreement that there is a demand from pension fund trustees and the actions under way to look at what action is needed, my amendment simply seeks to give the Government and regulators the tools to finish the job. I should make it clear, for the avoidance of doubt—I know that there are noble Lords who are pension fund trustees and are concerned on this issue—that this amendment does not seek to undermine anyone's duties to their clients.

[Baroness Hayman]
It puts the duty to act in savers' best interests in the Bill. It limits the topics on which the Secretary of State can issue guidance and makes it explicit that pension fund scheme trustees must manage financial risks, as well as environmental and social impacts.

At the moment, neither the DWP nor the Pensions Regulator can issue guidance with statutory weight on this topic. The Government are limited to non-statutory guidance, which is purely voluntary and often not widely followed. I cite as an example the Pensions Regulator's 2021 survey of defined contribution schemes, which found that more than 80% did not allocate any time or resources to managing climate risk, despite guidance encouraging them to do so since 2016. My amendment is designed to address this issue by giving the Government the power to issue statutory guidance that pension schemes must have regard to, but are not required to follow if they identify good reasons for divergence.

The DWP does not currently have powers to issue such guidance. This strikes a balance between support on the one hand and freedom to innovate on the other. Although work on the issue is ongoing, given the Government's recognition that action in this area is urgent, it makes absolute sense to take the powers they need now rather than wait for a future relevant Bill, which could be two, three, four or five years away.

I think that the noble Baroness, Lady Drake, will speak more on Amendment 93 about the importance of guidance issued by the FCA. I simply note two things. First, where guidance is issued for occupational pension schemes, corresponding guidance should be made available for personal pension schemes. Otherwise we face regulatory arbitrage, whereby firms on one side of the fence are subject to different expectations from organisations that happen to be on the other. Secondly, a symmetry of duties is desirable. If pension schemes are to have guidance about factoring in the long-term effects of decisions, and both the risks and impacts of their investments, it is important for their agents—the fund managers—to have corresponding guidance on how to serve their clients. Companies already have such a duty to their shareholders under Section 172 of the Companies Act 2006. It would do no harm, and could offer a great deal of help, for investment intermediaries to have similar guidance. I hope that the Minister will be able to respond positively to these amendments.

Finally, I turn to my Amendment 15. All the amendments in this group go with the grain of stated government policy, and nowhere is this clearer than in relation to Amendment 15. It would add nature to the new regulatory principle on net-zero emissions, and require the PRA and the FCA to consider the need to contribute towards commitments made to address both climate change and biodiversity loss. It would give legislative effect to clear government policy. I thank the noble Baroness, Lady Sheehan, the noble Lord, Lord Vaux of Harrowden, and the noble Earl, Lord Caithness, for their support.

It is with some reluctance that I am not pursuing my Committee stage amendment introducing a climate and nature secondary objective to the Bill. It was made very clear by the Government in Committee that no progress could be made on this, but I hope that we can take action in relation to the regulatory principle, as Amendment 15 so patently follows stated government policy. Indeed, I considered not using any of my own words in this speech and simply reading out a list of the Government's consistently repeated commitments on policy in this area. Alas, some linking paragraphs were required, but much of this speech is a reminder of what has been promised—and what must be delivered to make good those promises.

Financial regulators and financial sector actors are empowered to act on both the economic benefits of nature and the costs and risks of not doing so. In the Government's words,

"we want our world-leading financial services sector to drive every step of the global transition".

In recent years there has been a growing recognition that nature is a critical part of this transition. The risks and opportunities this presents led to Her Majesty's Treasury commissioning Professor Sir Partha Dasgupta of Cambridge University to undertake an independent review on the economics of biodiversity

"and to identify actions that will simultaneously enhance biodiversity and deliver economic prosperity".

This resulted in the Dasgupta review of 2021, which clearly articulates the extent to which economic growth has come alongside massive environmental degradation, and that a failure to make transformational change towards a path of sustainable growth is actually undermining our prosperity, now and for the future.

The Government responded to the findings of the Dasgupta review, acknowledging that:

"Delivering a nature positive future requires integrating the natural environment—and its goods and services on which we all rely—into our economic and financial decision-making, and the institutions and systems that underpin and drive those decisions".

I am tempted to say "I rest my case", but I will continue.

At the end of 2022, on the international stage the UK agreed the Kunming-Montreal Global Biodiversity Framework at COP 15. Its two targets seek to embed biodiversity within fiscal and financial flows. Just a few months later, the Government published their updated green finance strategy, which continues to bolster their commitment towards conserving and enhancing nature. It stated:

"The global transition to a resilient, nature-positive, net zero economy will see trillions of pounds reallocated and invested into new technologies, services and infrastructure. There are huge opportunities for the UK's financial and professional services industry in this transition".

I recognise that various initiatives are under way, such as the work of the Taskforce on Nature-related Financial Disclosures, which will undoubtedly make a contribution over time, but relying on voluntary action and market forces will not produce a transformation at the pace and scale required. What is needed is a systemic approach and it is essential that we use the opportunity of the Bill, which deals with the regulatory architecture of the financial services sector, to provide an enabling regulatory environment which can help turn government commitments into clear legal signals.

This is not just my view; it is shared by Professor Dasgupta, who has written to the Chancellor in support of this amendment. He has also issued a statement saying that

"the government recognised the urgent need to integrate nature into economic and financial decision-making and related institutions. The Financial Services and Markets Bill … presents an opportunity to make progress on this commitment. I urge the Government to support the proposed amendment to place a responsibility on financial regulators to consider nature alongside net zero when carrying out their functions. We need to empower those in charge of regulating our financial system to support the sector, to arrive at a nature positive destination".

I am enormously grateful to Professor Dasgupta for his contribution, both in his report and to our discussion today.

In the ministerial foreword to the green finance strategy document this year, Jeremy Hunt, Grant Shapps and Thérèse Coffey—the Chancellor, the Secretary of State for DESNZ and the Secretary of State for Defra—were crystal clear:

"Our ability to exploit the opportunities of this new Green Industrial Revolution will depend on our readiness to finance it".

It will depend on our readiness and the regulatory framework that allows them to do so. Too often this Government will the end but not the means, and their aspirations are not turned into actions. I hope that the Minister will, even at this late stage, be able to accept the amendment. If not, when the time comes, I will certainly seek the opinion of the House.

Baroness Boycott (CB): My Lords, I declare my interests and will speak to Amendment 91, which is in my name. I also express my absolute support for the other amendments, particularly Amendment 15, which was so brilliantly introduced by the noble Baroness, Lady Hayman, and accompanied by the quotes from Professor Dasgupta. It underlines everything that this group is trying to achieve.

I very much thank the noble Lord, Lord Randall of Uxbridge, and the noble Baronesses, Lady Chapman of Darlington and Lady Sheehan, for their support on Amendment 91. This amendment specifically introduces due diligence obligations for UK financial institutions to prevent the financing of illegal deforestation. Research I found last week stated that February 2023 had the highest rate of deforestation of the Amazon ever recorded, despite the conferences and the world's agreement. Clearly, this is out of control and needs much more tough regulation. That is what this amendment seeks to introduce.

6.45 pm

The Government list halting deforestation as a "top priority" in their net-zero strategy, but the scale of finance continuing to flow from British banks and investors to the companies actively destroying the world's tropical forests shows that in practice the Government do not prioritise this issue. Much as was said by the noble Baroness, Lady Hayman, we are talking a good talk but in practice we are not walking a good walk.

Over 90% of tropical deforestation is driven by agriculture. Research commissioned by the FCDO shows that at least 69% of forest clearance for agricultural purposes is illegal. Despite this exceptional level of risk, that sector continues to hide behind weak voluntary pledges, hoping that the public and the Government will not notice that they are the main characters in this crisis.

In many ways, this amendment is extremely modest. It merely asks that financial actors carry out simple checks to ensure that the companies they finance are not routinely engaged in breaking the law through illegal deforestation. It is taken straight from the recommendation made by the Government's own expert body, the Global Resource Initiative taskforce. It has been updated for Report to take into account the views of the Minister, which we were grateful for, and the financial sector, so that the specific procedural requirements placed on financial actors would be brought forward through secondary legislation. This leaves the Government with the flexibility to design a regime that works to genuinely minimise the risk of financing deforestation but does not lead to unnecessary de-risking because of incomplete information.

The Minister presented several arguments against this requirement in Committee, including that there is insufficient data on how to conduct due diligence because there are no

"equivalent disclosure requirements to those that will be set out under the Environment Act 2021 in jurisdictions across the globe".—[*Official Report*, 7/3/23; col. GC 110.]

My noble friend also proposed that we must wait for a new framework, under development by the Taskforce on Nature-related Financial Disclosures, which is a very long time coming. Both arguments are incorrect.

The European Union's new deforestation-free product regulation has introduced a much tougher regime than the one we set under Schedule 17 to the Environment Act. Traders wishing to place products on the single market must now ensure that their products are both deforestation free and produced in accordance with local law. That regulation requires traceability to the geolocation where a commodity was grown. This level of supply-chain monitoring is eminently practical, and such information will soon be readily available.

Moreover, triggered by that regulation, the EU has begun an analysis of the role of the European financial institutions in financing global deforestation. This process gives the European Commission the power to propose new regulations for the financial sector. It has been supported by civil society and progressive financial institutions, with over €177 billion now under management in this way.

I do not wish to indulge this line of argument too much, because there is, even without this new EU regulation, already more than enough data for financial institutions to carry out their due diligence. It is just the incentive that is missing. For this reason, I do not agree with the Minister that we must wait for the framework being produced by the Taskforce on Nature-related Financial Disclosures before we ask banks to take action. More data would be useful, but there is no reasonable excuse for not using the data already freely available from the clients, in combination with open-source information such as satellite data, grievances from local communities and adverse media coverage. We are talking about illegal activity here.

I am grateful for the Minister's engagement on this amendment, but I am yet to hear a compelling argument about why any information a company would share in

[Baroness Boycott]
its TNFD reporting would result in a change in financing patterns. Right now, financial institutions routinely choose to ignore high-profile exposés about illegal deforestation practised by their top clients. Put simply, the TNFD will not stop UK finance from flowing to those offenders. A lack of information is not the problem; the problem is the lack of a mandatory due diligence duty requiring that the information be put to use.

This amendment is a logical next step to Schedule 17 to the Environment Act 2021, which, if secondary regulations are ever brought forward after over a year of delay, will ban the import of certain goods produced on illegally deforested land. This amendment would allow us to future-proof UK financial regulation so it delivers a liveable planet and a workable food system, with all the attendant benefits for global economic stability. Inaction allows these deforesting companies to continue turning a profit by undermining the basis for future prosperity. It goes absolutely in the face of everything in the Dasgupta review. I look forward to the Minister's response, and will be testing the opinion of the House on this.

Baroness Drake (Lab): My Lords, I declare my interests as trustee of DB and master trusts. I will speak to Amendment 93. Government Amendment 4 is welcome because it recognises the necessary direction of travel on disclosure requirements on sustainability, but the problem is that it is not sufficient. It gives the Treasury the power to issue a policy statement on SDRs and to require the regulators to report against this, but the FCA does not have the powers to actually implement SDRs. As Amendment 93 proposes, there is a need to give the FCA the power to publish guidance on how asset managers must consider the long-term consequences of any decision; consider the impact of climate, nature and society on their investments; consider the impact of their investments on climate and nature; and publicly report on their considerations.

It is interesting that the explanatory statement accompanying the published government amendment states that it supports

"the regulation of disclosure requirements relating to sustainability"

by requiring the FCA not only to have regard to Treasury policy but to inform a policy statement by the Treasury. It is difficult to see how the FCA could optimally inform Treasury policy if it does not set guidance on expected content and open reporting by asset managers on the impact of their investment decision-making.

Confusion among fiduciaries about the extent of their duty to consider such impacts is not limited to occupational pension schemes; it runs across the length of the investment chain. The FCA has broad powers to issue guidance under Section 139A of the Financial Services and Markets Act 2000, but there is still an ambiguity. Amendment 93 gives the FCA the explicit power to issue guidance on the disclosure of considerations of sustainability impacts as a core part of the investment managers' duties. This is not inconsistent with the existing duty on trustees, in Regulation 2 of the occupational pensions investment regulations, to report on how they have complied with the Section 35 duties of the Pensions Act 1995.

The proposed FCA guidance is not legally binding: regulated firms would be free to diverge from it, but there is an expectation that they would need to explain why they have done so. There is a need to apply the guidance to contract-based personal pension schemes as well, to avoid the risk of regulatory arbitrage between a weaker FCA regime and a more robust TPR disclosure regime.

The concept of fiduciary duty borne by those responsible for the best interests of pension scheme members is evolving, and, as we heard, the Government's updated green finance strategy of 2023 includes a commitment to review pension trustees' fiduciary duties and stewardship activities. That trustees must act in the best interests of scheme members must not be a principle in doubt or, indeed, overridden. The key issue is what "acting in savers' best interests" means in law for fiduciaries, and the extent to which it includes stewardship and ESG engagement. If fiduciaries ignore the impacts of investment strategies on society, climate and nature, or vice versa, those major externalities will eventually impact them at a later date.

In seeking more productive investment by the finance sector, the Government should acknowledge that pension funds are not the only decision-maker or the beginning and end of the problem; asset managers have an equally key role to play in managing impacts and considering the long-term consequences. Amending FCA regulation powers to guide open reporting on these matters will encourage investment away from environmentally and socially damaging activities, and towards supporting efficient transition to net zero, nature protection and healthy societies, in a way that is in the savers' best interests and that supports the successful transition of the wider economy.

Guidance from regulators is required along the length of the investment chains as risks become more acute. Pension schemes contract with fund managers to manage assets. If schemes are expected to consider the sustainability of their investments, they need fund managers to support them by undertaking that activity too. Trustees' ability to discharge their ESG and stewardship responsibilities to greatest effect has a dependency on how regulators expect asset managers to discharge their duties. Expectations placed on pension funds and asset managers are a complement to, not a substitute for, government policies on efficient transition to a sustainable economic future. Government regulations that perversely drive greenwashing or green asset bubble risk are equally unsustainable.

The Government want to see more productive investment by the financial sector, but mandating how citizens' private assets are invested would displace trustee fiduciary duty with state control of private assets, inviting litigation and risking impacting public attitudes to private saving. But, in giving the FCA power to guide the content and require open reporting on sustainability, Amendment 93 can assist confidence in aligning members' best interests with increasing productive investment. I commend it to the House.

Lord Naseby (Con): My Lords, I welcome Amendment 4. Having listened to my noble friend on the Front Bench in Committee and subsequently, I know that she played a major role in this absolutely vital amendment coming forward.

The noble Baroness, Lady Wheatcroft, was quite right. Let us reflect on two key areas where we desperately need the SDR policy statement. First, in terms of the energy market, is the national grid. Today, all sorts of decisions have to be made by the energy market, whether on nuclear, solar or whatever else. People in that market want to know at what point the national grid will be in a position to be connected to them—that is absolutely key to sustainability.

Secondly, in my judgment, the public in general are confused and have no understanding of what they should do about making their contribution to net zero with the condition of their property. Some of us had a good briefing on that situation from the building society movement today. We must address this. But the principle is here, and I thank my noble friend on the Front Bench for how it has come forward.

I declare an interest as a trustee of the Parliamentary Contributory Pension Fund. Noble colleagues will not be members of it unless they have been in the other place or are ministerial colleagues. Nevertheless, I can assure anybody who knows anything about that particular area that, in my judgment, our fund—given the care and attention paid by its chairman and the members in terms of the time put in freely and the trouble that is taken to ensure that we listen to asset managers, question asset management and challenge the advisers we have—is aware of government policy, whatever it may be. Yes, we welcome guidance and particular in-depth information. But—and this is a very big "but" in capital letters—our primary duty is to the membership and the beneficiaries, and we must never forget that. We are not there to take risks, unless we really have to take them, and we debate these issues.

All I will say in relation to the forestry dimension is that I do not welcome that particular one more than any other. I want concrete material that is of benefit to those who are the beneficiaries. With that, I do not think that I need to say any more.

