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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Monday 10 July 2023

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Death of a Former Member: Lord Brown of Eaton-under-Heywood

Announcement

2.37 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 Brown of Eaton-under-Heywood, on Friday 7 July. On behalf of the House, I extend our condolences to the noble and learned Lord's family and friends.

Recall Petitions: Voter ID

Question

2.37 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask His Majesty's Government whether voter ID will be required for a recall petition.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, the Answer is, yes, it is set out in legislation that voter identification is required in order for an elector to sign the signing sheet in person at an MP recall petition.

Baroness Hayter of Kentish Town (Lab): My Lords, at least 14,000 people without ID were not able to vote in local elections, even on a date known to them in advance, so they had time to get ID if they did not have a passport. But recall petitions are sudden, unexpected and speedy, with no national awareness campaign. There is a petition in Scotland with just 40 days to obtain that photo ID, if you do not have a passport, and then to sign in person, as the Minister said. Three Tory recall petitions could have happened; two were saved by the MPs resigning, but one may still be to come. Given that 10% of voters are needed to trigger a by-election, anyone being unable to obtain voter ID in time makes recall less possible. How convenient for the Government. So will the Minister agree that a review is urgently needed if the recall procedure is to work as the Government first intended?

Baroness Scott of Bybrook (Con): I am sorry to disappoint the noble Baroness but I cannot agree that we should look at this again; it was not long ago that we looked at all this in the now enacted Elections Bill. On the 40 days, I assure the noble Baroness that the election department has been working on the voter identification process where anyone needs a VAC. It also wrote to all the electorate about the process, giving clear instructions that people would require voter ID, and instructions on what voter ID was available for them to use and, if they could not, where they could get a VAC.

Lord Pickles (Con): My Lords, does my noble friend agree that the Electoral Commission report clearly demonstrates that all the fuss about the effect of voter ID has proved to be an exaggeration? We are talking about less than a percentage point. Does my noble friend further agree that, given that it is part of our voting system, it would now make some sense to re-examine the qualifications for voter ID, particularly among the young? Will she keep those categories constantly under review?

Baroness Scott of Bybrook (Con): My noble friend is right. We are very encouraged by the first interim report from the Electoral Commission, but there is a lot more work to be done. It was only an interim analysis; the final analysis will be published in the autumn. The Government are looking both qualitatively and quantitatively at the May elections, and the report will be out by the end of November. When we get those reviews, we need to see if any changes need to be made, including on voter ID and young people.

Lord Wallace of Saltaire (LD): My Lords, many constituencies have several hundred overseas voters; some have over 1,000. The extension of overseas voting rights would increase those numbers very considerably. What arrangements do the Government have in hand to make sure that, in the event of a recall petition in a constituency, its overseas voters are informed in a timely fashion so that they can participate?

Baroness Scott of Bybrook (Con): My Lords, there will be a lot of changes in respect of overseas voters. I will have to write to the noble Lord on recall petitions.

Lord Balfe (Con): My Lords, I lived in Brussels for 40 years and voted in Belgium. I had a voter ID card throughout that time, and it was never an issue with any of the parties there. Is this not a bit of a false debate?

Baroness Scott of Bybrook (Con): My noble friend is right. We have had this debate over and over again, and it is clear that many countries, including Northern Ireland, have voter ID. It works very well, and the people of Northern Ireland are very happy with it. We agreed to do this in our manifesto and will continue to do so. We look forward to it working as well here as it does in many other countries.

Baroness Hayman of Ullock (Lab): My Lords, the noble Lord, Lord Pickles, talked about the initial report from the Electoral Commission. Our concern is that it showed that many thousands of people were turned away, many of whom did not return. We do not know the impact on those who were put off going in the first place, so the Government should not be complacent about that. It concerns me that we have by-elections and elections for recall petitions coming up, but the Government will not act on any of the recommendations and the final report is not coming out until September. Why will the Government not pause the process until they can be more confident about the outcomes?

Baroness Scott of Bybrook (Con): My Lords, the Government are confident about the outcomes. The initial evidence shows that it was a very successful first

[Baroness Scott of Bybrook]
step. We are pleased to see the Electoral Commission's report, according to which there were continually high levels of satisfaction with our voting system; 89% of polling station voters said that they were fairly or very satisfied. That is good, and a higher figure than during similar elections in 2019.

Lord Hannan of Kingsclere (Con): My Lords, I was one of the earliest proponents of this recall mechanism, in 2008. The then leader of the Opposition, David Cameron, liked the idea and put it in the 2010 manifesto—but then the rats got at it. Instead of it being a mechanism through which ordinary constituents could demand a recall, we had to have an initial procedure whereby the Privileges Committee, in effect, picked out which of its numbers from the other place it did not want. Will my noble friend the Minister look again at returning to the principle of diffusing power from Parliament to the electorate, rather than concentrating it in the hands of parliamentary committees, so that we return to the idea that only the voters determine the composition of another House?

Baroness Scott of Bybrook (Con): My Lords, my noble friend raises an interesting point. The Government have no plans to look back at the way in which recall petitions are done, but I am more than happy to talk to him further on this issue and take it back to the department.

Lord Grocott (Lab): My Lords, the Minister has repeated that, in the Government's view, 14,000 people being turned away from the polling station represents a success. Could she tell us what a failure would be?

Baroness Scott of Bybrook (Con): My Lords, there are many reasons why those people did not vote at that time. The Electoral Commission made clear in its interim report that it was satisfied, and it said that it needed further time for further evidence. Let us wait until November, as we said in legislation that we would, when we will get both the qualitative and the quantitative evidence.

Lord Hayward (Con): My Lords, I do not agree on this occasion with the noble Baroness, Lady Hayter, and her comments about recall petitions. As I understand the law, there is a requirement that 10% of the electorate sign the petition, but the petition stays open ad infinitum until the conclusion of the period, despite the fact that the 10% threshold may have been met after five, six or seven days. Is there not a need to review the recall petition legislation in order to avoid unnecessary cost and duration of this process?

Baroness Scott of Bybrook (Con): No, my Lords, I think my noble friend is wrong in this case. The Government feel that recall petitions should remain open even when the 10% threshold has been reached, mainly because if somebody gets a letter saying that they have a right to sign a petition, it should not be closed until the time given in that letter, and they should have their right to sign.

Viscount Stansgate (Lab): Can the Minister reassure the House that the Government will take steps to make a record of electors who go to sign their name at a recall petition and are refused for lack of voter identification?

Baroness Scott of Bybrook (Con): My Lords, the Government have made it very clear that they will look at all the data from any petition or election, as they did in May this year.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, in my part of the United Kingdom we have had voter identification for decades now, and in fact, we have some of the highest turnouts at elections anywhere in the United Kingdom. I am sure the electoral commission of Northern Ireland and indeed the Electoral Office will be more than happy to share what they have learned about voter identification over many years, and the Minister may wish to avail herself of that advice and assistance.

Baroness Scott of Bybrook (Con): I thank the noble Baroness. We have already availed ourselves of the electoral officers in Northern Ireland, where this has been such a success. It will be in this country as well.

Live Animals: Export Ban

Question

2.48 pm

Asked by ***Baroness Hodgson of Abinger***

To ask His Majesty's Government whether they are going to ban the export of live animals for slaughter and fattening.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, the Government recognise the long-standing public concern about livestock and horses being exported for slaughter and fattening. We are determined to deliver our manifesto commitment to end this trade. There have been no live exports for slaughter or fattening since 2020 and we want to make this permanent. We will be taking this forward during the remainder of this Parliament.

Baroness Hodgson of Abinger (Con): I thank my noble friend for his Answer. Although almost no animals are being shipped abroad at the moment, this does not mean that the trade cannot be restarted, so I am very glad to hear that the Government will stick to their manifesto commitment. What will the timing be for the Bill? Please can my noble friend assure us that enough time will be given by the Government to get it through before the next general election?

Lord Benyon (Con): I can assure my noble friend that this is a priority under *Our Action Plan for Animal Welfare* and that we will bring it forward in this Parliament. We want to make sure that, as she says, we stop the infrastructure that supports this trade. As I say, there have been no cases of animals transported for slaughter or fattening since 2021 and we want to make sure that we make that permanent.