7 pm

Lord Davies of Brixton (Lab): My Lords, I support the amendments in this group, particularly Amendment 93. It is always a pleasure to follow my noble friend Baroness Drake, who has said it all. I will join on the back of her comments to say that I strongly support the approach she has taken.

I also support Amendment 113 from the noble Baroness, Lady Hayman. I respect the extent to which some concerns have been taken into account to make it clear that the interests of the members are paramount in the amendment—that is crucial. On the idea that pension funds should have a more active role in growing our economy, obviously its time has come. It is not new—people have been making suggestions about it; I have been involved in it in the past—but there now seems to be a confluence of views that something must be done. However, it has to be done in a way that respects the fiduciary duty to put the interests of members front and centre in the decisions that are taken. I take a fairly broad view of what constitutes members' interests, but it is the members and their trustees acting on their behalf who have to take that decision, rather than bodies which do not have the direct results inflicted on them if they get it wrong.

It is important to stress that any ideas have to be practical and effective. I have some doubt as to whether the problem we face is about the supply of money; rather, it is about how the money will be used. Putting these proposals forward without having the other side of the bargain improved will be a problem. It is also important to stress that there are very different types of schemes, and they all have different investment needs. Again, whatever guidance is given has to respect the particular types of schemes.

I have one concern, which I would like the Minister to address, about the phrase "have regard to" in relation to guidance. It appears in the government amendment and in Amendment 113 put forward and supported by my noble colleagues. The problem with the "have regard to" is that it is a legal lottery. It is very difficult to know in advance what exactly it means, so it would be very helpful to me, and I hope the House, if the Minister could say something about that. Is it, as is sometimes suggested, like the accounting requirement—you comply or explain—or do you have to, in some way or another, follow the requirements as they are set out? What does "have regard to" mean in this legislation? It would be good to have clarification during the progress of the Bill, because the phrase appears several times.

Baroness Altmann (Con): My Lords, I congratulate my noble friend the Minister on her Amendment 4. I am sure that it is very well-intentioned, and it meets some of the concerns that were clearly expressed in Committee. I welcome the update that will be coming from her on the green taxonomy; I believe that there will be a consultation on that. There is also the new green finance strategy, which has been published. They are all welcome.

Amendment 4 is welcome, but, as the noble Baroness, Lady Hayman, explained, although it will ensure that the Treasury produces guidance or requirements for sustainable investing by pension schemes and others, it would appear that the FCA and the PRA may not have the powers to issue that guidance. So, once the Treasury has produced its recommendations, we will still need to legislate. Can my noble friend the Minister confirm that that is the case, and that we will need further legislation if we want to implement the impacts of Amendment 4 through to pension schemes?

I have added my name to Amendments 93 and 113 in the name of the noble Baroness, Lady Hayman. Amendment 93 deals with the investment duties of pension providers and investment managers, and Amendment 113 deals with the investment duties of occupational pension trustees and managers. Clearly, if we are to make progress in line with the Government's laudable objectives—and I congratulate them on all the work they have been doing, including some of their world-leading work on trying to ensure that pension schemes invest more in line with green objectives and sustainable investments for the long term—the amendments will ensure that the FCA and the PRA can make those rules. The amendments are very reasonably drafted; the FCA and the PRA may make these rules, but they do not require them at this stage to do so. The trustees and investment managers must then have regard to the rules, but, as the noble Baroness explained, they can explain why they are not going to implement

[Baroness Altmann]
the rules. However, at least we can set up a system where the trillions of pounds of long-term investment money in pension schemes can assuredly do more to protect the planet and provide investment opportunities that will help with social objectives for this country.

I do not have a problem with the concept of government directing pension schemes to invest a certain proportion of their assets, if necessary, in green, sustainable and socially desirable projects, including infrastructure, forestation, nature preservation and so on. At least 25% of all pension schemes—we are talking about hundreds of billions of pounds—has come from the taxpayer in the first place in the form of tax relief. Given that 25% of everyone's pension is tax free, that is money that was spent by taxpayers. Given the budget circumstances that the country faces, and as taxpayers would otherwise be funding these projects outside pension schemes, I do not think that it is impossible to justify the idea that, should the private sector not be forthcoming with its investments in these vital elements for future growth and for a sustainable future for us all, the Government might themselves decide to require it.

These amendments will at least pave the way to ensure that there is more chance of these huge amounts of money, which are put aside for millions of people's retirement income later in life, being invested in a way that will benefit them and the economy, as well as ensuring that there is much more and better protection for the planet, which I know that the Government wish to achieve. So I support Amendments 93 and 113, and I have added my name to Amendment 114, so excellently explained by the noble Baroness, Lady Wheatcroft, again facilitating rules that it will be necessary for schemes to follow, should the Government desire that—which is the indication that I have had from my noble friend the Minister and which is implied in the Government's Amendment 4.

Baroness Meacher (CB): My Lords, I shall speak to Amendment 91—this is a somewhat variegated group. The amendment was very ably introduced by the noble Baroness, Lady Boycott, and I am privileged to be asked to speak to it—it has widespread support across the political parties and within the public, as well as from key figures such as Sir Ian Cheshire and financial institutions representing no less than £1.18 trillion in assets under management and advice.

The UK is in the invidious position of being a leading financier of global deforestation and linked human rights abuses. This country provided an estimated $16.6 billion to businesses implicated in deforestation over five years to 2020. How many of us have money in pension funds contributing to the £300 billion of UK pension fund money supporting high deforestation risk companies and financial institutions? The Government claim that the answer to this problem—if you like—is the Taskforce on Nature-Related Financial Disclosures. However, the Government's own expert Global Resource Initiative task force has already explicitly rejected the TNFD's disclosure-based model as a solution. It has told the Government that new due diligence laws are needed to stop UK finance flowing to deforestation—and that is precisely what this amendment does.

I am aware of the noble Lord, Lord Field's rather wonderful Cool Earth charity, which finances indigenous tribes in the great forests to retain the trees and live within them. Amendment 91 is vital to prevent all Cool Earth's good work being undermined by UK financial institutions investing in high deforestation risk companies. The UK led the Glasgow leaders' declaration on forests and land use at COP 26, making a commitment to halt and reverse deforestation and land degradation by 2030, including by realigning financial flows. This amendment begins to meet that commitment; surely, this should not be neglected. My only regret is that the amendment allows for a 24-month delay before due diligence obligations come into force to allow the sector to prepare—and, of course, I understand that sectors need to prepare. But this issue has been debated in Parliament for some months. I wonder how far the sector has reached in its preparations and whether it would support a reduced delay. How does such a delay fit with the view of experts that commodity-driven deforestation must end by 2025 at the latest to limit global warming to 1.5 degrees centigrade? A 24-month delay takes us right into 2025. I understand that agricultural expansion drives more than 90% of tropical deforestation. Again, the amendment is business friendly and widely supported, and I hope that the Government will support it and accept it.

Lord Vaux of Harrowden (CB): My Lords, I have added my name to Amendment 15, tabbed by the noble Baroness, Lady Hayman. It aims to ensure that the conservation and enhancement of the natural environment are included in the regulatory principles of the regulators. Like the noble Baroness, I would have preferred another secondary—what is the word?

Baroness Northover (LD): Objective.

7.15 pm

Lord Vaux of Harrowden (CB): Yes, objective, thank you. But we are where we are.

The noble Baroness has already explained this with her usual skill, so I shall not repeat what she has said. However, I am sure that I am not alone in experiencing a feeling of déjà vu in even having a debate on this subject. The noble Baroness, Lady Hayman, has given similar excellent speeches on multiple occasions now—I am really quite amazed by her patience. All this amendment tries to do is ensure that government policy is embedded in the activities of the regulators, yet we seem to have the same debate on so many Bills. Each time, generally, the Government give way—and rightly so. I think that the most recent occasion might have been on the UK Infrastructure Bank Act. Frankly, if it makes sense to accept this for that bank, how much more sense does it make to accept it in respect of the entire financial services industry? Surely, it is time that all Bills to which the impacts of environmental change and risk are relevant should include these clauses by default. It really should not be up to this House to ensure that the Government apply their own policies. So I hope that the Minister will follow the multiple precedents and accept Amendment 15.

The Minister introduced Amendment 4 on SDRs, which is extremely welcome, but it is only a "may prepare" clause, not an obligation, and there is no timeframe included. Frankly, it could have gone an awful lot further.

I add my support to Amendment 91, which seeks to introduce a new due diligence requirement for regulated persons to ensure that the forest risk activities that they wish to finance or otherwise support are in compliance with local laws. I am sure that the Minister will refer to creating undue burdens on regulated persons, which seems to be the usual argument in these things—but the amendment leaves the level of required due diligence for the Government to decide and regulate, so I am not going to be terribly impressed by that argument. To put it simply, our financial services industry should not be financing illegal deforestation activities.

I also strongly support Amendments 93 and 113, which seek to ensure that the impacts on climate, nature and society are properly considered by occupational pension scheme trustees, and that the FCA may publish guidance in that respect. Noble Lords with much more experience in this area than myself have spoken to that at length. Pension funds are by their nature long-term investments and systemic in size, so it is especially important that these issues of sustainability are considered fully by pension schemes. I hope, perhaps forlornly, that the Minister will look favourably on these amendments, but particularly on Amendment 15, which seems self-evident to me.

Baroness Northover (LD): There have been a number of powerful contributions in this group. I add my voice as a signatory to Amendment 114. My noble friend Lady Sheehan will speak to others in this group, which we also support from these Benches.

The noble Baroness, Lady Wheatcroft, very ably made the case for Amendment 114, which seeks to give the powers to Ministers and regulators to legislate for sustainability disclosure requirements along the whole length of the investment chain. As she indicated, although we obviously welcome the fact that the Minister has brought forward Amendment 4, this simply does not match up to what needs to be done and what the Government, as others have said, say that they wish to do. We know that some change is already being driven—for example by the disclosures that are now required under the task force on climate-related disclosures. We know that the International Sustainability Standards Board continues its important work, with the involvement of Mark Carney, and we hope that the Government will adopt its recommendations—they are currently equivocal about that.

We urgently need the guardrails that Chris Skidmore recommended were required to reach net zero by 2050. The Government have made repeated commitments, as we have heard, to legislate for sustainability disclosure requirements and in these other areas to which noble Lords have referred. Amendment 114 and all the others help to deliver what the Government say that they wish to do. The noble Baroness, Lady Hayman, beautifully outlined how the other amendments also help to deliver for the Government on what they say that they wish to do. Therefore, I support this amendment and the others.

Baroness Young of Old Scone (Lab): My Lords, I support Amendment 15 in the name of the noble Baroness, Lady Hayman, who introduced it very powerfully. I want to talk to the House about the real relationship between nature conservation and climate change and the need to bring those together in the regulatory process. Nature restoration is essential for our reaching of net zero—we cannot do net zero without restoring nature; I think that is globally accepted now—but nature restoration is important to economic prosperity in several other ways. More than half of global GDP is considered moderately or highly dependent on natural assets and half the world's population is completely dependent on biodiversity for their livelihoods. That means that biodiversity is as important as climate change.

Biodiversity is also highly material in assessing risk, including financial and economic risk, and it is pretty clear that if biodiversity is going down the tubes, so is the economy and, indeed, so are we. So, it is a bit of a no-brainer, in my view, that financial services regulators should have, as a regulatory principle, net zero and nature recovery together: the two are absolutely indissolubly linked. I hope the Minister will not say that the provisions that are in the Bill for net zero will act as a proxy for biodiversity restoration. It does not work that way: net zero is a necessary condition but not a sufficient condition for biodiversity recovery.

The noble Baroness, Lady Hayman, threatened the House with simply reading out all the commitments that have already been made that are encapsulated in her Amendment 15. I want to add another one that no one has mentioned so far. The Environmental Audit Committee, in its report on biodiversity in June 2021, highlighted the fact that, although some progress had been made in transforming the financial system to reflect the pressures of climate change, the whole accompanying handshake with biodiversity was way down the line and much slower and needed to accelerate. It called on the Government to play a part in creating a narrative that there is a lot of international commitment to biodiversity recovery linked with climate change that we are going to have to respond to in this country, because we have signed up to it globally, and that it is therefore important to get the financial services industry and its regulation up to speed soon in order to cope with that global pressure. The noble Baroness's Amendment 15 would do that and, more importantly, it would secure this through a legislative approach and not be overly reliant on voluntary action.

Without delaying the House any longer, I also support Amendment 91 on deforestation. I will not repeat what the noble Baroness, Lady Boycott, said, but it was the bee's knees. I end with a note of distress at the comments made by the noble Lords, Lord Davies and Lord Naseby, about pension scheme investments and investors and pension committees and pension advisers' responsibility and duty to pensioners. I declare an interest, having set up the Environment Agency pension scheme some 25 years ago to be, at that stage, the only really green pension scheme and now probably the foremost green pension scheme in the world.

Let us not be in any doubt: there is not a dichotomy about responsibility to pensioners and taking action on climate change and biodiversity. They are absolutely one and the same thing. If climate change and biodiversity

[Baroness Young of Old Scone]
decline continue, there will be irreparable harm to the economics that pensioners and pension schemes depend on. Let us not be in any doubt about that: pension scheme trustees and their advisers—and I hope, if the Minister will accept Amendment 15, their regulators—have a responsibility towards climate change and biodiversity recovery, because it is absolutely in the economic interests of their beneficiaries.

Baroness Bennett of Manor Castle (GP): My Lords, I rise very briefly to express Green support for the non-government amendments in this group and acknowledge the way in which the weakness of the government amendment has already been acknowledged. Noble Lords will note that the explicitly environmental amendments, from Amendment 15 onwards, do not have a Green name on them. I am delighted about that because there was not space for one, because the amendments have cross-party support from right across the House, which really shows how far we have come in these debates.

I shall make four brief points, because I am very aware of the time. They are building on the points just made by the noble Baroness, Lady Young, and reflecting on an article published last week in *Nature*, which demonstrated that in seven of eight key measures, including climate, biodiversity and water, we are outside the safe and just operating space of this planet. We are absolutely at crisis point and I pick up the point made by the noble Baroness, Lady Hayman, that we cannot afford to wait. We cannot wait for the next Bill, the Bill after that and the Bill after that. I very much agree with the point just made by the noble Lord, Lord Vaux, that the country should not have to wait for the House of Lords to insert these things into Bills; they should be there in government Bills as a matter of absolute, basic course.

I have a particular point about Amendments 93 and 113, which strengthen the fiduciary duty of pension funds to ensure investors consider the impact of their investments on environment and society. The case has already been made that there is no finance on a dead planet and there are no pensions on a dead planet, but the society element also deserves to be noted. We have had a huge amount of discussion of the problem of the large number of people of apparently working age who are not engaged in our labour force at the moment, and the public health crisis that is associated with that. It is the kind of thing that Green councillors have been going on about, as members of governing boards of pension funds for years: such things as tobacco and the kinds of food products that are being supported are all issues that have an impact on pension returns.

On deforestation, the noble Baronesses, Lady Meacher and Lady Boycott, among others, have already made points about this, but there is £300 billion of UK pension money in high deforestation risk companies and financial institutions—that is a figure from Make My Money Matter. Again, there is a point about risk. The financial sector in the UK faces up to £200 billion of risk in Brazilian beef and soya and Indonesian palm oil supplies alone.

Finally, there is another risk in terms of our international reputation. We are of course enthusiastic signatories of the global biodiversity framework, which promises, under target 14, that the UK will align

"all relevant public and private activities, [fiscal] and financial flows with the goals and targets of this framework".

How could the Government not be accepting all the amendments in this group?

The Earl of Caithness (Con): My Lords, I have my name to Amendment 15, so ably introduced by the noble Baroness, Lady Hayman. I thank her for her very clear exposition of it and I thank the noble Baroness, Lady Young, for her little additions just to fill in some of the other parts of this important subject. I thank the Minister for her time yesterday when I came to discuss this amendment with her: it makes a lot of difference that a Minister is so receptive to a discussion, even though we did not part any closer than when I walked through the door.

I congratulate the Government on their world-leading position on green finance. That is a nice position to be in, but we need to work very hard on that if we are to retain it.