Baroness Jones of Whitchurch (Lab): My Lords, when will a suitable border inspection post be up and running in Calais? Can the Minister give a commitment that the ban will be introduced before live animal exports can go through Calais again, because I understand that that has been the barrier to there not being any in the recent past?

Lord Benyon (Con): The noble Baroness is absolutely right. We are in negotiations with the French authorities, and we want to make sure that there is a good border control post at Coquelles. That will assist us as well with the illegal import of products of animal origin, which are causing us great concern for biosecurity. I cannot give her an exact date, but I feel sure that a post will be created, and that will regularise the trade in both directions.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, on 3 December 2020, the Government published a consultation on the banning of the live export of animals for slaughter and fattening, and this closed in February 2021. This measure was included in the kept animals Bill that went through the Commons and was killed off in May. Are the Government now relying on a Private Member's Bill to bring this measure forward?

Lord Benyon (Con): No, I am hoping that it will be a government Bill.

Baroness Fookes (Con): My Lords, my noble friend has managed to assuage my wrath, for the time being. That is probably very unkind, because in the past I think he has been more the messenger than the author of the non-activity. None the less, can he tell all those involved in this matter that we and all those who are interested in animal welfare will be watching the timetable for this with the eyes of a number of hawks—so he had better deliver?

Lord Benyon (Con): I sit in awe of my noble friend's determination, and I want to make sure that there is no wrath in her. I gently remind her that we have a very good record on animal welfare. We have delivered in primary legislation the Animal Welfare (Sentencing) Act, the Animal Welfare (Sentience) Act, the Animals (Penalty Notices) Act, the Ivory Act 2018, which came into force in 2022, as well as measures to crack down on hare coursing—and with her assistance and that of the Government, the Glue Traps (Offences) Act. We will deliver many of the items of the kept animals Bill in a variety of ways, including through Private Members' Bills, and we will make sure that they are on the statute book soon.

Lord Trefgarne (Con): My Lords, can my noble friend confirm that there is no intention to restrict the movement of live racehorses from one meeting to another, which takes place on a considerable scale at the present time?

Lord Benyon (Con): The passage of elite animals for competition and for breeding is absolutely open, and will continue—it has a very high welfare standard. There are issues about the cost and bureaucracy involved, but that requires both sides of the channel to be in co-operation. It is a very important industry in this country, and we will support it.

Baroness Jones of Moulsecoomb (GP): My Lords, this was a manifesto promise by the Government years ago, yet for some reason they have consistently put it off—they have announced new powers and then put it off again. It was said that it was Brexit that was stopping it from being enacted. Brexit is done and dusted, so why has it not happened? Either Brexit has not happened, or the Government are just rubbish.

Lord Benyon (Con): It is certainly not the latter. You have a manifesto commitment, which you deliver over the course of a Parliament—that is what we are going to do. But the noble Baroness can sleep easy, because not one single animal is being exported. There is one vessel, the "Jolene", which operates out of Ramsgate, which has not exported a single animal for fattening or slaughter. The concern that people have is that animals are going to be exported to other parts of Europe that have lower welfare standards in their slaughterhouses than we do in ours. That is a legitimate concern—and something that the Government want to make sure will not recur.

Baroness Hayman of Ullock (Lab): My Lords, the Minister said he hopes this is going to be a government Bill, so why does he not just bring back the kept animals Bill?

Lord Benyon (Con): One of the items in the kept animals Bill, on the keeping of primates as pets, is a good example of something we can deliver more quickly than we could in an all-encompassing Bill, and we are going to do that through secondary legislation. We are in consultation with a number of people who will bring forward items through Private Members' Bills, with the Government's support. We want to get all of them on the statute book, but I hope that the noble Baroness, like me, is proud of what this Government are doing for animal welfare.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend give the House an assurance this afternoon that the ban is reciprocal and that we will not be importing live animals from the EU for slaughter and fattening in this country?

Lord Benyon (Con): There has never been a significant import trade for slaughter or fattening. For example, from 2019 to 2021, only 91 cattle and 14 sheep were imported for slaughter from the mainland EU. A key concern of many of those who opposed live exports was that once they are exported to the EU, we do not know where they are going. We can now make sure that, through the actions of the Animal and Plant Health Agency, we are keeping track of everything, so we want to make sure this ban is in place as soon as possible.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I have been listening carefully to the Minister's reply. He said the legislation will be brought forward in this Parliament, not in this Session of Parliament, so the noble Baroness, Lady Fookes, is very wise to keep an

[Lord Foulkes of Cumnock]
eye on what the Minister is up to. Can I help him? I have a suggestion. We can have it in this Session of Parliament; all the Government need to do is to withdraw immediately the Illegal Migration Bill.

Lord Benyon (Con): I will of course pass on the noble Lord's words to the business managers, but I totally agree with him that the noble Baroness, Lady Fookes, is wise.

Lord Weir of Ballyholme (DUP): My Lords, this was a key element of the kept animals Bill, which has now, sadly, been shelved. The Minister indicated that he intended and hoped that this would be brought forward as government legislation during this Parliament. Can he outline what other elements of the kept animals Bill he will be bringing forward as government legislation during this Parliament?

Lord Benyon (Con): I certainly can. In addition to the list I gave earlier, we are bringing forward the Hunting Trophies (Import Prohibition) Bill; we have supported the Shark Fins Act and the Animals (Low-Welfare Activities Abroad) Bill; the Animal Welfare (Electronic Collars) (England) Regulations are now on the statute book; and we are supporting other Private Members' Bills. As I said, some items can be done in secondary legislation, but we want to make sure that, as was listed in *Our Action Plan for Animal Welfare* and in our manifesto, all items will be on the statute book, but there are a variety of vehicles for delivering them.

Baroness Ritchie of Downpatrick (Lab): My Lords, will the Minister indicate whether this legislation will be in the forthcoming King's Speech? What discussions have already taken place with devolved Administrations, because there is general UK-wide interest in maintaining animal welfare and safety?

Lord Benyon (Con): The noble Baroness is absolutely right. The consultation was done in conjunction with the Welsh Government. We are talking to our colleagues in Scotland to make sure that they are with us on this. Of course, in Northern Ireland there is a different circumstance, because long before we left the EU there was a one-island policy on biosecurity. There is, from the animals' point of view, no difference between moving an animal for slaughter from Fermanagh to Cavan, but there is a big difference in moving an animal across the channel to a completely different animal welfare regime. We want to work closely with our colleagues in Northern Ireland to make sure there is free movement of animals within our biosecurity system.

Homelessness: Vagrancy Act 1824

Question

2.58 pm

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

To ask His Majesty's Government what further consideration they have given to using the Levelling-up and Regeneration Bill to repeal the Vagrancy Act 1824 to end criminalisation of homelessness.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, the Government are clear that the Vagrancy Act is antiquated and not fit for purpose and that people should not be criminalised for simply having nowhere to live. When we committed to repeal the Act, we said that we would do so once suitable replacement legislation was brought forward. We set out our plans in the *Anti-social Behaviour Action Plan* to ensure that local authorities and the police have appropriate tools to keep people safe, and that vulnerable people can access health and services. LURB is a large Bill already. Vagrancy is a complex policy that requires careful consideration and scrutiny, and we will table legislation at the right opportunity.

Baroness Taylor of Stevenage (Lab): My Lords, in March 2022, the Minister the noble Lord, Lord Sharpe of Epsom, who I am pleased to see in his place, committed to repealing the Vagrancy Act within 18 months. My noble friend Lady Kennedy of Cradley noted in May this year that this Act, which refers to the homeless as "idle and disorderly Persons" deemed to be

"Rogues and Vagabonds … committed to the House of Correction"

is still being used to criminalise 1,000 homeless people a year. A quick check on the College of Policing website shows over 15 pieces of legislation which give police and councils the powers they need to tackle anti-social behaviour and aggressive begging. Why will the Government not use the levelling-up Bill to confine the Vagrancy Act to history, where it belongs, before its 200th birthday?

Baroness Scott of Bybrook (Con): My Lords, the Vagrancy Act, as I have said, is an outdated piece of legislation; I agree with the noble Baroness that it needs repealing. However, the House rules on admissibility of amendments are set out in the *Companion*; amendments we have consulted on that were related to repealing the vagrancy offences have not been considered admissible to the levelling-up Bill. We would not normally discuss the clerks' advice in the Chamber, but I am sure that they will be very happy to discuss it in the usual way with her.

Lord Young of Cookham (Con): My Lords, an amendment was moved by the noble Lord, Lord Best, to the police and crime Bill to enable abolition to take place, and the consultation to see what, if anything, needed to be carried forward ended in May last year. Against all the commitments that have been given, are we really going to have the Vagrancy Act 1824 still on the statute book in 1924? Oh, I mean 2024.

Baroness Scott of Bybrook (Con): My noble friend is right. We did consult when the Vagrancy Act was within DLUHC, and the Home Office is holding further discussions particularly with those stakeholders who are important in local authorities, such as the police. However, the anti-social behaviour plan, which was published last March, outlined further details of our plans to introduce new powers for local authorities

and police to respond to begging and rough sleeping, coupling this with improved multiagency working between local partners so that vulnerable individuals receive the support they need. This is a complex issue, and further details will be set out in future legislation at the earliest possible parliamentary opportunity.

Lord Best (CB): My Lords, does the Minister agree that it is rather disheartening to the way in which we operate when the correct processes are followed—an amendment is carried in this House by a large majority, it goes back to the House of Commons for a second thought, the House of Commons decides to support us, Parliament then passes legislation to repeal the Vagrancy Act—and then nothing happens?

Baroness Scott of Bybrook (Con): As I have said, this is a really complex issue. We need to get this right and to be talking to people. The noble Lord is right that we have committed to repeal the Vagrancy Act as part of the Police, Crime, Sentencing and Courts Act 2022. We have started the consultation, we are discussing with stakeholders but, as I have said, we will look for the proper place in legislation, and the proper piece of legislation is not LURB.

Lord Griffiths of Burry Port (Lab): My Lords, I am happy to hear the formula about the right place and the right time. My experience of working with homeless people is that there is only one right time, and it is now. In view of the fact that so much has already happened in the recent past—so many exchanges, so many decisions—do the Government not feel that the right time and the right place is as near now as possible?

Baroness Scott of Bybrook (Con): That is exactly what I have just said—the right time is now, and we are making our final consultations and will look for the right piece of legislation as soon as possible. My department will work very closely with the Home Office so that this new legislation ensures that vulnerable individuals are always directed to the most appropriate support. It is not just about getting rid of an old-fashioned law.

Lord Bird (CB): While we are at it, can we do something about no-fault evictions at the same time? They are driving people into homelessness on the streets—including my brother.

Baroness Scott of Bybrook (Con): The noble Lord should know that we have the private renters' Bill starting in the Commons shortly, which will include the repeal of Section 21.

Lord Cormack (Con): My Lords, surely these consultations have gone on long enough. My noble friend Lord Young of Cookham got the date slightly wrong, but can my noble friend Lady Scott confirm that this will be well off the statute book by 2124?

Baroness Scott of Bybrook (Con): My Lords, I am sure the House realises that I cannot possibly confirm that as I cannot pre-empt anything that might be in the King's Speech.

Baroness Lister of Burtersett (Lab): My Lords, the Minister has mentioned a number of times that she will bring this forward in suitable legislation. She must have some legislation in mind. What is it?

Baroness Scott of Bybrook (Con): My Lords, I never said that I would bring it forward—I said that the Government would. It is now in the hands of the Home Office, which is dealing with this.

Baroness Thornhill (LD): My Lords, rough sleepers are just the thin end of the wedge, as the noble Baroness knows. Part of the long-term solution to homelessness must be to build many more homes for social rent and, in particular, to increase the public sector's role in building them. Given the additional financial pressures there are on social housing providers, as we both know—not least the decent homes standard, net-zero homes, fire safety and increased construction costs—will the Government commit to a minimum 10-year rent deal for these landlords to allow a longer period of annual rent increases and long-term certainty so that they can plan to build more much-needed social homes?

Baroness Scott of Bybrook (Con): The noble Baroness is absolutely right that we need more homes in this country—more affordable homes and more homes for social rent. That is why we are putting £11.5 billion into the affordable homes programme and, importantly, working with local authorities to ensure that they look at every possible way of using the £500 million we are giving them to keep people in their homes in the first place, rather than becoming homeless.

Lord Kamall (Con): My noble friend said that this is incredibly complicated and that replacement legislation for the Vagrancy Act must be considered. Can she share with us what laws have to be replaced, as many noble Lords feel that it should be very simple to abolish it now?

Baroness Scott of Bybrook (Con): I am not prepared to say what legislation might go. Part of this is not about what legislation goes but how much support we can give those individuals in trying to get them off the streets and into homes.

Baroness McIntosh of Hudnall (Lab): My Lords, in answering a number of questions, the noble Baroness has referred to stakeholders in the consultation. Who has a stake in retaining the Vagrancy Act?

Baroness Scott of Bybrook (Con): Nobody has a stake in retaining it, but many organisations have a stake in what would replace it—the police, local authorities, the third sector, faith communities and all those people involved in not only changing the law but giving support to those very vulnerable people who may need our help.

Missing Asylum Seeking Unaccompanied Children

Question

3.08 pm

Asked by ***Baroness Chakrabarti***

To ask His Majesty's Government what steps they are taking to find all the asylum seeking unaccompanied children who have gone missing from Home Office care.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): While the responsibility for locating missing children is ultimately for the police, the Home Office works closely with local authorities and other partners to try to locate missing unaccompanied asylum-seeking children and ensure that they are safe. As part of this, the Home Office continues to collaborate with the National Police Chiefs' Council and the National Crime Agency to ensure consistency in our national approach and response.

Baroness Chakrabarti (Lab): I am grateful for that. Could the Minister help the House with the number of those who were lost and the number who have been found to date, and whether photographs have been passed to the police for a national campaign? What about the ongoing safeguarding issue? Recent court proceedings reveal that 40% of those now in unregulated hotels are under 16, including some as young as nine. Is that not a grave and dangerous dereliction of duty?

Lord Murray of Blidworth (Con): The noble Baroness would not expect me to comment on ongoing litigation. I can provide her with the statistics: there are presently 154 unaccompanied children who are currently missing. Of that 154, 100 have since turned 18, and 25 of the 154 currently missing were age-disputed individuals.

Lord Laming (CB): My Lords, the Minister will agree that these children are especially at risk, having come to a strange country and not understanding the language, of being easily picked up in cars and taken off, never to be seen again. Would the Minister be willing to explore the possibility of introducing stronger safeguards, so that we can be reassured that fewer of these children will be lost in the future?

Lord Murray of Blidworth (Con): I can reassure the noble Lord that we take the welfare of these vulnerable children extremely seriously. We have had no alternative but to temporarily use hotels to give children in this situation an immediate roof over their heads while local authority accommodation is found. I can confirm to the House that we have robust safeguarding procedures in place, to ensure that all unaccompanied asylum-seeking children are accommodated and supported as safely as possible while we seek urgent placements with a local authority—and I might add that we are determined to stop the use of hotels as soon as possible.

Lord Scriven (LD): My Lords, the judgment in the High Court in June of the Article 39 case shows that these children are indeed, as part of the Children Act, children in need, and covered by Sections 47 and 17 of the 1989 Act, and Section 11 of the 2004 Act. In light of that judgment, what changes are the Home Office going to make to ensure that local authorities can carry out their statutory duties, without hindrance, to those children who are placed in these hotels?

Lord Murray of Blidworth (Con): As the noble Lord will be aware, and as the court made clear, the situation was that the local authority was unable to accommodate these children on arrival, so the Home Office was obliged to accommodate them in the interim. Steps were taken to ensure that that accommodation was appropriate and secure. I can assure the noble Lord that obviously we continue to review the need for hotels and, as I said a moment ago, it is our ambition to close them as soon as we can.

Lord Dubs (Lab): The Minister has just said that the Government take the welfare of unaccompanied children seriously. How does that relate to the arrivals centre in Dover, which had cartoons and welcoming signs for children removed on the orders of the Home Office Minister because it might make the children feel too welcome? Is that not a disgrace? Is it not time that Government Back-Benchers felt as embarrassed as we are that this is happening in our country?