7.30 pm

To me, it is absolutely logical that nature should be added into the Bill in the way proposed in Amendment 15. As has been said, nature underpins the whole financial system. Without nature, it is not going to work—and it has suffered because we have not given nature the economic value and attention it needs. Nature restoration is crucial to reaching net zero.

We can talk about climate change and net zero, but we must not believe that solutions to climate change always benefit nature—they do not. I give your Lordships the example of biomass and what was set out as a very good idea by Drax to move on to biomass. It has now been proven that it is not working as well as we had all hoped and that there has been degradation of nature. One can take the view that it does not affect the UK, because all the timber is imported, but it is causing a loss overseas. That links very well to Amendment 91 in the name of the noble Baroness, Lady Boycott, which I support.

Most of what I wanted to say has already been said, so there is no need to repeat it. It is strange how often we hear the Government make all sorts of encouraging statements, but when it comes to putting them in the Bill they are reluctant to do so. There is an old adage: if it is not on the face of the Bill, it will not be implemented in the proper way. That is why Amendment 15 is important.

Lord Randall of Uxbridge (Con): My Lords, I strongly support Amendment 15, so ably introduced and supported by others. I will speak principally to Amendment 91, to which I added my name. I tabled a similar amendment in Committee, but unfortunately ill health prevented me speaking then. I was grateful to the noble Baroness, Lady Boycott, for taking over the reins then and I am very happy to support her now.

I support the Government's amendment in as far as it goes. As we have heard, the Government have made a lot of strides in this area through public finance commitments. Only last month the Prime Minister met with the President of Brazil, pledging £80 million to the Amazon Fund to help stop deforestation. There is more money coming through; at least £3 billion of our international climate finance is devoted to nature protection and restoration.

The question we must ask ourselves is: are we turning a blind eye to the private finance undoing all this good? Preventing private finance doing harm is just as important as the aid we provide. As we have heard, the Government have endorsed this conclusion by pioneering the Glasgow declaration on forests and land use, which includes a commitment to:

"Facilitate the alignment of financial flows with international goals to reverse forest loss and degradation".

Now is the very time to make good on this pledge and get our own house in order.

This is a sensible proposal rooted in Schedule 17 to the Environment Act and limited to illegal deforestation for that very reason. The amendment itself has been publicly endorsed, as we have heard, by Sir Ian Cheshire, as well as financial institutions representing more than £1 trillion in assets under management and advice, including Rathbone Greenbank Investments, Federated Hermes Ltd and the Local Government Pension Scheme Central Ltd—so it is not just the usual suspects.

At the G7 last month, the UK committed to take steps to redirect finance away from activities causing biodiversity loss "without delay". I am very grateful to the Minister. As we heard from my noble friend Lord Caithness, she has bent over backwards to try to help and is committed to this. She has not quite convinced me that the Government should not accept this sensible amendment. I hope that it will be accepted and that the Government will follow through here. As I have got older, I may have got mellower but I have got more impatient. I am fed up with hearing every time that it will be in the next Bill.

Baroness Sheehan (LD): My Lords, I rise on behalf of our Benches in support of these amendments. In doing so, I declare my interest as a director of Peers for the Planet.

Before I move on to the bulk of the amendments in this group, I will address government Amendment 4. I agree with noble Lords across the House who have welcomed it but feel that it is deflective and a little weak. The policy statements required from the Treasury may be followed by the regulators, but it just does not go far enough. It certainly does not fulfil the spirit of Amendment 114 on SDRs, spoken to so ably by the noble Baroness, Lady Wheatcroft.

In the briefings I have received on this Bill to make provision about the regulation of financial services and markets, it struck me that the phrase "systemic risk" appears frequently. According to the Systemic Risk Centre, part of the London School of Economics and Political Science:

"Systemic risk refers to the risk of a breakdown of an entire system rather than simply the failure of individual parts. In a financial context, it captures the risk of a cascading failure in the financial sector, caused by interlinkages within the financial system, resulting in a severe economic downturn".

I think we all recognise that scenario.

Therefore, the amendments in this group all aim to strengthen the Government's hand either by aiming for better governance in financial services and markets or by pre-empting disastrous practices as financial services and markets transform and orientate towards a future that encompasses our net-zero ambitions. Deep change of this nature is a risky undertaking for the sector that the Government can act to mitigate. Indeed, the Government can act to enforce their own policy statements, as so many noble Lords across the Chamber have already mentioned.

I will briefly address the amendments to which I have added my name. Amendment 7 addresses an essential element of openness and transparency and would require the FCA to make rules to mandate fund managers and insurers to give information to clients and beneficiaries on the exercise of all voting rights on their behalf by appointed investment managers. The noble Baroness, Lady Wheatcroft, in whose name the amendment appears, has already given us chapter and verse on why this would be a sensible move by the Government. Currently, it is difficult for underlying fund managers and insurers to access information about how voting rights in investee companies are being exercised on their behalf in a consistent and comparable format. I will give just two examples and, I hope, not repeat too much of what the noble Baroness, Lady Wheatcroft, has already said. This is very important.

Reporting is currently voluntary and contained in a single dense report across the whole of the fund manager or insurer's operations. That is problematic, because in practice it means that pension funds will find it difficult or impossible to identify whether their pension fund is invested in that share. They cannot get at the information they need. That is one shortcoming; the other is that the reporting is non-standardised. Many investment managers disclose votes in a non-standardised way in long PDF reports—sometimes up to 10,000 pages—which makes it extremely difficult for pension funds to extract the data they need out of it.

The aim of Amendment 7 is to rectify these shortcomings and others that have already been mentioned, and requires the FCA to make rules requiring information on the exercise of voting rights to be disclosed on request and in a standard format. The US Securities and Exchange Commission has a regularly updated standard reporting template which managers must follow. The FCA should achieve parity with the USA on voter reporting and enable consistent and comprehensive vote disclosure. Voting at AGMs is a key tool in ensuring good corporate governance, good long-term investor returns and good economic outcomes more broadly, and is key to government realising its policy ambitions, not least its net-zero ambitions. Indeed, HMT has publicly acknowledged that good voting and good vote reporting are crucial to meeting net zero. Finally, as the Aldersgate Group identifies in its 2022 report, it is critical that financial institutions engage with systemic risks via stewardship—such as exercising voting rights—rather than managing portfolios by divesting from high-carbon assets.

Amendment 15, which adds nature to the new regulatory principle on net-zero emissions, is in the name of the noble Baroness, Lady Hayman, and was spoken to ably by her. We have only to gaze and wonder at the efficiency of bees and other pollinators in their role in providing us with good food. Various estimates have put a figure verging on £1 billion to pollinators' contribution to the UK economy in terms of worth of crops they produce. However, if one inputs human labour in their stead, we know that their value is far greater than that.

[Baroness Sheehan]

The Government's own green finance strategy, published just a few weeks ago, stated:

"Nature sustains economies and livelihoods, and protecting and restoring nature is inseparable from addressing climate change",

which completely echoes what the noble Baroness, Lady Young of Old Scone, said. The funny thing is that those are the Government's own words, so why do the Government balk at this amendment? In their response to the seminal Dasgupta review, *The Economics of Biodiversity*, which has already been mentioned, the Government committed to delivering a nature-positive future by reversing nature loss, and to

"leave the environment in a better state than we found it".

This amendment is urgently needed. Current investments are working against nature and driving nature's depletion. We have heard these figures before but they are worth reiterating. In 2019, financial institutions provided $2.6 trillion in loans and underwriting services to sectors identified as primary drivers of biodiversity loss and ecosystem disruption. Globally, Governments spend $500 billion per year that is potentially harmful to biodiversity.

Nature loss can be massively detrimental to investments and must be considered in assessing risks. I will give a couple of examples. First, shareholders lost billions when the European pharmaceutical company Bayer lost near 40% of its market capitalisation in less than a year after acquiring an agrochemical company accused of adversely affecting honeybee populations. Secondly, company shares in the Canadian gold-mining company Infinito Gold fell 50% when in 2012 the Costa Rican Government denied permission to develop a mine due to potential impacts on forests and endangered species.

In conclusion, we need investment in nature restoration to be commensurate with investment in net zero—here I disagree a little with what the noble Earl, Lord Caithness, said. In having similar amounts and similar resources deployed on net zero and climate change, we are able to protect our natural capital, which we must do if we are to meet our net-zero targets. Nature and climate change are two sides of the same coin. I hope that when the time comes, noble Lords will give this worthy amendment their full support, as we will from these Benches.

7.45 pm

I have added my name to Amendment 91. The noble Baroness, Lady Boycott, moved it so comprehensively that I need to say very little other than to add my support to it. I will just say that the Treasury's *Greening Finance* road map claims that financial actors should factor climate change into "every investment decision". However, this is currently not the case when it comes to deforestation.

I will cite one example. In June 2022 Global Witness, a relatively small NGO, published an analysis showing that HSBC and Barclays have continued to provide billions to Brazilian meat giant JBS in spite of widespread and credible allegations of the company's involvement in illegal deforestation, land grabs and human rights abuses. The UK financial sector faces up to £200 billion in risk exposure to Brazilian beef and soy, and Indonesian palm oil supply chains alone, according to the WWF. There I echo the words of the noble Baroness, Lady Bennett. It is shocking that financial institutions are not required to conduct any due diligence to find out whether their dealings are leading to illegal deforestation, even when their clients have been implicated in many public cases before.

Due diligence is not that hard to carry out. Sources are not limited to what is available in the public domain. Financial institutions can request supplementary data from their existing and potential clients to inform their due diligence. For example, they can ask the extent to which a supply chain is fully traceable, how many deforestation incidents that client detects per year, and whether they can demonstrate if they obtained the consent of indigenous peoples to operate on protected lands, among many other such questions. There are so many tools available to companies these days.

The Lord Privy Seal (Lord True) (Con): This has been a 13-minute speech on Report—

Baroness Sheehan (LD): I am just about to conclude.

Global Witness, for example, recently launched a "Brazil Big Beef Watch" Twitter bot to show how simple and effective supply-chain traceability can be. Therefore, due diligence requirements are not an onerous ask and are long overdue. It is deplorable that indigenous people are on the front line in defending against deforestation. Some 40 people per week are killed in the process. This must stop. I think I speak for our Benches when I say that should the noble Baroness, Lady Boycott, seek the opinion of the House on her amendment—we hope that she will—we will give it our wholehearted support.

Amendments 93 and 113 on fiduciary duty have been covered extensively by the noble Baronesses, Lady Hayman and Lady Drake, and by other noble Lords across the House, so I need say very little other than that we are in full support of them.

Lord Livermore (Lab): My Lords, this has been a fascinating if somewhat disheartening debate, and I have learned much listening to the contributions from noble Lords on all sides of the House.

We welcome the tabling of government Amendment 4, which brings forward new provisions relating to sustainability disclosure requirements, but we agree with the views expressed across the House, particularly as set out by the noble Baroness, Lady Hayman, arguing that the Bill simply does not go far enough in supporting the country's green ambitions.

We support many of the amendments in principle but particularly Amendment 15 in the name of the noble Baroness, Lady Hayman, and Amendment 91 in the name of the noble Baroness, Lady Boycott, the latter having been signed by my noble friend Lady Chapman.

The financial services sector touches many more aspects of our lives then we may sometimes realise, with firms' investment decisions having a direct impact on virtually all sectors of the economy. This activity can, and often does, do much that is good. For example, if we are to secure the green jobs of the future, businesses will need investment. But, as we see in some cases, such as investment activity that leads to deforestation, there can be severe negative environmental impacts. In a recent poll cited by Global Witness, 77% of UK savers said they would be unhappy to discover

that their pension was funding deforestation and habitat loss, with 14 million people estimated to switch pension provider if they made such a discovery. However, as Amendment 7 highlights, there is currently no way for the public, nor indeed the Government, to tell if their money is invested in that way, and therefore no way for consumers to exercise choice. That surely cannot be right.

Amendment 91 would implement recommendations from the Government's own Global Resource Initiative taskforce in relation to deforestation, a practice which causes significant harm to global climate ambitions, as well as to indigenous peoples who are evicted from their ancestral homes. We are told by the Government that they are serious about achieving net zero and protecting nature, yet, at present, the net-zero regulatory principle still fails to mention nature, which is what Amendment 15 would correct. Indeed, nature is not even mentioned in the Bill. As the WWF rightly points out, by excluding nature from this key financial services legislation, the UK will fail to secure opportunities that could make the UK a leading green finance centre, while exposing the country to nature-related risks.

We should also give serious weight to the intervention of Professor Sir Partha Dasgupta, who led the Government's review of the economics of biodiversity, when he urges the Government to support the amendment. He says:

"We need to empower those in charge of regulating our financial system to support the sector to arrive at a nature-positive destination by recognising the value of natural capital and the significant social and economic benefits restoring nature presents".

We are losing nature at an alarming rate, and these issues are only going to become more urgent. We have missed opportunities to act in the past, and we cannot continue to make the same mistakes. We therefore urge the Government to think again on these important areas, but if they are not willing to do so, we will support the noble Baronesses, Lady Hayman and Lady Boycott, should they choose to push their amendments to a vote.

Baroness Penn (Con): My Lords, let me first take Amendment 15, from the noble Baroness, Lady Hayman. I reassure noble Lords that the regulators already consider issues related to sustainability, and specifically nature, as part of their work under their existing objectives. For example, the Government and the regulators are active participants in the work of the Taskforce on Nature-related Financial Disclosure, which we have heard about, which helps organisations to report and act on evolving nature-related risks; and the Bank of England is a key member of the Network for Greening the Financial System, which recently launched a task force on nature-related risks.

The noble Baroness listed the work that is happening and the various commitments, and I interpret that to mean that the lack of the reference to nature in the framework does not equal a lack of action by either the Government or the regulators. I understand the desire of noble Lords to see that reflected in the framework in the Bill. However, further work needs to take place to better understand the interaction between nature targets and the work of the financial services regulators when including it in regulation, and the conclusions of that work are not yet clear. Moreover, equivalent targets to those in the Environment Act for England and Wales in 2021 do not yet exist in the other devolved Administrations, so we remain of the view that it would not be appropriate to place a requirement within the FSMA regulatory principles without the clarity I spoke about, or to impose requirements that link to targets that do not yet exist; so unfortunately, the Government are unable to support the amendment.

Turning to Amendment 91 in the name of the noble Baroness, Lady Boycott, the Government are committed to working with UK financial institutions to further tackle deforestation-linked finance. As set out in the updated green finance strategy, we will begin this work with a series of government-convened round tables this year, and I am keen to work with noble Lords on this process.

As we discussed in Committee, the amendment we are considering today would involve imposing requirements on all regulated financial services firms, obliging them to undertake due diligence on practically all their client firms and their clients' supply chains. In practice, this would amount to UK banks being required to check most of the world's major companies and their supply chains for links to illegal deforestation, and stopping any finance to them until those companies can provide the data needed to do so. This is while the rest of the world's banks carry on financing this activity with no global standard on deforestation in place.

Global due diligence is not something that can be legislated for by Parliament and the UK financial sector alone. In fact, trying to do so may make this problem harder to solve. Imposing this data requirement on UK financial firms alone where such data is lacking globally could lead to one of two things: firms trying to satisfy the requirement but failing due to a lack of data, leading to misreporting and misallocations of capital; or keeping that business outside the UK, with no chance of securing the type of environmental change we want and that is the aim of the amendment.

The Government therefore want to find a workable solution, and we are pursuing a number of different lines of action to do so, in addition to the commitment we made to work with UK financial institutions in the green finance strategy. First, we are directly addressing deforestation in situ by our partnerships approach. The Government launched the forest and climate leaders' partnership at COP 27, and also fund the partnership for forests, which has channelled more than £1 billion of private investment into forests and sustainable land use, and brought more than 4 million hectares of critical landscapes under sustainable land use.

Secondly, the Government are working to address due diligence for illegal deforestation using the Environment Act. The most relevant UK businesses that use forest-risk commodities or products derived from them will be required to ensure those products are produced in compliance with relevant local laws. Thirdly, the Government are supporting the development of a coherent international approach on disclosure and management of nature-related risks and impact.