Lord Murray of Blidworth (Con): The murals that the noble Lord refers to were provided by our detention contractors and were not commissioned or approved by the Home Office. It is clearly the correct decision that these facilities have the requisite decoration befitting their purpose.

The Lord Bishop of Chichester: My Lords, our duty of care in the welfare of children is provided for in a number of ways: the Children Act is one, as is the routine of Ofsted inspections of schools and children's care homes. Can the Minister confirm that, if an asylum-seeking unaccompanied child is found after going missing from Home Office accommodation, they will not be returned to hotel accommodation but instead will be returned to local authority care, where all their rights under the Children Act can be met and the quality of their accommodation will be subject to Ofsted regulation and inspection?

Lord Murray of Blidworth (Con): Obviously, each case is different. If a child were to go missing from Home Office accommodation, depending on when and where they are located, they would be either returned to the local authority, if a space has become available in local authority accommodation, or relocated for a short period and returned to Home Office accommodation. In all circumstances, the child's needs and appropriate accommodation are paramount.

Lord Brownlow of Shurlock Row (Con): My Lords, frankly, I am ashamed of the Minister's previous answer. I think people in this House and the wider community would have preferred his answer to be that it was a mistake to paint over those murals and that a contract will be commissioned to repaint them. We are a welcoming country. While I accept that the Government's Bill is needed to deter people, it is time we showed some compassion.

Lord Murray of Blidworth (Con): As I say, the decoration of these facilities is a matter for the Home Office. It is a detention facility for those who have entered the country unlawfully and it is appropriate that it is decorated in a manner that reflects its purpose.

Lord Coaker (Lab): Can I ask the Minister to reflect again on what his noble friend and my noble friend Lord Dubs have just said? Is it really the Government's position that it was perfectly justified to paint over these murals in a detention centre for children? Can the Minister not see how frankly astonished and, to use the noble Lord's phrase, ashamed we are that this has happened? The least we would have expected is that the Government are sorry that it has happened, are looking into it and are going to make sure that it never happens again. Will the Minister reflect on his answer and see how appalled the Chamber was by what he said?

Lord Murray of Blidworth (Con): I reassure the noble Lord that we take the welfare of children in our care very seriously. The point is that those children are held at the Kent intake unit for only as short a time as possible. Of course, the age of the children held at that unit can be anything up to 18 years old and, as this House knows from repeated answers, the majority of those passing through that unit are in the upper end of the available age bracket.

Lord German (LD): My Lords, in response to my noble friend's question earlier, the Minister said that local authorities could carry out their responsibilities under Section 17 of the 1989 Act—but how on earth can they do that if the Home Office does not tell them where these children are located?

Lord Murray of Blidworth (Con): The Home Office does of course notify local authorities of the arrival of children. We have something called the national transfer scheme, of which the noble Lord is no doubt aware, which has seen 4,875 children transferred to local authorities with children's services between 1 July 2021 and 31 March this year. That is over six times the number of transfers as in the same timeframe in previous years.

Baroness Meacher (CB): My Lords, I think the Minister will be aware that we are at risk of losing our reputation as a country that upholds human rights, in particular those of children, because of the treatment of unaccompanied children under the Illegal Migration Bill. What plans does the Minister have to ensure that all unaccompanied children are cared for only under the auspices of local authorities and never under the Home Office in order to try to rescue the reputation of this country?

Lord Murray of Blidworth (Con): As I say, it is the Home Office's intention to ensure that all unaccompanied asylum-seeking children are placed into local authority care as soon as it becomes available. That has been achieved with great success in recent times. Indeed, for a number of weeks recently there were no asylum-seeking children in hotels—although that is not the case at the moment.

Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2023

Motion to Approve

3.19 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Regulations laid before the House on 19 June be approved.

Relevant document: 45th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 5 July.

Motion agreed.

Supply and Appropriation (Main Estimates) (No.2) Bill

Second Reading (and remaining stages)

3.20 pm

Moved by ***Baroness Penn***

That the Bill be now read a second time.

Bill read a second time. Committee negatived. Standing Order 44 having been dispensed with, the Bill was read a third time and passed.

Illegal Migration Bill

Third Reading

3.21 pm

Moved by ***Lord Murray of Blidworth***

That the Bill be now read a third time.

Relevant documents: 34th and 37th Reports from the Delegated Powers Committee, 16th Report from the Constitution Committee, 12th Report from the Joint Committee on Human Rights. Correspondence from the Senedd published.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, before we commence proceedings on the Bill, I am obliged to make a short statement setting out the position on legislative consent. It is the UK Government's view that the Bill relates to reserved or excepted matters—namely, immigration and nationality—in each of Scotland, Wales and Northern Ireland, and is therefore not within the legislative competence of any of the devolved legislatures.

The United Kingdom Government note that the Senedd has declined to agree a legislative consent Motion in relation to certain provisions in the Bill, but it is our view that the legislative consent process is not engaged in relation to Wales.

Noble Lords will recall that we added a provision on Report relating to legal aid in Northern Ireland. Such a provision may amount to an alteration of the Department of Justice's executive functions; as such, we consider that this provision engages the legislative consent process in Northern Ireland. However, due to the continued absence of the Northern Ireland Executive and Assembly, a legislative consent Motion cannot be secured.

[Lord Murray of Blidworth]

For completeness, I add that no legislative consent Motion has been considered by the Scottish Parliament. The Scottish Government sought to bring forward such a Motion in relation to the modern slavery provisions in the Bill, but the Presiding Officer concluded that it did not meet the terms of the relevant standing order of the Scottish Parliament and consequently it was not debated. Accordingly, I beg to move.

3.23 pm

Motion

Moved by ***Lord Murray of Blidworth***

That the Bill do now pass.

Lord Murray of Blidworth (Con): My Lords, I do not want to detain the House for too long at this stage but, in view of what transpired on Report, it is fitting that I say a few words before the Bill completes its passage through your Lordships' House.

There is clearly some disagreement about the means, but we all agree on the necessary ends: we must stop the boats. It remains the Government's contention that the provisions of the Bill, as introduced in your Lordships' House, are a vital plank of the actions we are taking to stop these dangerous, illegal and unnecessary crossings of the channel. As my noble friend Lord Clarke so memorably noted, we have not heard an effective alternative. But, if we are to stop the boats, it is imperative that the scheme provided for in the Bill is robust and sends the unambiguous message that, if you enter the UK illegally, you will not be able to build a life here; instead, you will be detained and swiftly returned, either to your home country or to a safe third country.

As a result of the many non-government amendments agreed by your Lordships' House on Report, that message is no longer unambiguous. It is, at best, half-hearted and, at worst, now wholly absent from the Bill. The Government are reflecting carefully on each and every amendment, but I have no doubt that many will not find favour with the other place and we will soon be debating them again.

Having said all that, I record my thanks for all the valued contributions made by my noble friends and noble Lords opposite during the Bill's passage. It is particularly appropriate, following the sad news of his death late last week, that I express my sincere appreciation for the insightful contribution made by Lord Brown of Eaton-under-Heywood at Second Reading. This was one of his last speeches in this place and I am sure that I speak for all noble Lords if I say that his passing is a great loss to this House.

While there has not been much common ground between these Benches and those opposite, I express my gratitude for the candid and courteous way in which the noble Lords, Lord Coaker and Lord Ponsonby, have engaged with me on the Bill. I also extend my thanks to the noble Lord, Lord Paddick, and his Front-Bench colleagues for their clarity of message, albeit not one that I have been able to agree with.

Finally, I am duty bound to record my sincere gratitude for the invaluable help and assistance of my noble friends Lord Sharpe and Lord Davies and my noble and learned friends Lord Bellamy and Lord Stewart. I put on record my particular thanks to the excellent Bill manager, Mr Charles Goldie, and thank Gurveer Dhami, the deputy Bill manager, the whole of the Bill team, my private office staff and the officials and lawyers in the Home Office and the Ministry of Justice who have provided excellent support, along with the first-class drafting of the Office of the Parliamentary Counsel.

As I have indicated, I suspect it will be an unusually short time before we are debating these matters again, but for now I beg to move that this Bill do now pass.

Lord Cormack (Con): My Lords, we have a short time before this Bill comes back and I would like to take this opportunity to say to my noble friend that the Bill has been significantly altered and, in the view of many of us, generously improved in your Lordships' House.

My noble friend said some fairly strong words and, of course, he is fully entitled to do that but I urge that he discusses with his ministerial colleagues, particularly the Home Secretary, some of the speeches that have been made in this House and the underlying concern of those speeches—many of them made from this side of the House—that there is an absence of kindness, consideration and concern in the Bill that came before us at Second Reading.

The Bill has been improved. It has been made more human and more humane. If there is a particular thing that illustrates what I am trying to say—and it was raised earlier this afternoon, and I raised it myself in the gap when we debated the Windrush generation on Friday—it is that this incident of the painting out of murals designed only to amuse unaccompanied children sends out a message that, frankly, is not worthy of our country. I urge my noble friend to permeate his discussions on this Bill and his consideration with the Home Secretary as to which amendments can be amended, which can be accepted and which they feel they have to resist, with a recognition that it is the kindness and consideration of this country that have made it a great country. One has only to cite the Jews in the years before the war and the Ugandan Asians who came into this country 50 years ago, both enriching our communities.

Of course we cannot have boat people coming indiscriminately, but we must recognise that they are human beings, that they are individuals and that they are worthy of consideration as such. I implore my noble friend to enter some of that spirit into the discussions that he is shortly to have with the Home Secretary and his ministerial colleagues.

3.30 pm

Baroness Lister of Burtersett (Lab): My Lords, I very much echo what the noble Lord, Lord Cormack, has just said. I want to draw attention to the fact that the last-minute publication of the child rights impact assessment, which required the intervention of my noble friend Lord Kennedy of Southwark, meant that we were unable to pay due attention to it during the Bill's passage—despite children being among the Bill's main victims. Therefore, I will say a few words now.

The UN Convention on the Rights of the Child makes clear that a child rights impact assessment should be built in

"as early as possible in the development of policy".

The fact that it arrived so late and reads more like a repetitive post hoc justification of the Bill's measures than a serious analysis of their implications for the rights and best interests of the child suggests that it was not. Noble Lords from across this House and the Children's Commissioner have called for the assessment since the Bill's introduction. The commissioner has now made clear that the assessment "does not allay" her

"concerns about the impact of this Bill on children".

With particular reference to detention and the use of force, she notes that it

"relies on overly optimistic assumptions about what might come to pass to reach conclusions about the positive effect on children, while ignoring or overlooking the clear, evidenced and tangible negative impacts it will have".

While the Home Office's use of the DfE template is welcome, it serves to expose the lack of evidence to support its assessment of the impact on children's rights and its failure to consult externally. From the perspective of process and outcome this is a travesty of a child rights impact assessment. I hope that we remember that when it comes to the process of ping-pong on amendments affecting children.

Lord Carlile of Berriew (CB): From these Benches, I echo the remarks made by the Minister about our late and lamented noble and learned friend Lord Brown, who is sorely missed and who was often an inspiration to us all, even when we did not entirely agree with him, because he always inspired conceptual thinking.

I thank the Minister—and I do mean this by the way—for his patience while under fire, even though I mostly disagreed with his responses when they came. However, behind and underneath that carapace of patience has been a failure to understand that the Government set out to do something that is neither possible nor legal. We were told that the Bill would stop the boats as a deterrent. However, we know that the boats were fuller than ever in June. We were told that sending asylum seekers and refugees to Rwanda would be a deterrent. However, sending them to Rwanda is illegal—I use the word advisedly—under the laws of this country, at least until the matter has been relitigated in the Supreme Court. In the Minister's consultations with the Home Secretary, the Government should give serious consideration to pausing this Bill until that hearing has taken place. It seems extraordinary to me, as a long-time parliamentarian in both Houses, for this Parliament to be asked to pass a Bill which requires something unlawful to be done. I have a basic opposition to that.

I will say one other thing. Some of us are already receiving messages from various well-informed members of the media about changes the Government intend to make to this Bill. It would be helpful if we were informed at approximately the same time as the media so that we can make a considered judgment as to what we do during ping-pong and so that we can carry out the role which, I believe, we have performed effectively hitherto.

Baroness Chakrabarti (Lab): My Lords, it is an absolute pleasure to follow the noble Lord, Lord Carlile of Berriew, and I agree with so much of what he said. I do not normally support the contemporary fashion for many speeches at Third Reading, but, because of the Minister's kind words about the late noble and learned Lord, Simon Brown of Eaton-under-Heywood, I want to echo the tributes to him at this opportunity. He was a titan of our chambers and of so much more. He was, above all else, an incredibly kind human being. Kindness is a quality that has been mentioned in this Chamber today a number of times.

The Minister is quite right that Lord Brown was much more sympathetic to the Minister's position on this Bill than perhaps I have been, but I would like to leave noble Lords with some words from Lord Brown at ping-pong during the passage of last year's Nationality and Borders Act. He was pressing me all day, by every available means of communication, to press an amendment that would have made that legislation—which is now defunct, I understand—subject to our international obligations under the refugee convention. This is what he said in the Chamber that night:

"My Lords, I rise, I hope for the last time—a hope which will be shared by every Member of this House"—

self-deprecating, as always—

"—to support this amendment. There are not many issues that it is worth going to the stake for, but surely the rule of law is one. I have spent 60 years of my life on it and do not propose to stop here. I suggest that your Lordships support this too".—[*Official Report*, 27/4/22; col. 299.]

Lord Scriven (LD): My Lords, I wish to echo some of the words of the noble Lord, Lord Cormack. I, for one—like, I am sure, many noble Lords—do not have any pleasure in this Bill receiving its Third Reading because it lacks kindness, compassion and humanity. It is also not going to be effective, regardless of the rhetoric from the Dispatch Box.

For many of us who have been on this Bill, the way the Home Office has acted towards this Chamber has been with complete discourteousness. We had a late impact assessment, a late child impact assessment and they tried to keep us here for long hours to do our job, which is to scrutinise effectively.

I say very gently to the Minister, even though he has been very robust in his defence of the Bill, that it is not the job of this House to come up with a whole new Bill; it is our job to come up with amendments which make a Bill more effective. I believe the amendments we have passed make the Bill more effective, more compassionate and kinder in how we treat some of the most vulnerable people who seek asylum on these shores. I say very gently to the Minister, as he takes this back and it goes to the other place and as he speaks to the Home Secretary: think about the amendments, which are trying to make the Bill more effective; and make sure that the Home Office comes back, hopefully, with a Bill from the other place with a bit more compassion, kindness and effectiveness, and a lot less rhetoric.

Lord Deben (Con): My Lords, I rise to ask the Minister to make a correction. He said that there were divisions between the two sides of the House, but surely what has been true about this Bill is that large

[Lord Deben]
numbers of people on this side of the House have been very unhappy about it, have voted against it or have not voted with the Government. It is very important that the Minister takes back to the Home Office the fact that this Bill is not supported by the House as a whole, even by those of us who recognise the great need to have strong immigration control.

If I may say so, the Minister's comments about the drawings on the wall made me very unhappy. If it were his child in that place, he would know that his child would have been uplifted by those paintings. What about the people who did those paintings? They did it to make life a bit better for those people who find themselves in a position that we all ought to thank God that neither we nor our children are in. Until the Government understand that feeling, and recognise the unhappiness across the House, they will have missed the whole tone of what this House is about.

Baroness Jones of Moulsecoomb (GP): My Lords, this is a bad Bill. We have done our best in your Lordships' House to improve it. However, it is quite obvious that the Government, when we talk about kindness, compassion and humanity, seem to think that these are weaknesses. I argue that they are actually strengths. It is part of our British psyche to give that sort of kindness, so the Bill does not work for anybody in Britain. It certainly will not work for the Government to stop the boats. I just wish the Government had more common sense.

Lord German (LD): My Lords, while echoing all the sentiments that have been expressed, I will address the remarks of the Minister in introducing new material at the very beginning of his statement about the legislative consent Motion of the Welsh Parliament, the Senedd. The impression given by the Minister was that these were matters reserved to the British Government, and that therefore any legislative consent Motion from the Welsh Senedd was not appropriate and certainly not allowed. But the matter on which it passed the legislative consent Motion was a very narrow issue indeed about how children in Wales are to be looked after, and the responsibilities of local authorities towards those children, no matter where those children came from.