Since our debate in Committee, the Taskforce on Nature-related Financial Disclosure has published its latest draft framework. This now includes recommended metrics and associated governance strategies for businesses to understand and mitigate deforestation in areas of direct or indirect operational control. We committed

[Baroness Penn]
in the green finance strategy to explore how the final TNFD framework should be incorporated into UK policy and legislative architecture, and we will start this work later this year, once the final framework is published.

I personally made the case to the International Sustainability Standards Board, while at COP 15 in Montreal, that such standards should be considered for integration into its work. If that happens, global standards are genuinely within reach. I acknowledge that TNFD or any subsequent global standards do not prohibit the financing of deforestation in itself but, as a disclosure framework, it is the bedrock for action, both by incentivising firms to take action on the risks that they identify and allowing the Government to consider taking further regulatory action after the establishment of such a disclosure framework. I hope, therefore, that I have explained why the Government cannot accept the amendments, but have also demonstrated that effective action is under way to address noble Lords' concerns in these areas.

Turning to Amendments 93 and 113, also from the noble Baroness, Lady Hayman, in the updated green finance strategy, the Government have already recognised that decisions about investing in the context of systemic risks such as climate change and biodiversity loss are complicated, in particular for pension funds. The Law Commission's 2014 report suggested that fiduciary duties mean that non-financial factors can be considered as part of investment decisions if trustees have good reasons to think their members share their concerns and if such decisions do not involve a risk of significant financial detriment to the fund.

However, the Government recognise that trustees would like further information and clarity on their fiduciary duties in the context of the transition to net zero, and that is why we are taking steps to ensure that such clarity is forthcoming. Later this year, DWP will examine how closely its stewardship guidance is being followed, including whether incorrect interpretations of fiduciary duties are playing a role in this area. The financial markets and law committee, which includes representatives from both DWP and the Treasury, is working to consider issues around fiduciary duties and sustainability and whether further action or clarity is needed.

8 pm

The Government and regulators will hold a series of round tables with interested stakeholders to gather further information on what can be done to clarify fiduciary duties. This extensive programme of work will make clear to the Government and regulators whether and where further action may be required to ensure that trustees fully understand how they can take the transition to net zero into account while meeting their fiduciary and trustee duties. The Government are confident that they have appropriate vires to act on the outcomes of this extensive programme of work; at this time, we see no reason to take additional powers.

I turn to Amendment 7 from the noble Baroness, Lady Wheatcroft. We recognise that transparency is crucial to effective stewardship and corporate governance by pension funds. We also acknowledge the argument that the existing voting disclosure framework is not working as well as it could. That is why, in November, the FCA convened the independently chaired Vote Reporting Group, following the recommendations made by the Taskforce on Pension Scheme Voting Implementation to develop a standardised and decision-useful framework for voting disclosure.

That group is due to publish its first output soon. The Government believe that it would be more appropriate to wait for the group's output before requiring the FCA to produce further rules and regulation. When reviewing the group's output, the Government will carefully consider whether its recommendations go far enough to address existing issues of transparency, and what further action may be appropriate. We therefore believe that this amendment is premature.

Turning to Amendment 114, also from the noble Baroness, Lady Wheatcroft, I am grateful to noble Lords for highlighting the importance of the Government's own sustainability disclosure requirements framework in fulfilling our goals for green finance in the UK. This is something we can all agree on. It is worth clarifying a number of points in relation to the regulators' powers in this area. The noble Baroness is right that, previously, the Government have said that we need to bring forward primary legislation to implement SDR. The relevant departments and regulators would then set out sector-specific requirements through their usual rule-making powers.

Since then, the Government have considered this position further. We do not consider there to be any limitations on the implementation of SDR, as was set out in the green finance strategy. We have therefore adapted our approach in the light of that. To be absolutely clear, the FCA has sufficient powers for authorised financial services firms and listed companies to take forward SDR; indeed, it is already doing so, building on the work of the TCFD.

My noble friend Lady Altmann and others asked how the policy statement applies to pension schemes; there is also the question of how SDR can be applied to pension funds. The policy statement in the Government's amendment applies only to the PRA. The FCA will be required to have regard to the Treasury policy statement; it will therefore apply to FCA-regulated pension schemes, such as personal pension schemes. DWP is responsible for occupational pension schemes and has the powers to take forward SDR in the areas set out in our green finance strategy. The Government can therefore directly ensure that their priorities are addressed in SDR requirements for occupational pension funds.

The noble Lord, Lord Davies, asked what "have regard" means in the context of the Government's amendment. I can answer that. The "have regard" approach obliges the regulators to consider the Government's policy goals in their rule-making and increases scrutiny of their efforts to do so while respecting the regulators' independence, in line with the overall framework for financial regulation in the UK. In this respect, the aim of the amendment and the "have regard" approach is to ensure that the Government's ambition and policy in relation to SDR are properly considered by the regulators when making rules. I hope that, when it comes to the powers to implement SDR, I can reassure noble Lords that, having reviewed this issue in the context

of the policy commitments we made in our green finance strategy, we are assured that we have the powers we need to take this forward.

I want to end on the point about commitments versus action. This is an area where there is not just government commitment but government action. We were the first country to implement TCFD reporting across the economy. Not only that: we used our G7 presidency to get other countries to commit to doing so too. We have pushed for this to become an international standard. We expect that to come out this month. We have set out how we will assess that for adoption in the UK. Transition plans are already a requirement for FCA-regulated firms, and we have set out our commitment to taking that further for large companies in the real economy later this year. The FCA already has its consultation on SDR and labelling out, so action is already under way. Again, this demonstrates that the regulators have the powers they need to take forward policy in this area.

I will not detain the House any further. I beg to move government Amendment 4.

Amendment 4 agreed.

Schedule 5: Financial promotion: related amendments

Amendments 5 and 6

Moved by ***Baroness Penn***

5: Schedule 5, page 137, line 32, leave out sub-paragraphs (3) to (5) and insert—

"(3) For subsection (4) substitute—

"(4) If either regulator—

(a) proposes to vary a Part 4A permission or to impose or vary a requirement,

(b) varies a Part 4A permission, or imposes or varies a requirement, with immediate effect,

(c) proposes to vary a permission under section 55NA, or

(d) varies permission under section 55NA with immediate effect,

it must give A written notice.""

Member's explanatory statement

This amendment would align the wording of new section 55Y(4A), being inserted by paragraph 10 of Schedule 5 to the Bill, with section 55Y(4) of the Financial Services and Markets Act 2000, by replacing both those provisions with a new section 55Y(4) which clarifies in a single subsection the circumstances in which a written notice must be given to a person.

6: Schedule 5, page 138, line 8, leave out paragraph 13

Member's explanatory statement

This amendment is consequential on the amendment at page 137, line 32.

Amendments 5 and 6 agreed.

Amendment 7 not moved.

Amendment 8

Moved by ***Lord Tyrie***

8: After Clause 23, insert the following new Clause—

"Regulatory Decisions Committee

(1) The FCA must establish and maintain a committee to be known as the Regulatory Decisions Committee (the RDC).

(2) The purpose of the RDC will be to take contested enforcement decisions on behalf of the FCA.

(3) The RDC must, in its decision-making function, be operationally independent of the FCA.

(4) The chair of the RDC must be nominated by the Chancellor of the Exchequer, and such nomination only has effect if confirmed by the Treasury Select Committee in the House of Commons.

(5) All other members of the RDC must be nominated by the FCA Board, and such nominations only have effect if approved by the chair.

(6) Members' appointment must be for a fixed term to be determined by the FCA, with such term to be no more than five years.

(7) Members of the RDC may be appointed for up to two terms.

(8) The FCA Board may remove a member of the RDC, but only in the event of that member's misconduct or incapacity.

(9) All members of the RDC including its chairman and deputy chairs, must be operationally independent.

(10) For the purpose of subsection (9), a person is not operationally independent if they are an employee of the FCA or any other UK financial regulator.

(11) Other than those for purely administrative purposes, all interactions between the FCA and members of the RDC relating to any specific potential enforcement actions must be minuted and disclosed to any person potentially subject to that action.

(12) The FCA must make available to the RDC sufficient resources, including legal advisers and support staff, to enable it to perform its function of determining fairly and expeditiously the matters which it is required to consider.

(13) Such staff may be employees of the FCA but must be operationally independent of FCA staff involved in conducting investigations and presenting cases to the RDC.

(14) The Chair of the RDC must, at least once per year, deliver a report to the FCA, His Majesty's Treasury, and the Treasury Select Committee in the House of Commons. Such report must address at least—

(a) the extent to which the RDC was able, in the period under review, to determine fairly and expeditiously the matters which it was required to consider,

(b) the resourcing of the RDC, and the extent to which the resources available to it have been sufficient to enable it to perform its functions, and

(c) the independence of the RDC, and in particular any circumstances or events where any impression of partiality, bias or undue access by the FCA to the RDC may have arisen."

Lord Tyrie (Non-Afl): I declare my interest as a consultant to DLA Piper, which helped me with drafting the amendment.

The need to provide the RDC with statutory autonomy was a recommendation of the Parliamentary Commission on Banking Standards, which I chaired in 2013. The purpose of my amendment is to give the FCA's internal watchdog, the Regulatory Decisions Committee, greater independence by putting it on a statutory footing. I set out why this is necessary in Committee so I will not repeat all those arguments now but, in a nutshell, the benefit will be greater fairness for firms and individuals; it can be accomplished without compromising high-quality enforcement.

The case for this is pretty straightforward. The RDC was created to act as a check on what would otherwise be the FCA's almost untrammelled power of

[Lord Tyrie]
enforcement. The RDC is the FCA's in-house watchdog —a second pair of eyes—which can stop an enforcement action. In theory, firms could go to the Upper Tribunal, the equivalent of the High Court, but that is very costly and the fact that its proceedings are in public creates huge reputational risk for a firm or individual going there. For many of them, that can be terminal. So, the RDC is often the only practical safeguard they have against overly zealous enforcement by the FCA.

The problem for the RDC is that it does not have enough statutory authority to do the job as well as it should. At the moment, the RDC's operational independence is wafer-thin. For a start, the RDC is subordinate to the FCA board. The board can and does decide what type of cases the RDC looks at, what resources are available to it and what procedures it should follow. The RDC also sits down the corridor from the enforcement team in the FCA. So it is small wonder that firms think it is much less than fully independent.

The price of the perception that the RDC is not fully independent is not just a sense of unfairness among some in the regulated community; it also carries a significant economic cost. It acts as a deterrent to activity and investment to many who do not want to take a risk of being on the wrong side of the enforcers. It is for these reasons, among others, that the Parliamentary Banking Commission, which I chaired, concluded that the RDC should be provided with statutory autonomy for its operations.

No doubt the Minister will have been briefed by the FCA, via her Treasury officials, that all these changes that I have set out are unnecessary—but they are necessary. The dangers that come with lack of independence have recently been vividly illustrated by the FCA board's decision significantly to limit the scope of the RDC's activities. There was very little public discussion. As of 2021, it no longer supervises the FCA's decisions relating to a firm's licensing, authorisations—the specific activities permitted under its licence—or an individual's approval: that is, whether people are suitable for senior appointments under the senior managers' regime. It also leaves firms and individuals unable to make oral representations in front of the RDC for many decisions that are crucial to their future. For many cases, those oral representations have now been closed down under the 2021 reforms.

So the narrowing of the remit will matter a lot, particularly for smaller firms. What is more, it will drive a coach and horses through the RDC's already fragile independence and certainly through the perception of it. The fact that such a change could have been pushed through by the FCA board, after a consultation exercise which did not even support it, illustrates the need for much greater accountability and much better explanations from the regulator. Something was already needed in 2013 when we looked at this, to boost the RDC's operational independence, but this 2021 reform shows that it is even more badly needed now. The modest amendment on the Marshalled List will entrench the RDC's independence in statute. It will give the RDC the jurisdiction to challenge—publicly, if necessary —FCA board decisions that are relevant to its work, and it will create a direct statutory line of accountability to Parliament for everything it does.

Since 2013, I have scarcely heard any arguments against the banking commission's proposal and, since I raised these issues in early March, I have been flooded with support from all sides of the financial services industry, and from a number of Peers and several former senior regulators. Two former Cabinet Secretaries have contacted me to tell me they strongly support it, as has the right reverend Primate the Archbishop of Canterbury. This is quite a large collection of varied support for a relatively small but sensible measure. They have done this, I think, because it has clear upsides, and neither they nor I can think of any downsides. It does not even carry an Exchequer cost.

I very much hope that the Minister will not be the last opponent standing when she stands up, but, if she is unpersuaded, I very much hope that she will at least agree to a consultation taking place on whether something should be done to boost the RDC's independence, with an open mind on what should be needed. In that conciliatory frame of mind, I beg to move.

Baroness Kramer (LD): My Lords, I had the privilege of adding my name to this amendment, and of serving with the noble Lord, Lord Tyrie, in his pre-Lordship days, when he chaired the Parliamentary Commission on Banking Standards. Like virtually everyone else who was on that committee and had spent two years taking evidence across the full range of issues that underpinned the crisis of 2008 and 2009, we were very surprised that the Government did not seize upon the recommendations for a body such as the RDC to have the kind of statutory independence that is described in this amendment. The amendment is extremely well drafted, as anybody reading it can recognise. It is not one of those where people say that the idea is good but there is a problem with the language. In this instance, there is not.

I have always thought that the regulator benefits as much as anybody else from oversight and challenge by an independent body with the requisite expertise. I also have the privilege of sitting in the Economic Affairs Committee. We have had discussions in the context of the independence of the Bank of England, but this has far broader implications. The problems of groupthink are becoming extraordinarily evident. Creating independence in a body such as the RDC is a mechanism for breaking down some of that groupthink. It is not because people are bad, incompetent or inadequate, but because, if there is not a process of challenge with sufficient gusto, groupthink begins to take hold. There begins to be a measure of complacency, people become less inclined to challenge and that benefits none of us.

I see no downside to the Government accepting this amendment. I hope that they take it extremely seriously and recognise that the quality of the language is here, meaning that they can run with this amendment as it sits, and that the regulator will benefit, the industry will benefit and individuals will benefit. There are very few occasions when one can look at a measure and say that this is true on all those fronts.

8.15 pm

Lord Forsyth of Drumlean (Con): My Lords, it is late, so I will not repeat the arguments which have been made by the noble Lord, Lord Tyrie, and the

noble Baroness, Lady Kramer. The amendment seems to be a very sensible measure, and if my noble friend cannot accept it, the noble Lord suggested a compromise of at least consulting on this. However, I am not sure that many people would say that this was not a sensible proposal. The amendment has certainly been very carefully drafted. We are on Report, and I have some sympathy with my noble friend on the Front Bench being faced with this, but it merits very serious consideration and would be very much welcomed in the City.

Lord Eatwell (Lab): My Lords, I apologise for missing the introduction from the noble Lord, Lord Tyrie; I was caught out by the Whips' rearrangement of business. Fortunately, I read his pamphlet on this matter, so I have a good idea what he said.

Lord Harlech (Con): My Lords, I am afraid that the noble Lord, Lord Eatwell, was not here for the opening comments from the noble Lord, Lord Tyrie.

Lord Eatwell (Lab): I am probably the only Member of this House who has been a member of the Regulatory Decisions Committee and I might have some observations to make.

Noble Lords: Hear, hear!

Lord Harlech (Con): Clearly, the House wants to hear the noble Lord's remarks, so please continue.

Lord Eatwell (Lab): If the Whips had not rearranged the business so peremptorily, one would not have been caught out.

Lord Harlech (Con): The business has not been rearranged; the Order Paper says,

"at a convenient time after 7.30pm".

Lord Eatwell (Lab): My Lords, as a founding member of the Regulatory Decisions Committee of the Financial Services Authority who served from 2001 to 2006, I reflect on the fact that at that time the FSA took extraordinary care in preparing the documentation that was submitted to the RDC. This clearly had an effect on the way in which the RDC prepared itself. This is an important element in ensuring that our regulatory system is not only fair but seen to be fair. Having read with care the pamphlet from the noble Lord, Lord Tyrie, I support the arguments that he made there, which I am sure he recently repeated in the House.

Baroness Altmann (Con): My Lords, I support all the work that the noble Lord, Lord Tyrie, has put into this amendment. He has worked for so many years and has so much knowledge on this subject. If my noble friend cannot accept the amendment today, I urge her to come back at Third Reading if possible, perhaps with the Government's own proposals for at least a consultation, which would be a reasonable compromise. There is a strength of feeling on this issue.

As the noble Lord said, the FCA has already been clipping the RDC's wings. We can see dangers and that there is huge support for proper independence on a statutory basis. We do not want the City to become an oligopoly; we need to protect some of these smaller firms for healthy competition. What is the Government's objection to this proposal?

Baroness Chapman of Darlington (Lab): My Lords, we commend the noble Lord, Lord Tyrie, on his amendment and on using it to raise important questions. We understand that concerns have been raised about the perceived watering down of the RDC's role within the FCA. While we know that the Government respect the operational independence of the FCA, we hope that the Minister is able to say something about the regulator's recent decisions on the RDC, which are causing substantial concern.

The FCA believes that the current balance of responsibilities is correct and that the recent reforms were necessary to ensure quicker decision-making. However, it would help if the Minister could outline what steps, if any, the Treasury might take in future, should it come to the view, if it has not today, that the system is not quite working in the way that it should.

Baroness Penn (Con): My Lords, I am also grateful to the noble Lord, Lord Tyrie, for raising this important issue through Amendment 8. The Regulatory Decisions Committee, or RDC, takes contested enforcement decisions on behalf of the FCA where the FCA has not been able to settle a case with the relevant firm. The Government recognise that the RDC performs a critical function within the regulatory framework. FSMA requires that decision-makers are independent, and the design of the RDC reflects this.

It is important that the RDC makes decisions fairly and transparently. To ensure this, the members of the RDC are wholly independent of the FCA's executive. The RDC also has its own team of support staff and legal advisers. This structure ensures that FCA personnel involved in the investigation of the enforcement case are not involved in supporting the RDC in its final decision-making.

As noble Lords noted, the FCA has recently made a number of operational changes to transfer decision-making responsibilities in certain cases from the RDC to the FCA executive, which will increase the speed of decision-making. However, decisions in contested enforcement cases continue to be made by the RDC.

In addition, should a firm or senior manager disagree with the final enforcement decision taken against them by the RDC, they generally have the right to refer the case to the Upper Tribunal. Where decisions fall to FCA executives, the relevant parties retain the right to make representations in writing. The FCA will also consider taking oral representations in exceptional circumstances, when not doing so would be detrimental to the fairness of decision-making. As set out above, the decisions made by FCA executives can also be referred to the Upper Tribunal should a firm disagree with them.

Any proposed legislative changes to the structure of the FCA's supervision and enforcement framework should be subject to appropriate public consultation. As we have discussed previously during the passage of the Bill, the Government sought views from stakeholders on the operation of the future regulatory framework

[Baroness Penn]
through a review. However, we concluded during that review that the case had not been made for changes to the FCA's enforcement and supervision functions given that these responsibilities were not increasing as a result of the UK's departure from the EU, unlike the significant increase in its rule-making responsibilities, which was the focus of the review and the subsequent enhancements made by the Bill.

Nevertheless, I am grateful to the noble Lord for bringing the importance of the FCA's supervisory and enforcement framework to the Government's attention. The Government do not see the need for legislative change in this area at this time. However, we support the noble Lord's aim to ensure greater independent scrutiny of and accountability within the regulatory framework. The Economic Secretary and I will look at this issue further, outside the passage of this Bill, to ensure that the FCA's supervisory and enforcement framework remains appropriate as it takes on new powers. We will continue to listen to the views of the noble Lord and other stakeholders as we do so.

I have also raised the issue with the FCA, and will pass on the response with further detail on the decisions and changes made to the operation of the RDC to this House. Therefore, I hope, for the reasons I have set out, that at this stage the noble Lord is content to withdraw his amendment and continue this conversation further outside the passage of the Bill.

Lord Tyrie (Non-Afl): I would be grateful for an opportunity to respond to a few of the points made there. Before I say anything more, I should say I have discussed this amendment on a couple of occasions with the Minister. If she does not mind my saying so, she makes a first-rate fist of doing an impossible job. I also hope she does not mind my saying that from time to time—and this was one of them—I had the impression that people in other places are pulling a number of the strings. That does give me cause for concern.

I will just make a few brief points. The Government have set great store by the Edinburgh reforms. They are designed to bolster business confidence and investment, and make sure that regulation and the threat of enforcement do not end up damaging the UK's pre-eminence in financial services, among other things. But if the Edinburgh reforms mean anything, they must mean that measures such as this—which would give businesses, particularly smaller businesses, greater confidence that they would be protected from arbitrary enforcement—should be seriously considered. I regret that they are being dismissed somewhat peremptorily.

The Minister said that oral representation is still possible before the RDC. I will not read out the FCA's response to the consultation, to which I referred earlier, in full, but if she were to go back and look at it, she will see that it has been effectively closed down for all but exceptional cases. It is that opportunity to have a private conversation with the RDC that is so greatly valued—I see the noble Lord who served on the RDC is agreeing—on both sides: on the RDC side and by firms. The RDC dose a very difficult job and does it very well, but it needs more empowerment. I regret that the Government are getting in the way of that.

My last substantive point takes us right back to where we started. Frankly, we have not heard a substantive argument against this proposal from the Front Bench just now, for the simple reason, I think, that there are not any. We have heard the suggestion that firms can still go to the Upper Tribunal, but there was no response to the points made that the Upper Tribunal is not a practical option for a very large proportion of the regulated community, both on grounds of cost and on reputational risk grounds, because it is held in public.

I find the arguments adduced for not doing the reform to be frankly incomprehensible. Its only real opponent of this left is the FCA itself. I would like to end just by drawing one conclusion from that point. It is very concerning that, when a regulator has a vested interest in an issue such as this, it can succeed in knocking down a sensible proposal with scarcely any explanation, and can persuade the Treasury that it should be knocked down and that the advice of that regulator should be taken without challenge. At that point, we are into a self-reinforcing spiral of ever more powerful regulation. That is exactly why, in so many different ways, Members on all sides of the House have come to the conclusion that we must have better accountability of the regulators, particularly the financial regulators, if we are to carry on handing them more powers, as is intended in the Bill.

Having said all that, seeing as I do not have the troops just now, I will withdraw my amendment.

Amendment 8 withdrawn.

8.28 pm

Consideration on Report adjourned until not before 9.10 pm.

Covid-19 Inquiry: Judicial Review

Statement

8.28 pm

The Deputy Speaker (Baroness Bull) (CB): My Lords, the Statement on which we are about to take questions concerns matters which are currently before the courts. The Speaker granted a waiver of the sub judice rule in the House of Commons yesterday to allow these matters to be raised on the grounds of their national importance. The Lord Speaker has also agreed to waive this House's sub judice resolution, both during proceedings this evening and on an ongoing basis.

The following Statement was made in the House of Commons on Monday 5 June.

"I am grateful for permission to make a Statement on the Government's decision to seek a judicial review on a specific point of law relating to the public inquiry on the Covid pandemic. The whole House will recognise that, on any issue that is before the courts, a Minister needs to act and speak with extreme sensitivity. We fully respect the difficult role that judges need to perform, and I appreciate that the conventions of this place are designed to ensure that we do not make their role—the sober and detailed consideration of facts of law by those qualified to do that—any harder. I am

sure that the House will respect the fact that, for those reasons, it would be inappropriate for me to debate the fine details of this case.

Notwithstanding that, we felt that there was very real public interest in the broader issue of why the Government would take the unusual step of asking for a judicial review on a point of technical difference between the Government and an inquiry that the Government have established. That being the case, we felt, as ever, that the matter should be raised in this House.

The Government fully support the vital work of the inquiry, which seeks to establish the facts, and the lessons to be learned from the response to the pandemic. It is right that the inquiry on Covid-19 be comprehensive and rigorous. It is being chaired by Baroness Hallett, an eminent former Court of Appeal judge. In this dispute, the guidance of the courts is sought on a narrow and technical point of law. It does not touch on the Government's confidence in the inquiry. Nor does it in any way affect the Government's intention to continue full co-operation with the inquiry. To date, the Cabinet Office alone has submitted 55,000 documents to the inquiry. We will continue to provide any and all Covid-related materials requested.

We are grateful for the work being undertaken by the inquiry chair and her team. The pandemic was one of the most difficult times for our country in living memory—so many people lost so much. The inquiry's task is challenging. It must have the support of us all in conducting its work, and in bringing forward its conclusions in a timely way. The core point of principle that is raised is whether there are limits to the power of the inquiry to compel information and documents to be produced.

Specifically, the question raised by the compulsory notice under the Inquiries Act 2005 that was served on the Cabinet Office is whether the inquiry has the power to compel production of documents and messages that are unambiguously irrelevant to the inquiry's work, including personal communications and matters unconnected to the Government's handling of Covid. The notice received is bound to include a range of material of that nature. It covered a two-year period and a range of documents, including WhatsApp messages relating to my right honourable friend the Member for Uxbridge and South Ruislip, Boris Johnson, and a former special adviser.

I reiterate that all material that is relevant to the inquiry's work has been and will be provided to the inquiry; likewise, material about which there might be real questions about its relevance to that work. There is no question but that all internal discussions on Covid, in any form, requested by the inquiry will be made transparently available to it. What has been redacted, and so not provided in response to the notice, is material that the Cabinet Office considers to be clearly and unambiguously irrelevant to that work. That material includes, for example, communications about purely personal matters and about other aspects of the Government's policy and work which have nothing to do with Covid. It is that material, and that material alone, that is subject to judicial review. Honourable Members wanting to see more detail of our concerns may be interested in our letter to the inquiry, sent last Thursday, which is available on the Government's website and a copy of which I will deposit in the House of Commons Library.

As in any such dispute, there are two sides to this debate. Baroness Hallett, as I have said, is a highly respected senior judge and inquiry chair in whom the Government have great confidence. The inquiry has made relevant statements regarding the Government's position on its website, to which I draw the House's intention. The inquiry will no doubt be making further statements. Above all, as I understand it, the inquiry believes that it should be for the inquiry alone to judge the relevance of the material requested. We respect that position and, as I have indicated, the Cabinet Office has provided material about which there might be a dispute.

Where we differ with the inquiry is only in relation to material that is considered to be clearly and unambiguously irrelevant, and that is considered to be so after careful checking. This is a genuine and sincere difference of opinion on which we are seeking the guidance of the courts. I do, however, want to assure the House that the Government have explored with the inquiry ways to bridge the gap between those sincerely held but differing views, and we will continue to do so. We appreciate the patience and good will shown by the inquiry as we have sought to identify a mutually acceptable solution.

We have also sought to assure the inquiry on the nature of the redactions of non-relevant material from the information requested in the Section 21 notice and how those would operate. The process deployed to ascertain and redact unambiguously irrelevant material from that information is as follows. Witnesses are required to identify any material that may contain potentially irrelevant information to the inquiry, with guidance from the counsel team supporting them. That is then reviewed by the counsel team, who identify any material that is unambiguously irrelevant. The counsel team discusses it with the witness in case there is any context or detail of which they may not be aware. The review by the counsel team includes the assessment of a King's Counsel instructed by the Cabinet Office. No decision to redact material as unambiguously irrelevant has been or will be taken by a witness acting alone.

These redactions will all be kept under review such that if the scope of the chair's inquiry changes, she will be able to receive the material that becomes potentially relevant. I would like to reiterate that this is a matter of legal principle that will have an impact on this Government and all future Governments. This is absolutely not related to one individual's personal information.

In conclusion, I would like to again issue my thanks to the inquiry chair and her team for the important work they are undertaking. The Government have only embarked on this course after serious consideration. It is with regret that we felt the judicial review had to be brought forward. We are very aware that it is sometimes in the nature of government that difficult decisions have to be taken, knowing that in the short term they may of course be criticised or misinterpreted, but which we believe are important for the country in the longer term. Whereas it is entirely right that any

[Baroness Bull]
material in any way related to Covid is available to the inquiry, we believe there is value to challenge and debate inside government being unclouded by the knowledge that other discussions could be disclosed regardless of their relevance to any future inquiry. As such, we believe this request for guidance is necessary.

Finally, I would like to make it absolutely clear to all those directly affected and bereaved by Covid that the Government will do absolutely nothing that we believe impedes the vital work of the inquiry, to give them the answers they deserve and that the country needs to ensure that we learn the lessons of Covid. I commend the Statement to the House."

8.29 pm

Baroness Smith of Basildon (Lab): My Lords, before I start, I will just emphasise the point made by the noble Lord that it is unusual when business says

"at a convenient time after 7.30 pm"

to be starting closer to 8.30 pm. I wondered whether the Government were trying to delay it because the Minister did not want to answer questions.

Where I suspect the Government and I would agree is that Ministers, politicians and officials need private time and space to explore and discuss issues as they develop policy, but that is not what the Government's legal action in this Statement is about. There were basically two reasons why the Government launched this inquiry into the handling of the Covid pandemic. The first was to learn lessons from what was done well, what went wrong and what changes could be made for us to be better prepared and to better respond to such events in future. For there to be trust in government for any similar event in future, we must ensure we are able to respond effectively.

Secondly, the inquiry was about trust, responsibility and accountability. Many questions have been raised since; for example, about preparedness beforehand, the supply and purchase of PPE and the disputes the Government had about scientific advice, and the view from the Government was that an independent, judge-led inquiry was the most appropriate way forward. To this end, the Government chose a highly regarded former judge, the noble and learned Baroness, Lady Hallett. I am giving some background on this because in your Lordships' House we do not now benefit from hearing a Minister read a Statement out, so it is somewhat awkward for those listening to know what is going on. Normally, I would just have questions, but I think it is important to set on record some of the scene, which should be the Government's job.

The Government chose a highly respected former judge, the noble and learned Baroness, Lady Hallett, but what appears to be the case—I would be grateful for the Minister's comments on this—is that the terms of reference for that inquiry and the timescale in which it was to be expedited were not fully formed and there is now a dispute between the Government and the inquiry. We now have a rather embarrassing position where the Government are seeking a judicial review to, in their own words, test

"the core point of principle"

of who decides whether there are limits on information that an inquiry can request. The Government's argument is that this applies only to documents that are "unambiguously irrelevant" and that this is a test case. It has been admitted by a Minister that the Government expect to lose the case but, apparently, even then, it is important to test the point of principle in the court with the taxpayer footing in Bill.

I have a number of questions for the Minister. What discussions were there between the Government and government representatives and the inquiry prior to the application for judicial review? In other words, was there any attempt to resolve this more sensibly? Can she confirm that the inquiry is being conducted under the Inquiries Act 2005? Is she confident that a judicial review is compliant with the entirety of that legislation? If so, on what grounds are the Government seeking judicial review? If, as the Government have previously confirmed, there are well over 20 million documents that could be relevant yet so far only 55,000 have been provided to the inquiry, have they made any assessment, should they be successful in the case, of the timescale for assessing those documents—whether or not the Government consider they are relevant to the inquiry—and what are the criteria for those documents being assessed as relevant? Was that ever discussed prior to the judicial review with the noble and learned Baroness, Lady Hallett?

I think the important question is whether it is true that the Government have told the former Prime Minister, Boris Johnson, that if he rocks the boat on this inquiry, they will stop paying his legal costs. The Minister huffs and puffs at me, but this has been raised in the press—it has been discussed quite openly—and I think it would be helpful in your Lordships' House to get an accurate assessment of whether that has been the case or has been discussed, and whether there has been any discussion at government level of that kind of tit-for-tat approach.

As regards the type of documents and information requested, can the Minister say how many of those communications were by WhatsApp? The reason I raise that is that we have discussed this WhatsApp issue before, and there are real concerns that Ministers have been far too casual about communications through private messages and social media platforms, mixing up what is appropriate government business with what is just gossip and chit-chat. I can understand that Ministers may be concerned about the public reaction to the banality of some of those messages, as the Hancock exposé revealed, but the Minister has to understand that this just fuels suspicion that this judicial review is more about protecting reputations than learning the lessons of what happened during the pandemic.