The piece of legislation that the Government are now putting a red line through is an Act of the Welsh Parliament that has been signed by the Head of State. It is one of which the Welsh people are truly proud, because it projects certain obligations on local authorities to commit to those children who find themselves in Wales, no matter where they come from. I wonder whether the Minister, in reminding us why the Government have overturned that piece of legislation, knows that they are actually overturning a piece of primary legislation that was passed five years ago and has universal support from all parties in Wales. It is that narrow point that the Government seek to overturn, not the Bill as a whole, even though the Welsh Parliament has of course expressed widespread concerns about the Bill as a whole. But that is what the legislative consent Motion was denied for: the overriding of a piece of primary legislation in that respect.

Lord Paddick (LD): My Lords, I associate those of us on these Benches with the kind words of the Minister and others around the House in relation to the sad news about the noble and learned Lord, Lord Brown of Eaton-under-Heywood. He will be greatly missed.

Since Second Reading, we on these Benches have made clear our opposition to what we consider to be an illegal—to use the word of the noble Lord, Lord Carlile of Berriew—and immoral Bill. If there were any way in which a Bill of this kind might have any chance of stopping the boats, it was by acting as a deterrent. Despite its proposed retrospectivity, record numbers crossed the channel in June and again this weekend, as the noble Lord, Lord Carlile, said. The Government's own impact assessment describes a consensus among academics that the Bill is unlikely to deter those seeking sanctuary in the UK. Both in theory and in practice, the Bill appears destined not to achieve what it sets out to do.

Instead, as introduced into this House, the Bill undermines both the UK's international reputation and the global consensus that mass migration needs to be dealt with through international co-operation, not unilateral action. Unamended, the Bill is all pain and no gain, potentially creating a permanent underclass of tens of thousands of people who cannot be removed, whose claims for asylum will not even be examined, let alone accepted, and who will be unable to work legally—a permanent drain on the taxpayer.

Contrary to what the Minister has said, some noble Lords, whose attendance during our lengthy debates on the Bill has been—how can I put it?—sporadic, claim that no alternative has been offered. Nothing could be further from reality, as the official record shows. For example, some 15 years ago claims for asylum were higher; the backlog of claims awaiting decisions was a fraction of what it is today; and the number of those being removed was far greater. The only immigration crisis in the UK today is one created by the Home Office, and a Bill targeted at criminalising asylum seekers, rather than people smugglers, is bound to fail.

3.45 pm

It is customary at this stage of a Bill to thank those involved. I express my grateful thanks for the way in which Ministers and officials from the Ministry of Justice and the Foreign, Commonwealth and Development Office have engaged positively with the issues surrounding the Bill. I thank all the NGOs and charities that have provided helpful briefings on the Bill. I acknowledge the hard work of Charles Goldie and his Bill team in difficult circumstances. I thank my amazing noble friends, the noble Lords on the Labour Benches, and Back-Benchers on both the Government and Cross Benches for their constructive engagement, whatever side of the arguments they have been on. Debate and dialogue are essential in such contentious areas. I want to reassure all noble Lords that we on these Benches have listened, and their views have been considered. Most of all, I thank Elizabeth Plummer in our Whips' Office, whose work on the Bill has been heroic. Roll on, Wednesday.

Lord Coaker (Lab): My Lords, I start on a sombre note and join other noble Lords and the Minister in paying tribute to Lord Brown, who will be sorely missed by us all. He spent many an hour in the tearoom and elsewhere trying to explain various legal niceties to me in a very calm and dignified way, always treating me with a respect and courtesy I am not sure I deserved. He was a truly remarkable man and a pleasant individual. He will be missed by us all, and it is very sad that he has left us.

I will start with some usual courtesies before I make a couple of comments. I thank the Minister for the briefings he gave us. We have fundamentally disagreed on certain things. We were not pleased about the lateness of the impact assessments, as my noble friend Lady Lister made clear. To be fair to the Minister, even when we have fundamentally disagreed, he has always tried to brief me with respect to the Bill, and I am grateful for that. I thank his colleague, the noble Lord, Lord Sharpe, for being similarly available whenever needed with respect to the Bill. Again, we disagreed on various things, but I appreciated his courtesy and help. I would be grateful if he could pass on my thanks to the noble and learned Lords, Lord Bellamy and Lord Stewart, who at different times contributed to the Bill. I have to mention the Government Whip, who sat there all the way through with his normal face, which was always interested and agreeable. It was a pleasure to talk to him, if no one else at times. I also thank the Minister's officials, who have been really helpful.

My noble friend Lord Ponsonby is always a welcome contrast to my calm and unexcitable demeanour. He generates the rhetoric, drive and passion that I sometimes lack, and I am grateful for him encouraging me to have a bit more zeal at times—but seriously, it is good to have him alongside me. I am grateful to the officials in our office, Dan Stevens and Clare Scally, who have been very helpful, and my Back-Bench colleagues—I am always a bit nervous about this; it is like being at a wedding when you forget the aunt at the back—particularly my noble friends Lady Chakrabarti, Lord Dubs, Lady Lister, Lord Bach, Lord Cashman and Lord Hunt, and many others, for their support and help as the Bill has gone through. I thank the noble Lord, Lord Paddick, and his team for their co-operation, and Peers from across the House, some from unexpected quarters, who rang me to ask about different things. It has been a pleasure to work with them.

I want to start with some related points, including the comment made by the noble Lord, Lord Deben. Having said what I said about the Minister, a couple of the things he said at the beginning were disappointing. There may have been times when some have thought it the right thing to do but, generally speaking, this House has not sought to block the Bill. It has recognised that the Commons has a right to pass its legislation. However, many in this House feel that the payback for that—for want of a better way of putting it—is that the other place has to respect that this place has a constitutional role to play as well. We will not be intimidated or made to back off from passing amendments that we think are important, or from saying where we think the Government have got it wrong.

I have been in government; it is hugely irritating to a Government to have this happen, but it sometimes works, in that better legislation is passed. If two and two does not make four, there is a problem. On a Bill as controversial and difficult as this, it is only right that large numbers of amendments be passed. It is only right to ask the other place—as a number of Peers have done—to give due consideration, in proper time, to the amendments we have passed and to adapt and make changes.

To be frank, it is difficult to know exactly what we should think about what will happen tomorrow, given that the only briefing we have had has gone to the newspapers and the media, telling us what to expect in the amendments to be published tomorrow or later today. Some may be things that we could agree to. Many in this place, including me, and a number of Members in the other place, will say that it cannot be right that journalists are ringing to ask your opinion, when you have no idea about it. They ask why you cannot comment and you have to say, "Well, I don't know what the Government are suggesting". That cannot be right, and it needs to be looked at.

The noble Lord, Lord Deben, made a passionate point. Sometimes, if a Government get something wrong, as they have with the murals at the detention centre, the right thing to do is to stand up and say that it should not have happened and they will make sure it does not happen again.

As part of our co-operation and work together, the Minister organised a trip to Dover and to Western Jet Foil for my noble friend Lord Ponsonby and myself. My noble friend and I went to the facility with the mural, where Mickey Mouse was painted on the wall. There was nothing offensive about it—nothing at all that anybody could take offence at. All it did was provide comfort and a sense of belonging to children in a desperate situation, which, presumably, is why somebody painted it. They did not paint it out of badness, or to make a political point or embarrass the Government. This was simply a human being, no doubt as an act of kindness, painting something on the wall to comfort children in a desperate situation.

In addition to the Minister's response being wrong and disappointing, the noble Lord, Lord Deben, made the point he made—he will correct me if I am wrong—in order to show that that attitude cannot prevail when considering the other amendments we have sent to another place, where they are generally dismissed out of hand. The Government may have given way on four, five or six—we do not know—but the 20 or so amendments sent there deserve proper consideration. If the Government object to them, they will need to give a proper explanation. Underlying what the noble Lord, Lord Deben, said, that is what we are asking for.

This place deserves its proper position within the functioning of the constitution of this country. If it does not have that, the consequence will be poorer legislation. In respect of an Illegal Migration Bill that is so controversial, the impact will be on innocent people, including children, who do not deserve it.