I hope the Minister understands that there are real fears that, by their action, the Government could undermine the very purpose of the inquiry. If it is felt that information has been withheld or suppressed, then one of the key objectives—public trust—will have been undermined, with damaging consequences not just for our politics but for confidence in any measures that may be required if and when we face another major public health event. Other countries have already reported on their investigations; all these delays mean there is a danger that by the time these issues are resolved, it will be too late for lessons to be learned.

So many who have lost loved ones or are still living with the consequences of Covid deserve to know the truth. They also deserve to be reassured that we understand where the Government's successes were, where the failures were, and that lessons have been learned. I hope the Minister will be able to give some answers today to reassure the House that that is the Government's ambition too, because that aim is being undermined by this legal action.

Lord Allan of Hallam (LD): My Lords, what a dog's breakfast this is when a Government who spend so much time complaining about other people using judicial reviews stand before us trying to justify their decision to use the same legal process to prevent an inquiry that they set up having access to communications sent by members of that very same Government on matters of significant public interest.

The Government's case appears to be that full disclosure would be unfair because their communications are all over the place, mixing business and pleasure with God knows what in a soup of uncontrolled WhatsApping, as the noble Baroness, Lady Smith of Basildon, has already flagged. Yet this is a problem entirely of their own making. While the pandemic was not something that anyone could have foreseen, it was entirely predictable that the way this Government have been working would lead to problems. If this were not happening with the Covid inquiry, we would have arrived here sooner or later with some other investigation into government decision-making where disclosure of Ministers' messages was necessary.

Does the Minister accept that this situation could have been avoided if her Government had shown more discipline in managing government communications from the outset? Does she agree that it was not inevitable that we would end up in this mess—that this could have been avoided through having clear rules such as using different devices for home and work communications, as is common in many other sectors? Can she indicate whether all Ministers are now following improved protocols so that we will not repeatedly fall into this same situation, as there are surely other areas of government policy that will be challenged either in the courts or through future public inquiries?

I am sure that all of us find it hard to keep track of which communications channels we use for which purposes, and it can of course be convenient to mix them up, but the business of government is special and communications about decisions by government that affect millions of people have a particular importance. This importance means that Ministers of the Crown and those working for them should be held to a higher standard, and they have more resources available than most of us to help them meet those high standards.

The fact that this court case is happening is not—however much the Government protest—a way of protecting all Governments from overreach, as not all Governments would have allowed decisions to be made in the way that this one has done. Concerns about this Government acting as a chumocracy, mixing public business with the private interests of their friends and supporters, run much more widely than the supply of PPE during the pandemic.

The public interest is not now served by the Government throwing up legal barriers to those we have tasked with investigating, thoroughly and impartially, how decisions were made on matters of massive public interest. The Minister has a job to do and she has been sent here to defend her Government's latest actions, but I hope that she will at least acknowledge that this is not a bolt from the blue but an inevitable consequence of how her colleagues have been working for far too long.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): I start by agreeing with the noble Baroness, Lady Smith of Basildon, that it is difficult to answer questions when we have not had the benefit of the Statement. It was a long Statement in the other place.

Baroness Smith of Basildon (Lab): The Minister misunderstands. It is difficult to ask the questions, but it should be easy for her to answer them.

Baroness Neville-Rolfe (Con): It is helpful to set things out, and I thank her for trying to do that.

I want to respond to the point about our intentions. The noble Baroness described the inquiry and how it was set up. The Government wholeheartedly support and endorse this important inquiry as it seeks to establish the facts and lessons to be learned from the response to the pandemic. I agree that the noble and learned Baroness, Lady Hallett, the very distinguished, eminent former Court of Appeal judge who is chairing the inquiry, brings invaluable experience, and we are very grateful to her and the team.

As noble Lords know, the Cabinet Office is challenging the Section 21 notice issued by the chair, fundamentally as a matter of principle. We are protecting the proper conduct of government for the longer term. Indeed, we remain hopeful and willing to agree the best way forward with the inquiry.

The noble Baroness asked about discussions between the Government and the inquiry prior to the application for review. We have been working for months and making documents available. That has been done by the special team for the inquiry in the Cabinet Office. Attempts have been made to agree and, as the noble Baroness said, we are conducting the inquiry under the 2005 Act. The grounds of our review have been set out clearly in a statement of case and grounds. That has been made available and is on GOV.UK so that people can understand what our case is about.

Obviously it is with regret that we felt that judicial review had to be brought. I assure the House that it has been done in relation to unambiguously irrelevant material—I cannot emphasise that more—and as a matter of principle. The Government are not trying to suppress anything. We are happy to provide any potentially relevant material that the inquiry requests, but not unambiguously irrelevant material, which is an unwarranted intrusion into other aspects of the Government's work. That explains the need for what is, in a sense, a narrow and technical judicial review. It does not touch at all on the Government's confidence in the inquiry.

[Baroness Neville-Rolfe]

The noble Lord, Lord Allan, asked about the JR and felt that people would not understand why we were doing it. The truth is that the Government embarked on this course only after very serious consideration. It is with regret that we had to bring the judicial review forward. We are very aware—I am very aware of this—that it is sometimes in the nature of government that difficult decisions have to be taken, knowing that in the short term there may be criticism, but we believe it is important for the country in the longer term to ensure exactly the arrangements for disclosure. However, I cannot emphasise more strongly that if information relates to Covid then it will be made available to the inquiry.

It is true that there is a lot of documentation, along with WhatsApps, calendars and so on, to be gone through. That is why the Cabinet Office and other departments are doing everything they can to make information available to the inquiry in a usable and sensible form. I emphasise that, on the whole, relations with the inquiry have been harmonious and co-operative. What the inquiry does and decides is a matter for it, but we have done our very best to continue with that and make sure that things run smoothly.

As the noble Lord, Lord Allan, said, some inquiries in other countries have already concluded. He probably mentioned Sweden, which I think had a less wide-ranging inquiry. There is much wishing here for the inquiry to be very wide-ranging and to look at all the different issues. That is why the noble and learned Baroness, Lady Hallett, has set out the procedure for the inquiry in the way that she has, with modules looking at different things. We are assisting her. All government Ministers—those being supported by the Government—are co-operating with the inquiry.

8.45 pm

Baroness Chakrabarti (Lab): My Lords, on the anniversary of D-day, I remind noble Lords that during the pandemic this country alone lost twice as many civilians as we lost during World War II. Therefore it was quite right that the Government decided, like many other countries, to hold some kind of independent inquiry into the handling of something that was difficult for everyone—no question about that. I hope the Minister knows my respect for her; she knows that we share a characteristic of being former civil servants. I declare a further interest in being a former inquiry member, having served on Lord Leveson's inquiry, so I hope I have a number of insights into this kind of process.

I am concerned that sometimes Governments hold inquiries, important though they are, to kick important issues into the long grass. If I am not right about that, I am sure that a lot of people in the country share a potential cynicism about the inquiries held. I think the noble Lord, Lord Allan, suggested that it is like saying, "We don't believe in legal aid or in judicial review, but we believe in judicial inquiries whenever there is a political crisis". I have concerns about that.

In particular, however, I ask the Minister: how is it ethically or publicly appropriate to constitute your own independent judicial inquiry into a matter of such public concern and not to trust the judge—a Member of this House—to decide what is relevant and not relevant, and what is sensitive and not sensitive? If there are things that are sensitive, how is it not appropriate to put in the disclosure with suggested redactions and leave it, for goodness' sake, to the noble and learned Baroness, Lady Hallett, rather than to judicially review the government's own instituted inquiry? Further, and finally, how is it appropriate to use the leverage of withdrawing legal funding from witnesses as a means of deciding that those witnesses—whoever they are, whether I like them or not and whether I agree with them or not—should not co-operate with the inquiry of the noble and learned Baroness, Lady Hallett, for fear of having legal support withdrawn?

Baroness Neville-Rolfe (Con): Perhaps I could pick up that last point, which the noble Lord, Lord Allan, also raised—

Baroness Smith of Basildon (Lab): It was me.

Baroness Neville-Rolfe (Con): My apologies. There is a well-established precedent, as we all know—I think it goes across many Administrations—that former Ministers are supported with legal representation after they leave office. The cost of that is met from government funds and for good reasons, I think, for when those of us who serve as Ministers are doing so. When the former Prime Minister, Boris Johnson, decided to recuse from being supported by government legal services a letter was sent to him, explaining that it was possible for him to have his legal advice—if this is what was being referred to—paid for, subject to the normal rules of value for money, as the Permanent Secretary has to sign off that money is properly spent. I think it is a non-issue and that he is now drawing on his own solicitors, Peters & Peters, for advice.

The noble Baroness, Lady Chakrabarti, explained that we all agree that we have empowered a very eminent judge. I think she was making the point that it is up to the judge to decide what is relevant and what is not. We agree that the framework of the inquiry is for her to decide, but there is this narrow point about unambiguously irrelevant documents and messages. Some of those are WhatsApps, as has been mentioned. Since the Act was passed, WhatsApps have become a much more common form of communication. You can imagine that in the bundles there is a combination of personal communication and matters that are completely unconnected to the Government's handling of Covid.

I want to make it clear—the Paymaster-General made it completely clear in the other place—that documents relating to Covid and potentially relevant material will be made available to the inquiry. It is a broad-ranging inquiry. We owe it to the people who lost their lives and those whose relatives lost their lives to find out what happened. The inquiry has to be of a very wide-ranging nature. However, in some of those documents and notebooks, there is material which is completely unconnected to the Covid inquiry.

We have therefore asked a judge to use the process of judicial review—those noble Lords who have been involved in the courts will know this is quite a common process—to rule on this technical point. We hope to have a hearing on this by the end of June so that things

will be clear. In the meantime, we are continuing to submit material every day to the inquiry and to work with it.

Lord Faulks (Non-Afl): My Lords, I apologise for missing the first 30 seconds of the observations of the noble Baroness, Lady Smith. Some of us were standing by and did not expect business to proceed quite as quickly as it did. I think some others may be in the same position.

The optics of this are not particularly good. I can understand the observations made by the noble Baroness, Lady Smith, and the noble Lord, Lord Allan. Clearly, individuals involved in this inquiry should not be able to hide behind process and conceal anything which may be relevant to the inquiry. I of course share with others the confidence in the noble and learned Baroness, Lady Hallett, as an entirely suitable chair with a very important role to fulfil.

I find some reassurance in the Statement in the description of the process, which has been undergone and will continue, in deciding what should or should not be disclosed. It says:

> "Witnesses are required to identify any material that may contain potentially irrelevant information … with guidance from the counsel team supporting them. That is then reviewed by the counsel team, who identify any material that is unambiguously irrelevant. The counsel team discusses it with the witness in case there is any context or detail of which they may not be aware. The review … team includes … a King's Counsel … No decision to redact material as unambiguously irrelevant has been or will be taken by a witness acting alone".

There is an important role for the lawyers, rather than the witnesses, in deciding on relevance, although that is a continuous process. This is perfectly familiar to those like me who have been involved in disclosure and judicial review generally. It seems that there is a matter of importance in deciding what should and should not be disclosed, not just for the purposes of this inquiry but for inquiries in the future which may involve different Governments on different issues.

However, I ask the Minister whether it is possible to reach some kind of compromise on this, so that in the process described, which should be able to identify matters which are relevant or unambiguously irrelevant, there should be some circle of confidence involving the inquiry and its chair's lawyers to enable her, her team and the government lawyers to ascertain what is truly relevant while not wasting a lot of time on things that are irrelevant and without forcing some judge to make a rather difficult decision on where the parameters lie.

Baroness Neville-Rolfe (Con): I thank my noble friend for his wise advice and the background. We miss him on the Front Bench, and it is good that he has come to talk to us today. As evidence of his point, materials are carefully considered. One of the issues under debate was the Sarah Everard processes. In this case, a message that appeared unconnected to Covid was initially redacted, but it was then identified as potentially relevant as part of the additional counsel review, which the noble Lord referred to, so the Cabinet Office then provided it to the inquiry proactively. A process is going on, and a large team is working away at this. All along, our legal team in the Cabinet Office looking after the inquiry has tried to agree on sensible arrangements. We have entered a JR, but we remain hopeful and willing to agree the best way forward with the inquiry, if that is possible.

Baroness Brinton (LD): My Lords, one of the strengths of a judge-led public inquiry is that it is able to look at everything, including the emerging wider context and competing pressures facing those who have to come to some very difficult decisions. Inquiries such as the Leveson inquiry, that on Hillsborough and, more recently, IICSA have all had confidential information and have had to decide what to redact. I was peripherally involved in the latter of those as a witness, and it was somewhat nerve-racking to hand over personal information, but I was utterly confident that the decisions would be made in the interests of the inquiry.

As the health spokesperson on the Front Bench during Covid and just before it first struck in January and February 2020, I note that there are a large number of issues, including the Government disbanding the pandemic preparedness group to leave more space for Brexit. NERVTAG and SAGE minutes between January and February changed very quickly, and it is illuminating to read them. But it was concerning to read that the Prime Minister missed the first five COBRA dates, and there were reports that he was not working on weekends during that early period. In addition to those reasons, some of what the inquiry needs to look at includes why the UK did not follow the World Health Organization guidance on testing and protection from the start, and why the UK Government sent PPE to China just at the point that the experts were saying that our health people needed it. We had health staff in bin bags because we did not have any PPE in this country.

For all these reasons, I ask the Minister whether she believes that the inquiry really needs to see the detail of that correspondence. It may look irrelevant from the outside, but, in terms of emerging contexts and competing decisions, it becomes vital to what happened and whether people lived or died.

Baroness Neville-Rolfe (Con): The Government set up the inquiry for exactly the sorts of reasons that the noble Baroness outlined. These questions need to be answered. As I said, the Government are making available all relevant information—anything related to Covid or decisions about it is being made available. The judicial review is on a narrow technical point about unambiguously irrelevant items, and I assure the noble Baroness that the Government seek to ensure that the inquiry and its chair have all the information and access to witnesses that they need, to ensure that the very important questions that the chair is asking are answered. That is why we are having an inquiry. Of course, we want it to get on, and we look forward to learning the lessons as soon as possible.

Lord Wallace of Saltaire (LD): My Lords, does the Minister recognise that this is a particular example of the confusions and contradictions into which the Government have now slipped, in terms of our constitutional conventions and of maintaining public confidence in constitutional government? After all, we are being asked to accept that what the Cabinet

[Lord Wallace of Saltaire]
Office decides is or is not relevant to the inquiry should be accepted, rather than what a judge who is heading the inquiry considers.

According to recent public surveys, public trust in government is now lower than it has been in my lifetime; this is not a decision that would help to restore public trust. I spent the last 24 hours leading a very interesting new Constitution Unit publication on the executive prerogative. This is, after all, an issue of executive dominance, or acceptance that the rule of law is dominant. We have had a number of arguments in this House over the last two years about executive dominance versus parliamentary scrutiny. We have also had a parallel argument about the rule of law, the role of the courts and the influence of lefty lawyers—as is so often said in the right-wing media—and of the damage that excessive judicial review was doing to decent executive government. Now, we have the Government reversing and wanting to use judicial review, which they have been arguing about limiting for a good time, so that they can defend themselves against their own inquiry.

Does the Minister not agree that, after we come out of this, this Government or the next Government need to have a very thorough examination of the relationship between our courts, the rule of law and the Executive, and between the Executive and Parliament, to determine how they will restore wider public confidence in the balance between the institutions which hold our Government together?

Baroness Neville-Rolfe (Con): I am grateful to the noble Lord for his thoughtful comments. Issues about the Executive and Parliament are ones that we debate. We have set up a very broad inquiry to learn the lessons and do the right things for the future. The Cabinet Office and other departments—because other departments are also party to the inquiry—have followed procedures that have worked well on a series of other inquiries. What we have found here is that there has been an issue about some unambiguously irrelevant information. That is not going to stop us making available all relevant material in relation to Covid. I think that people have just mistaken our intentions, but I am sure that it will be quickly resolved—obviously, that is my hope.

Baroness Chakrabarti (Lab): So as not to mistake the Minister's intentions, why not make the application not for judicial review but to the noble and learned Baroness, Lady Hallett, herself, by submitting with full disclosure with a submission that certain parts of it be redacted? That is what a Government do when they have trust in the judicial chair of their own inquiry, so why not do that?

Baroness Neville-Rolfe (Con): As I hinted, we have been in discussion for some time, and we have tried to make progress. We have taken the view, on advice from our own King's Counsel, that it is appropriate to seek a judicial review—so that we can get guidance on this narrow and technical point of law, particularly in the new era of communications—and that that is the sensible thing to do.

I failed to respond to an earlier question about the use of digital communications. I should repeat that this is something we debated. I made a Statement in March issuing the new guidance on the use of non-corporate communication channels, which distinguishes between things that must be recorded for posterity, and the disciplines that we as Ministers have to enter into, and the ephemera with which is not appropriate to clog up the record book. Obviously, it is early days, but I hope that that will help with these issues in the future. I also look forward to the clarity of this judicial review, into which we have entered with good faith and the expectation that it is proper, whatever might have been said by some others.

Baroness Smith of Basildon (Lab): My Lords, the Minister has addressed a number of issues tonight but, looking back, I am not sure that she answered many of the questions that I asked at the beginning. I shall check *Hansard*. To press her on one point, she was clear that the inquiry was under the Inquiries Act 2005 and all parts were being complied with. I asked her about the judicial review, and she did not really respond to that. She may not have time to reply now, and she may not know the answer, given her previous answers, but I would ask her to look at Section 21 of that Act, which says that the person who chairs an inquiry can require a person giving evidence to

"produce any other thing in his custody or under his control".

There is quite a bit in that section about the duty to comply with any request as

"determined by the chairman of the inquiry",

which would imply that the Government may not be fulfilling all requirements under that section of the Act. I would be grateful if the Minister could look at that and write to me.

Baroness Neville-Rolfe (Con): I can certainly look at it. The document that I mentioned, which is on the internet, starts off by going through exactly those paragraphs of Section 21 and picking up the points that the noble Baroness has made and explaining why. Interpretation is at the heart of the judicial review. As the noble and learned Baroness, Lady Hallett, helpfully made clear this morning when she made some comments in opening a phase of her inquiry, we should leave that to the court, and find out how that works out. But I am very familiar with Section 21.

9.06 pm

Sitting suspended.

Financial Services and Markets Bill

Report (1st Day) (Continued)

9.10 pm

Clause 24: Competitiveness and growth objective

Amendment 8A

Moved by ***Viscount Trenchard***

8A: Clause 24, page 38, line 23, leave out "aligning with" and insert "having regard to"

Member's explanatory statement

This amendment, and the amendment to Clause 24, page 39, line 2, in the name of Viscount Trenchard, amends the role of international standards in relation to the growth and competitiveness objective.

Viscount Trenchard (Con): My Lords, Amendments 8A and 8B were originally tabled by my noble friend Lady Noakes. In moving Amendment 8A, I remind your Lordships of the interesting debate on this matter in Committee on 1 February. I repeat that we are, in many fields, especially financial services, a leader in the formulation of international standards and best practice. The FCA says on its website:

"We contribute to and implement international standards, and supervise and enforce rules based on them in the UK".

I believe that the UK's influence in IOSCO, the recognised standard setter for securities regulation, has been enhanced now that we sit at the table in our own right, rather than as a member state of the EU. The same is surely true with regard to our influence within the International Association of Insurance Supervisors.

I support the new competitiveness and growth objective—although I think it should have been of equal importance with the regulators' primary and operational objectives—but I continue to believe that it is rather curiously drafted. I am still not sure what the Government mean by

"aligning with relevant international standards".

First, the word "relevant" is very subjective. We all know that there is often a lack of consistency as to what different people consider relevant. I already worry that the competitiveness and growth objective will be subjugated to the primary objectives, depending on which standards the regulators may choose to exempt them from the need to have regard to.

Secondly, surely the amendment is drafted in a way that gives too much weight to policies developed outside the UK, which are claimed by some to be international standards. Does my noble friend want to see a position where the PRA, for example, can ignore the secondary objective on the grounds that it is following international standards, where those standards are not core to the primary objective? International standards are a highly subjective concept and it is not at all desirable for the UK to have to adhere to everything that claims to be an international standard. The competitiveness and growth objective is already circumscribed by its status as a secondary objective. Using the PRA as an example, this means that it has only to,

"so far as reasonably possible, act in a way which … advances the competitiveness and growth objective".

If the PRA considers that adherence to certain international standards is necessary, they are already covered by its primary objective. However, if an international standard is not necessary for the primary objective, why should such an international standard crowd out the competitiveness and growth objective?

9.15 pm

Besides, it is not easy to define what is an international standard. As my noble friend said in Committee, the Basel capital standards have not always been followed universally—most notably by the United States, which pursued its own course for a considerable period. International standards are not matters of international law. Their implementation is always a matter of judgment for the home regulators, and therefore needs to be considered in the judgments they make on their primary objective.

My noble friend the Minister's response on this matter in Committee was, I fear, a little disappointing, although she acknowledged that nuances of the UK market mean that the international standard is not appropriate. She added that it may be best for UK markets to go beyond the international standard. It is quite possible that I missed it, but I do not think my noble friend acknowledged that it is a largely subjective consideration as to what is relevant, and it is certainly subjective and lacking in clarity as to what international standards are.

I ask my noble friend whether she can at least bring back a definition for Third Reading if she does not consider that my amendment offers a reasonable solution, for "having regard to" is a lot less onerous than requiring "alignment with". I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, I have two amendments in this group. Amendment 9 is similar to one I tabled in Committee and is intended to focus the secondary objective on the advancement of the UK economy through fair and efficient operation of financial markets.

It still concerns me that the Government's wording can be interpreted as more about general profitability of financial services, rather than the positive nature of their operation on the economy. We got into a bit of a tangle about this in Committee when the Minister focused on how financial services made money out of clients. I hope the Minister can now appreciate the nuance and at least confirm that the primary intention of the secondary objective is benefit to the economy that is served by financial services, and not maximum income generation from financial services to the extent that it is of detriment to the economy.

A great deal of attention has gone into asking what regulatory issues have risked competitiveness. A key example is how the London market lost out in new insurance products when the regulator was too slow. Criticism has been levied about delays in SMCR approval of new staff. My Amendment 115 concerns an alarming example of harm to the economy and proposes a solution through a specific legislative amendment. It aims to fix a competitiveness and investment issue with listed closed-ended investment funds. As such, I declare my interests as both a director of the London Stock Exchange plc and a director of Valloop Holdings Ltd, which has potential interest in such listings.

For the last 14 months, a dire situation has been seriously affecting the UK economy and should have been resolved but has not. It has its origins in a face-value interpretation of an EU regulation that is part of the MiFID family, relating to how ongoing charges should be presented in collective investment schemes that invest in other funds and a desire to create a consistent cost disclosure framework in a somewhat inconsistent EU framework.

As part of reviewing what should be included in cost redisclosures, the FCA asked the Investment Association —the principal trade body for the asset management industry in the UK—to provide new guidance. That guidance now requires that when a fund holds shares in listed closed-ended investment funds—also known as investment trusts—it should aggregate with the investing fund's own charges all the underlying running costs that are incurred within the investment trust,

[Baroness Bowles of Berkhamsted]
including the listing and corporate costs, in the same way as it would were it to hold units in an unlisted open-ended fund. The IA took this line because the investment trust is regarded as a collective investment undertaking, and the EU regulation refers to collective investment undertakings.

At first sight, the cost disclosure might look reasonable, but it ignores the nature of investment trusts, which have publicly traded shares with a price set by the market: an investment trust is essentially like any other publicly traded company from an investment perspective. If a fund invests in the ordinary shares of a listed commercial company, the internal costs of that commercial company do not have to be shown in aggregated charges. For both listed commercial companies and listed investment trust companies, everyday running costs are disclosed in accounts, reflected in profit and ultimately in the share price, which embodies investors' assessment of the company, including its underlying costs. However, the IA guidance instead equates investment trusts with open-ended funds, requiring internal running costs incurred at the investee investment trust level to be aggregated as a cost, setting aside the fact that, unlike with units of open-ended funds, investors have already factored such charges into the price that they are prepared to pay for the shares of the investment. Thus, for example, directors' fees of an investment trust aggregate as an ongoing charge of the investing fund; the directors' fees of a commercial company that is similarly invested in do not have to be aggregated. Likewise, various other corporate costs receive dissimilar treatment.

Therefore, that is an unfairness, but why does it matter beyond being anti-competitive, as if that is not enough? It matters because those corporate costs being in effect almost duplicated and put under the headline of "ongoing charges" suddenly elevated the ongoing charges of the fund investing into the investment trust, sometimes to levels where they hit cost ceilings put in place by various pension funds and other collective investment funds, or simply made fund managers cringe when the headline of accumulated charges suddenly looked more expensive and people started to think that they were doing something wrong. Hence, there became a disincentive to invest in investment trusts to avoid these unexpected changes, questions about them or hitting cost ceilings. A great deal of investment choice follows the headline and not deeper analysis, which separates and explains the varying nature of costs.

To make the point again, an ordinary listed commercial company, such as SEGRO plc, which invests in property, might now be deemed investable while the exact same property investments with the exact same costs, held for example by the investment trust Tritax Big Box fund, might be deemed not investable because one does not have to have its corporate costs regarded as ongoing charges and the other does.

I do not think it is a coincidence that, since the new guidance, there has been no real asset IPO and just a couple of small equity IPOs of investment trusts. At a stroke, something that has at times been regarded as a jewel in the London funding ecosystem—an expanding sector of listed funds investing into long term illiquid alternative assets such as renewable energy and other infrastructure—has been abandoned.

I just gave an example of two companies investing in property, with no intention to impugn either, but there are some sectors of the economy where using an investment trust to raise funds is the only route to capital—notably for new and innovative business in the environmental and social sectors: businesses such as HydrogenOne, which is leading investment into UK's alternative energy, directly linked with our net-zero commitments.

It is also the case that investment trust exposures are typically more diversified and real than exposures via commercial corporates, which investors appreciate but now cannot access as they have been dropped from portfolios. This is a real loss to the UK economy that has been going on for 14 months. We have all read the news about companies switching listing from London for valuation reasons—and that is another story—but here it is not switching, it is simply regulatory asphyxiation.

Both the FCA and the Investment Association know and understand the problem. The IA thinks it should be fixed and has publicly written about it to the FCA. On the face of it, given that inherited EU legislation is the mix, I think it is more up to government and the FCA to fix it than the IA, even though it came up with the guidance. In any event, you go up the power chain to fix a disaster. It is also worth noting that there is no actual legislative EU definition of collective investment undertaking, only ESMA guidance, from which the FCA could distance itself, if only for this specific purpose.

The Government have been informed of this issue and, while dreaming up ways to help more investment in the productive economy is important for the Chancellor, all he has to do here is stop this extinction event. It is not about undermining transparency; it is about understanding what is and is not like-for-like. There are those who have been getting around it in some EU countries by saying that for cost disclosure purposes, an investment trust is a company not a fund, but investment trusts are not mainstream in EU countries; they use other channels for investment, so the issue is not really pursued.

The UK situation now is that we have essentially just clarified our law using definitions originating in soon-to-be-discarded PRIIPs and non-legislative EU guidance, front-running a wider-reaching FCA review and achieving nothing but harm. My amendment shows one way to fix it by amending the regulation so that all listed companies are treated the same for the assessment of accumulated ongoing charges. Investment trusts would then not be discriminated against by being improperly lumped together with open-ended funds whose value is not set through share price, nor by having a cost label attached, compared with competing commercial companies or funds in other countries, and the UK businesses reliant on the investment trust route could again raise the capital they need.

9.30 pm

I would dearly like the Government just to do this now or suggest that the FCA gives immediate interim guidance. It is an emergency. It should not need months and months of consultation. It is going back to what worked for years. Quick fixes are one of the things that Brexit is meant for but, instead, we are ruining ourselves

for want of flexibility and action. If we cannot do regulatory repairs like this quickly, I do not see any point in a competitiveness objective. This issue shows a monumental lack of awareness from the Government and the FCA about the sharp end in the real economy. A dire problem has been left festering.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to speak to Amendments 10 and 112 in my name; I gratefully acknowledge the support of the noble Lord, Lord Sikka. This is a bit of a diverse group, but Amendment 10 in particular heads in a similar direction to Amendment 9 in the name of the noble Baroness, Lady Bowles of Berkhamsted—a direction that seeks to lead towards a financial sector that meets the needs of the real economy rather than swallowing up the scarce human and capital resources that could be used to far better effect than creating complex financial instruments that, when they go down, threaten to take the rest of us with them.

Had it not been for events between Committee and Report, I might have chosen to sign the noble Baroness's amendment instead of tabling my Amendment 10, which states that Clause 24—the growth and competitiveness clause to which the noble Viscount, Lord Trenchard, referred—should not be deleted from the Bill. It mirrors exactly the amendment tabled in Committee by the noble Lord, Lord Sikka, signed then by myself. However, in the light of events, I thought it really important that we tackle the "growth at any cost" foundation that underlies Clause 24: "Growth is infinite; let's chase as much growth as we can"—which is, of course, the ideology of the cancer cell.

In Committee, the noble Lord, Lord Sikka, said:

"The secondary objectives of growth and competitiveness cannot be reconciled with the main role of ensuring financial stability and consumer protection".—[*Official Repor*t, 1/2/23; col. GC 242.]

This is a position that we both hold. However, it was clear in Committee that there was no support from the Front Benches, and the issue might have been allowed to lapse. But then there were events that highlighted the many dangers of chasing growth in the financial sector. After several weekends of financial panic, emergency meetings and sudden bank rescues, parts of the real economy—in particular, the digital sector—were left highly uncertain of their financing. I am referring, of course, to the collapse and rescue of Silicon Valley Bank, Credit Suisse and Signature Bank, the first and last of those being mid-sized US banks and the middle one being a former European banking colossus.

These US events came after President Trump watered down the Wall Street Reform and Consumer Protection Act, better known as the Dodd-Frank Act, in 2018, reducing the supervisory oversight of banks with assets between $50 billion and $250 billion; the noble Viscount, Lord Trenchard, referred to this watering down in his introduction to this group. However, just because someone else is doing the wrong thing and reducing controls and protections, it does not mean that we should chase after and try to compete with them. As David Enrich from the *New York Times* put it, this was a

"crisis that has revealed the extent to which the banking industry and other opponents of government oversight have chipped away at the robust regulatory protections that were erected after the 2008 financial meltdown".

What happened is that competitiveness had been advanced while security was lost and risk increased. A great many people had sleepless weekends as a result of that.

What has also become clear since Committee is how Credit Suisse clients withdrew nearly $69 billion from the bank in the first quarter of this year before its fire sale rescue by UBS in March. Of course, Credit Suisse had been hit by the insolvency of Greensill Capital—something that is rather close to home in your Lordships' House—and the collapse of family office of Archegos Capital Management, which caused huge trading losses. However, the end came very quickly.

Clearly, in the digital age which SVB helped to fund, financial events can occur at a speed that was unimaginable even in 2007-08. I wonder whether, when wrapping up, any of the Front Benches are prepared to say that they believe that regulators today are truly prepared for the world in which they operate, a world that also faces the risks of other substantial shocks, as we have seen highlighted today with the Russian attack on the Kakhovka dam, geopolitical risks and, of course, environmental risks, since as we speak, Canada is essentially ablaze. That will undoubtably have enormous impacts on the insurance sector.