Lord Murray of Blidworth (Con): My Lords, I will not address all the speeches, but I can certainly say that I agree with parts of almost all of them. Of

[Lord Murray of Blidworth]
course, noble Lords are entirely right that I and the department should think deeply about the amendments proposed, and we will. It is clear that there will be some changes, and I hope to work with noble Lords on that in due course.

Without Lord Brown, this House is very much a lesser place, and I am glad that we had an opportunity to reflect on that today.

3.56 pm

Bill passed and returned to the Commons with amendments.

Online Safety Bill

Report (2nd Day)

3.56 pm

Relevant documents: 28th and 38th Reports from the Delegated Powers Committee, 15th Report from the Constitution Committee. Scottish and Welsh Legislative Consent granted.

Clause 10: Children's risk assessment duties

Debate on Amendment 34 resumed.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): We began this group on the previous day on Report, and I concluded my remarks, so it is now for other noble Lords to contribute on the amendments that I spoke to on Thursday.

Lord Bethell (Con): My Lords, I rise emphatically to welcome the government amendments in this group. They are a thoughtful and fulsome answer to the serious concerns expressed from the four corners of the Chamber by a great many noble Lords at Second Reading and in Committee about the treatment of age verification for pornography and online harms. For this, I express my profound thanks to my noble friend the Minister, the Secretary of State, the Bill team, the Ofcom officials and all those who have worked so hard to refine this important Bill. This is a moment when the legislative team has clearly listened and done everything it possibly can to close the gap. It is very much the House of Lords at its best.

It is worth mentioning the exceptionally broad alliance of noble Lords who have worked so hard on this issue, particularly my compadres, my noble friend Lady Harding, the noble Baroness, Lady Kidron, and the right reverend Prelate the Bishop of Oxford, who all signed many of the draft amendments. There are the Front-Benchers, including the noble Lords, Lord Stevenson, Lord Knight, Lord Clement-Jones and Lord Allan of Hallam, and the noble Baroness, Lady Merron. There are the Back-Benchers behind me, including my noble friends Lady Jenkin and Lord Farmer, the noble Lords, Lord Morrow, Lord Browne and Lord Dodds, and the noble Baroness, Lady Foster. Of those in front of me, there are the noble Baronesses, Lady Benjamin and Lady Ritchie, and there is also a number too large for me to mention, from all across the House.

I very much welcome the sense of pragmatism and proportionality at the heart of the Online Safety Bill. I welcome the central use of risk assessment as a vital tool for policy implementation and the recognition that some harms are worse than others, that some children need more protection than others, that we are legislating for future technologies that we do not know much about and that we must engage industry to achieve effective implementation. As a veteran of the Communications Act 2003, I strongly support the need for enabling legislation that has agility and a broad amount of support to stand the test of time.

4 pm

However, there is also a time when it is essential that we are absolute about things and that we say that there are some contents and functions that children should never encounter anywhere on the internet. If we want to be taken seriously as a Parliament, and if we want to bring about meaningful behavioural change, we need to tether the regulation of the internet to at least some certainties, and that is why this package of government amendments is so very welcome. We need to make it clear to anyone doing business on the internet that, sometimes, there are no loopholes, no mitigations, no legal cop-outs, no consultations and no sliding scales. Sometimes Parliament makes choices and decides that some things are just plain wrong and beyond the pale.

It was the moral relativism and misguided sense of proportionality and consultative handling, when it came to the age verification measures for damaging and violent pornography, that so alarmed so many people about the draft Bill. It is very much the clarity of the newly introduced government amendments that make them so powerful. They make it crystal clear that no child should ever see any pornography anywhere on the internet. That is a massive relief to those who have campaigned so hard and for so long for final age verification for pornography and priority harms. On this, I am particularly thankful to the noble Baroness, Lady Benjamin, who I know is seething with frustration that she is not speaking, and to my noble friend Lord Farmer. By introducing clear, concrete and definitive measures, this government package provides a tether that anchors the Bill to some certainty.

The government amendments are an essential step to ending the corrosive sense of exceptionalism that has hung around the regulation of online spaces for too long. We will no longer consult with industry about what it might or might not be expected to do to protect children, as was first intended. Instead, we are defining a high bar and applying it to all pornographic content and priority harms, wherever they are on the internet, the metaverse or any future technology. We are legislating for all online businesses, wherever they are, and whether they are big, small, mobile, meta or whatever.

Thank goodness that our Government have recognised that we have reached an inflection point in the history of the online world, where the access to internet content and functions are in the pockets and bedrooms of our children. We should no longer victim-blame our children by calling for more education; we cannot scapegoat parents by making implausible expectations

about how families can police or manage their children's times on devices. Instead, with these amendments, the Government have recognised that we need internet companies to take responsibility for what is on their platforms; there will be no more dodging or obfuscation. If you have horrible, violent porn content on your service, you need a system to keep children away—full stop; no haggling.

This is a profound challenge to Twitter, Instagram, Snapchat, TikTok, WhatsApp, Reddit, Facebook and all the services that the Children's Commissioner rightly identified as gateways to pornography: businesses that have, for too long, happily recruited kids to their algorithms with porn and have taken advertisers' money for clicks from kids watching porn, regardless of the consequences to society. This is also a challenge to Pornhub and all the other professional pornographers that have benefited from the constructive ambiguity of the last 30 years and will now be called to account.

This is a huge victory. My noble friend Lord Grade thoughtfully and movingly told us that he would judge Ofcom's mission to be a success if platforms finally took responsibility for what was on their services, and I take that very seriously. The government amendments in this group provide a powerful illustration of that principle and a tool for bringing it about. Effective enforcement by Ofcom is essential for giving tech bosses, who are too often happy to pay the fines and move on, a certain clarity of mind. I welcome the government amendments on senior management liability, which introduce the threat of prison to those who egregiously breach Ofcom's standards. However, as the House knows, several enforcement measures are yet to reach us, and I flag in advance to my noble friend the Minister that these are considered critical to the success of the new regime by several noble Lords.

The government amendments are a massive step towards applying the common-sense principle that the rules about what is illegal and inappropriate for children in the real world should be applied equally to the online world, with equal vigour and equal scope. For that reason, I very much welcome the announcement of a porn review to investigate gaps in UK regulation that allow exploitation or abuse to occur online, in clear breach of long-standing criminal and civil laws, and to identify barriers to enforcing criminal law.

This is a knotty issue that involves several cross-departmental dependencies, including the allocation of resources by the Home Office, the writing of proper guidelines by the Ministry of Justice, the prioritisation of prosecutions by the CPS, and the building of a relevant skills base in our police forces. I therefore ask the Minister for guidance on the timetable, the terms of reference and the appointment of a chair for this review. I would also ask that a wide range of voices are heard and prioritised for this review.

The Government deserve considerable praise for their bold steps: not just to protect children from the harms of pornography, and to put Britain at the forefront of the global response to online safety, but also to nurture a benign environment for our critically important tech sector. These government amendments will create legislative certainty: an essential foundation for innovation. They will help rehabilitate the reputation of a tech sector reeling from the excesses of bad actors and the misplaced moral relativism of this young, exciting and vibrant industry. That will have benign consequences for investment and recruitment.

With a final word of optimism, I ask my noble friend the Minister what work will be done to bring alignment with other jurisdictions and to promote Britain as a well-regulated destination for investment, much as we do for life sciences.

Baroness Ritchie of Downpatrick (Lab): My Lords, I reiterate what the noble Lord, Lord Bethell, has said and thank him for our various discussions between Committee and Report, particularly on this set of amendments to do with age verification. I also welcome the Government's responsiveness to the concerns raised in Committee. I welcome these amendments, which are a step forward.

In Committee, I was arguing that there should be a level playing field for regulating any online platform with pornographic content, whether it falls under Part 3 or Part 5 of the Bill. I welcome the Government's significant changes to Clauses 11 and 72 to ensure that robust age verification or estimation must be used and that standards are consistent across the Bill.

I have a few minor concerns that I wish to highlight. I am thoughtful about whether enough is required of search services in preventing young people from accessing pornography in Clause 25. I recognise the Government believe they have satisfied the need. I fear they may have done enough in the short term, but there is a real concern that this clause is not sufficiently future-proofed. Of course, only time will tell. Maybe the Minister could advise us further in that particular regard.