The IMF's *Global Financial Stability Report* from April reflects on the challenges posed by the interaction between tighter monetary and financial conditions, and the build-up of vulnerabilities since the global financial crash. It says that:

"The emergence of stress in financial markets complicates the task of central banks at a time when inflationary pressures are proving to be more persistent than anticipated"—

a statement which is particularly true within the UK. There are stresses from the shadow banking sector, the effect of geopolitical tensions on financial fragmentation, the risk of potential capital flow reversals, disruption of cross-border payments, impacts on bank funding costs, profitability and credit provision, and more limited opportunities for international risk diversification. The IMF concludes that there is a need to "Strengthen financial oversight". This is all referring to events since we were in Committee. That is my case for Amendment 10.

My Amendment 112 is much more modest and addresses in a different way a point that I raised in Committee. I discussed the growing body of literature around too much finance, but in this amendment I am not asking the Government to agree with me on that; I am asking for them to prepare a report to consider the ideal size of the financial sector. What is the Goldilocks range for a financial sector, where we can afford the risks and supply the human resources and it serves the needs of the real economy?

As the House has heard before, I approach this question in the light of the Sheffield Political Economy Research Institute's study from 2018, which found that the UK had lost £4.5 trillion over two decades because of its oversized financial sector—£67,500 per person. To bring this right up to the present day, in a study published last week, the global hiring website Climatebase has posted more than 46,000 jobs from over 1,500 organisations in the past two years. Of these, data science and analytics were the hardest to fill, taking an average of nearly four months to fill posts compared with three months for engineering roles.

[Baroness Bennett of Manor Castle]

This brings me back to Amendment 10, which would delete Clause 24. I did not have a chance to speak in Committee, but I suggest that Clause 24 as it stands is internally contradictory. It gives the FCA the duty of facilitating the international competitiveness and medium to long-term growth of the economy of the UK,

"including in particular the financial services sector".

This clause talks of growing the economy of the UK and growing the financial sector. I posit that those two objectives are mutually contradictory. I refer to a Bank for International Settlements working paper from 2018, *Why Does Financial Sector Growth Crowd Out Real Economic Growth?* It is actually impossible to promote growth both in the real economy and in the financial sector. It comes back to—probably the easiest part of this to understand—the need to think about human resources. We all know the labour shortages and skills shortages that so many sectors of the UK economy are suffering, and we know that many skills are going into the financial sector when they could be going into other areas.

Tomorrow, your Lordships' House will debate the report of our Science and Technology Committee titled *"Science and Technology Superpower": More Than a Slogan?* I am not asking any Front-Benchers or the Government to agree with the claims that I am making here; what Amendment 112 asks for is a report to look at the evidence, so that the Government and the country can make considered judgments about what size financial sector we both need and can afford.

Lord Eatwell (Lab): My Lords, I will address the amendments proposed by the noble Viscount, Lord Trenchard. In some way, they are part of the whole privileging of the competitiveness objective, but I do not want to talk about that. I will talk specifically about his concern about aligning with international standards.

I suggest that the success of the development of international financial markets since the 1970s has been predicated entirely on the development of an international regulatory system. It was first stimulated by the Herstatt Bank crisis in the summer of 1974, which led to the establishment of the Basel committee on settlement risk. Since then, we have developed a whole international financial infrastructure of regulation—the Basel committees, IOSCO and, most importantly today, the Financial Stability Board. That, by the way, was a British idea that has greatly aided the stabilising of international financial markets.

These committees, as the noble Viscount, Lord Trenchard, pointed out, are not part of any form of international law or treaty. They are what is known in the trade as "soft law". They are laws that countries agree it is in their mutual benefit to align with, and failing to align is against the benefit of individual countries as well as of the system as a whole. It has been the judgment of His Majesty's Government that it is in the best interests of the United Kingdom to align with international standards.

But there are other international standards with which we align. Take the Paris-based Financial Action Task Force. Would the noble Viscount, Lord Trenchard, suggest that we do not align with the international anti-money laundering police? It is essential that we agree to align with this framework of international financial regulation, which we have been such an important element in creating.

Viscount Trenchard (Con): My Lords, I am grateful to the noble Lord for giving way, but I want to correct him for criticising me for opposing all international standards. The ones he has chosen to mention are not ones that I objected to specifically. I was just saying that in general international standards are not defined.

Lord Eatwell (Lab): I suggest to the noble Viscount that, in fact, the whole corpus of international soft law on finance is generally known in the trade as the international standards, and those who work in the regulatory community would immediately relate to the proposals of those particular institutions. As the noble Lord pointed out, occasionally Basel standards have not been followed. This is true in the United States, where only international competitive banks follow Basel committee standards. The US has learned painful lessons over the last year or so with the collapse of Silicon Valley Bank and others that did not follow Basel standards. The relaxation of standards was one of the elements that led to that particular collapse. Alignment with international standards and the institutions which—I say again—Britain has done so much to help develop is an important part of the maintenance of financial stability in this country.

Lord Davies of Brixton (Lab): My Lords, I will make an argument that the idea that greater competition is a public benefit is simply wrong, if you think it is inevitable. Now, I spoke about this at length in Grand Committee a couple of weeks ago, and the Minister had the benefit of my views on the matter at the time, so I am not going to repeat them at length; one or two other Members present did as well.

9.45 pm

The idea that a bigger financial sector will benefit the economy is, to me, a non-sequitur. There is a limit to the advantage that we get from the financial sector, and my view is that we are beyond that limit at the moment. It is certainly an issue which needs to be considered, rather than the assumption that we have to get a bigger and more competitive financial sector.

I also support the deletion of Clause 24 and will speak in support of the mover of the proposition. I should say that my noble friend Lord Sikka would very much have liked to have been present, but pressing family circumstances meant that he was unable to be with us. He was strongly of the view—and I agree with him—that giving the FCA this competition objective is fundamentally wrong. To be brief, the two crucial problems are that it promotes regulatory capture—the phenomenon where the people who are meant to be regulated come to dominate the thought and practice of the regulator—and that it inevitably leads to the weakening of consumer protections. However much you may wish that it was not the case and however much you want to say that it will not happen, experience tells us that that will be the result.

Financial regulation ultimately requires robust rules, made in the long-term public interest. The public interest does not always align with the immediate interests of financial institutions. Tasking oversight bodies with promoting the industry they regulate fundamentally compromises their work. It is just the way the system works, and however much you may wish that the world was different, experience over many years demonstrates that that is the inevitable result of tasking the regulator with the job of promoting what they are meant to be regulating.

Lord Livermore (Lab): My Lords, we do not support this group of amendments. We strongly support the inclusion in this Bill of the new secondary objective for the regulators on international competitiveness and economic growth. Its position as secondary in the hierarchy of regulators' objectives is of course key. As a secondary objective, economic growth and international competitiveness will remain subordinate to the regulators' primary objectives of preserving financial stability and protecting consumers. The UK's reputation and success as a leading international financial centre depend on high standards of regulation, and a stable and independent regulatory regime. These high regulatory standards are a key strength of the UK system and its global competitiveness, so we would not support any moves towards a regulatory race to the bottom. That would negatively impact international confidence in the UK, making the UK less attractive to international businesses and investment.

The UK's financial services industry plays a vital role in boosting economic growth and delivering skilled jobs in every part of the UK. Almost 2.5 million people are employed in financial services, with two-thirds of those jobs based outside London, and the sector contributes more than £170 billion a year to GDP—8.3% of all economic output.

The City of London is one of only two global financial capitals and is at the very heart of the international monetary system. This is an enviable position, and it is vital that we support the sector across the UK to retain this competitiveness on the world stage post Brexit so that the UK can continue to be one of the world's premier global financial centres. It is therefore crucial that the UK's regulatory framework plays its part in supporting this positive contribution to the UK economy and society. To do this, it must enhance competitiveness and support the industry in trading with the world, including in new markets. It must attract investment into the UK and promote innovation and consumer choice.

A secondary growth and international competitiveness objective is a simple and internationally proven way to achieve this, helping to ensure that the UK remains a leading global financial centre by empowering regulators to make the UK a better place to do business and ensuring a more attractive market for international providers and consumers of financial services. The UK is, of course, in competition with other international financial centres, and many of them, including Australia, Hong Kong, Japan, Malaysia, Singapore, the United States and the European Union, have introduced a similar objective, which they balance against financial stability and consumer protection.

In future groups we will come to topics such as investment in high-growth firms, but it is precisely by having this secondary objective on competitiveness and growth that we will create an ecosystem that supports investment in new technologies, provides much-needed economic growth and secures new jobs.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, the new secondary growth and competitiveness objectives in the Bill will ensure that the regulators can act to facilitate medium to long-term growth and competitiveness for the first time, but a focus on competitiveness and long-term growth is not new. When the UK was part of the European Union and financial services legislation was negotiated in Brussels, UK Ministers went to great efforts to ensure that EU regulations appropriately considered the impact that regulation could have on economic growth and on the competitiveness of our financial services sector.

Now that we have left the EU, and as the regulators take on responsibility for setting new rules as we repeal retained EU law, it is right that their objectives reflect the financial services sector's critical role in supporting the wider economy. We must ensure that growth and competitiveness can continue to be properly considered within a robust regulatory framework. As the noble Lord opposite said, a secondary competitiveness objective strikes the right balance. It ensures that the regulators have due regard to growth and competitiveness while maintaining their primary focus on their existing objectives. That is why the Government strongly reject Amendment 10, tabled by the noble Baroness, Lady Bennett of Manor Castle, which seeks to remove the secondary objectives from the Bill.

Turning to Amendment 9 from the noble Baroness, Lady Bowles of Berkhamsted, the Government agree that the UK financial services sector is not just an industry in its own right but an engine of growth for the wider economy. The current drafting of the Bill seeks to reflect that but also recognises that the scope of the regulators' responsibilities relates to the markets they regulate—the financial services sector—so it is growth of the wider economy and of the financial services sector, but not at the expense of the wider economy. I hope I can reassure her on that point.

On Amendment 115, also from the noble Baroness, Lady Bowles, as noble Lords know, the Bill repeals retained EU law in financial services, including the MiFID framework. Detailed firm-facing requirements, such as those that this amendment seeks to amend, are likely to become the responsibility of the FCA. As such, it will be for the FCA to determine whether such rules are appropriate. When doing so, the FCA will have to consider whether rules are in line with its statutory objectives, including the new secondary growth and competitiveness objective.

Parliament will be able to scrutinise any rules that the regulators make, including pressing them on the effectiveness of their rules, and how they deliver against their objectives. Industry will also be able to make representations to the regulators where they feel that their rules are not having their intended effect or are placing disproportionate burdens on firms. I hope the

[Baroness Penn]
noble Baroness is therefore reassured that the appropriate mechanisms are in place for considering the issues that she has raised via that amendment.

Baroness Bowles of Berkhamsted (LD): I understand that there are and will be mechanisms in place, but the point that I was trying to make—and the reason that I expounded at length on how we got into this mess—is that it is urgent action that is necessary. This is not something that waits for this great wheel of change that we are bringing in through this Bill to come along. This is something that should be on people's desks tomorrow; it should have been on people's desks a year ago. There will not be ongoing investments trusts if it is not fixed now.

Baroness Penn (Con): I understand the case that the noble Baroness makes, but it is not for an amendment to this Bill but for regulator rules to address the issue that she raises.

I turn to Amendments 8A and 9A from my noble friend Lord Trenchard, which seek to remove the requirement for the FCA and the PRA to align with relevant international standards when facilitating the new secondary objectives and instead have regard to these standards. As we have heard, international standards are set by standard setting bodies, such as the Basel Committee on Banking Supervision. These standards are typically endorsed at political level through international fora such as the G7 and G20 but, given the need to enable implementation across multiple jurisdictions, they may not be specifically calibrated to the law or market of individual members. It is then for national Governments and regulators to decide how best to implement these standards in their jurisdictions. This includes considering which international standards are pertinent to the regulatory activity being undertaken and are therefore relevant.

Since we left the EU, the regulators have been generally responsible for making the judgment on how best to align with relevant standards when making detailed rules that apply to firms. This approach was taken in the Financial Services Act 2021, in relation to the UK's approach to the implementation of Basel standards for bank regulation and the FCA's implementation of the UK's investment firms prudential regime. It was also reflected in the overarching approach set out in the two consultations as part of the future regulatory framework review.

Part of the regulators' judgment involves considering how best to advance their statutory objectives. Following this Bill, this will include the new secondary competitiveness and growth objectives. The current drafting therefore provides sufficient flexibility for the regulators to tailor international standards appropriately to UK markets to facilitate growth and international competitiveness, while demonstrating the Government's ongoing commitment for the UK to remain a global leader in promoting high international standards—which, as we have heard, the UK has often played a key part in developing. The Government consider that this drafting helps maintain the UK's reputation as a global financial centre.

I turn finally to Amendment 112 from the noble Baroness, Lady Bennett. The Government consider the financial services sector to be of vital importance to the UK economy. The latest figures from industry reveal that financial and related professional services employ approximately 2.5 million people across the UK, with around two-thirds of those jobs being outside London. Together, these jobs account for an estimated 12% of the UK's economy.

The financial services sector also makes a significant tax contribution, which amounted to more than £75 billion in 2019-20—more than a tenth of total UK tax receipts—and helps fund vital public services. It is not for the Government to determine the optimum size of the UK financial services sector, but in many of the areas that the noble Baroness calls for reporting on, the information would be largely duplicative of work already published by the Government, public sector bodies or other industry groups.

For example, the *State of the Sector* report, which was co-authored by the City of London Corporation and first published last year, covers talent, innovation, the wider financial services ecosystem, and international developments and comparisons. The Government will publish a second iteration of the report later this year. The *Financial Stability Report*—

Baroness Bennett of Manor Castle (GP): The Minister said that was a City of London report, but then said it was a government report. Surely the City of London Corporation is not an independent source on the financial sector—it is the financial sector.

10 pm

Baroness Penn (Con): It is a joint report from the City of London and the Government that provides analysis of a number of the areas that the noble Baroness covers in her amendment.

I was just moving on to the *Financial Stability Report*, which is published twice a year by the Bank of England's Financial Policy Committee, setting out the committee's latest view on the stability of the UK financial system and what the committee is doing to remove or reduce any risks to it and make recommendations to relevant bodies to address systemic risks.

I hope that noble Lords will agree, although I am sure that not all do, that a well-regulated and internationally competitive financial services sector is a public good for the UK and something that we should continue to support. I therefore hope that my noble friend Lord Trenchard will withdraw his amendment and that other noble Lords will not move theirs when they are reached.

Viscount Trenchard (Con): My Lords, I thank all noble Lords who have taken part in this short debate. The noble Baroness, Lady Bowles of Berkhamsted, talked about the senior managers and certification regime. Does she know that the Japanese banks have given up sending senior directors to London because they cannot get authorised, so they have to promote people who are already in London? All three main megabanks are now doing that because they are so exasperated with the difficulty of getting their senior officers approved by the FCA.

I entirely agree with what the noble Baroness said about the problem of the uneven playing field between listed companies and listed investment trusts. That is an urgent problem that needs to be addressed now. The FCA, with its current culture, is just not responsive to that type of situation. Everybody is aware of that, and it is why some of us are pushing so hard for a more determined effort to change things. I think that if the competitiveness and growth objective had been given equal status with the stability objectives and the other consumer protection objectives, we might have got somewhere nearer that, but I know that not all noble Lords agree.

The noble Baroness, Lady Bennett of Manor Castle, and the noble Lord, Lord Davies of Brixton, supported Amendment 10 to leave out the competitiveness objective and Amendment 112 to reduce the size of the financial services sector. If you leave out the competitiveness objective, you will not have much of a financial services sector, so we would not need both amendments.

The noble Lord, Lord Eatwell, always speaks with great authority. We served together on the original Joint Committee on Financial Services and Markets under the excellent chairmanship of the noble Lord, Lord Burns, in 1999, and it was hugely successful. I take the noble Lord's point, but I still do not think that we should be bound to align to an international standard just because it is a Basel committee standard; we should have to have regard to it. I say to the noble Lord, Lord Livermore, that some of the other jurisdictions that he mentioned do not subordinate their competitiveness objective to the main stability objectives.

I am grateful for my noble friend's reassurance and beg leave to withdraw my amendment.

Amendment 8A withdrawn.

Amendments 9 to 10 not moved.

House adjourned at 10.05 pm.