In Committee, I also argued that the duties in respect of pornography in Parts 3 and 5 must come into effect at the same time. I welcome the government commitment to placing a timeframe for the codes of practice and guidance on the face of the Bill through amendments including Amendment 230. I hope that the Minister will reassure us today that it is the Government's intention that the duties in Clauses 11 and 72 will come into effect at the same time. Subsection (3) of the new clause proposed in Amendment 271 specifically states that the duties could come into effect at different times, which leaves a loophole for pornography to be regulated differently, even if only for a short time, between Part 3 and Part 5 services. This would be extremely regrettable.

I would also like to reiterate what I said last Thursday, in case the Minister missed my contribution when he intervened on me. I say once again that I commend the Minister for the announcement of the review of the regulation, legislation and enforcement of pornography offences, which I think was this time last week. I once again ask the Minister: will he set out a timetable for publishing the terms of reference and details of how this review will take place? If he cannot set out that timetable today, will he write to your Lordships setting out the timetable before the Recess, and ensure a copy is placed in the Library?

Finally, all of us across the House have benefited from the expertise of expert organisations as we have considered this Bill. I repeat my request to the Minister

[Baroness Ritchie of Downpatrick]
that he consider establishing an external reference group to support the review, consisting of those NGOs with particular and dedicated expertise. Such groups would have much to add to the process—they have much learning and advice, and there is much assistance there to the Government in that regard.

Once again, I thank the Minister for listening and responding. I look forward to seeing the protections for children set out in these amendments implemented. I shall watch implementation very closely, and I trust and hope that the regulator will take robust action once the codes of practice and guidance are published. Children above all will benefit from a safer internet.

Baroness Kidron (CB): My Lords, I welcome the government amendments in this group, which set out the important role that age assurance will play in the online safety regime. I particularly welcome Amendment 210, which states that companies must employ systems that are "highly effective" at correctly determining whether a particular user is a child to prevent access to pornography, and Amendment 124, which sets out in a code of practice principles which must be followed when implementing age assurance—principles that ensure alignment of standards and protections with the ICO's age appropriate design code and include, among other things, that age assurance systems should be easy to use, proportionate to the risk and easy to understand, including to those with protected characteristics, as well as aiming to be interoperable. The code is a first step from current practice, in which age verification is opaque, used to further profile children and related adults and highly ineffective, to a world in which children are offered age-appropriate services by design and default.

I pay tribute again to the noble Lord, Lord Bethell, and the noble Baroness, Lady Benjamin, and I associate myself with the broad set of thanks that the noble Lord, Lord Bethell, gave in his opening speech. I also thank colleagues across your Lordships' House and the other place for supporting this cause with such clarity of purpose. On this matter, I believe that the UK is world-beating, and it will be a testament to all those involved to see the UK's age verification and estimation laws built on a foundation of transparency and trust so that those impacted feel confident in using them—and we ensure their role in delivering the online world that children and young people deserve.

I have a number of specific questions about government Amendment 38 and Amendment 39. I would be grateful if the Minister were able to answer them from the Dispatch Box and in doing so give a clear sign of the Government's intent. I will also speak briefly to Amendments 125 and 217 in my name and those of the noble Lord, Lord Stevenson, the noble Baroness, Lady Harding, and the right reverend Prelate the Bishop of Oxford, as well as Amendment 184 in the names of the noble Baroness, Lady Fox, and the noble Lord, Lord Moylan. All three amendments address privacy.

Government Amendment 38, to which I have added my name, offers exemptions in new subsections (3A) and (3B) that mean that a regulated company need not use age verification or estimation to prevent access to primary priority content if they already prevent it by means of its terms of service. First, I ask the Minister to confirm that these exemptions apply only if a service effectively upholds its terms of service on a routine basis, and that failure to do so would trigger enforcement action and/or an instruction from Ofcom to apply age assurance.

4.15 pm

Secondly, will the Minister further explain how these exemptions impact on the child safety duties for priority content, which is not prohibited but must be age appropriate, or how they might account for aspects of the service that create harm but are not associated directly with the content? In trying to work out the logic, it appeared to me that either a company would have to identify the end user was a child by means of age assurance, but perhaps not the highest bar, or it would have to design a service that was not harmful to children even if that harm was not primary priority content. It would be good to hear what the intention is to make sure there is not—inadvertently, I am sure—a loophole by which companies can fail in their duties by ignoring children on their service because they do not allow primary priority content.

Amendments 49 and 93 would ensure that

"a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it".

Somewhat related to my previous question, can the noble Lord confirm that a service—for example, a financial service provider that offers adult-facing products, or a gambling site that requires adults to identify themselves—will be taken as having age-verified so that age verification is no longer necessary?

I welcome the 18-month deadline for Ofcom to produce guidance on child access assessments, but can the Minister confirm that the timeframe is a backstop and the Government's ambition is to get age assurance much quicker? Also, when he responds, will he confirm that Schedule 4 will be published as part of the child safety code, which is why it is not mentioned in Amendment 271? While I enthusiastically welcome the code of practice, it is simply the fact that many adults and children have concerns about privacy and security.

Amendments 125 and 217 address a gap in the Bill by making it clear

"that data collected for age assurance must be stored securely, deleted as soon as possible and not used for other purposes".

Similarly, Amendment 184, in the name of the noble Lord, Lord Moylan, addresses the privacy issue in a detailed way that may be better suited to Ofcom's fully fleshed out code of conduct but none the less speaks to the same gap. I do not expect the Minister to accept these amendments as written, and I understand that there is an overarching requirement for privacy in the Bill, but in the public discourse about the online world, safety is always put in binary opposition to privacy. If the Government were to acknowledge in the Bill the seriousness of the need for privacy and security of information relating to age verification and estimation, it would send a clear message that they have understood the validity of the privacy concerns and be an enormous contribution to ending the unhelpful

binary. I hope that on this matter the Minister will agree to take these amendments away and include wording to the same effect.

Finally, last week, at the invitation of the right reverend Prelate the Bishop of Gloucester, the Minister and I attended an event at which we were addressed by children about the pressures they felt from social media. I thank all the young people present for the powerful and eloquent way in which they expressed the need for politicians and religious, civic and business leaders to do more to detoxify the digital world. If they are listening, as they said they would, I want to assure them that all of us in this Chamber hear their concerns. Importantly, when I asked Oliver, aged 12, and Arthur, aged 13, what one thing we could and should do to make their online world better, they said, "Make age checking meaningful". Today, we are doing just that.

Lord Allan of Hallam (LD): My Lords, I shall follow on directly from some of the comments of the noble Baroness, Lady Kidron, around privacy. I shall not repeat the arguments around children and pornography but touch on something else, which is the impact of these amendments on the vast majority of internet users, the 85%-plus who are 18 or older. Of course, when we introduce age assurance measures, they will affect everyone: we should not kid ourselves that it is only about children, because everyone will have to pass through these gateways.

I shall speak particularly to Amendments 184 and 217 on privacy. I am sure that most adults will support extra safety measures for children, but they also want to be able to access a wide range of online services with the least possible friction and the lowest risk to their own personal data. We can explore how this might work in practice by looking at something that we might all do in this Chamber. Looking round, I believe that we are all at least 18 years old, and we might find ourselves idly passing the time creating an account on a new user-to-user or search service that has been recommended. We should consider this group of amendments by how that might play out. In future, the services will have to check that we are in the United Kingdom—there is a range of ways in which they can do that. Having confirmed that, they will need to understand whether we are 18-plus or a child user so that they can tailor their service appropriately.

I hope we all agree that the services should not be asking us for passports or driving licences, for example, as that would be entirely contrary to the thrust of privacy regulations and would be a huge gateway to fraud and other problems. The most efficient way would be for them to ask us for some sort of digital certificate—a certificate that we have on our devices where we have proven to a trusted third party that we are 18-plus. The certificate does not need to contain any personal data but simply confirms that we are of age. That is very similar to the way in which secure websites work: they send a digital certificate to your browser and you verify that certificate with a trusted third party—a certificate authority—and then you can open an encrypted connection. We are reversing the flow: the service will ask the user for a certificate and then verify that before granting access. A user may have a setting on their device in future where they confirm that they are happy for their 18-plus certificate to be given to anybody or whether they would like to be asked every time there will be a new set of privacy controls.

Building the infrastructure for this is non-trivial. Many things could go wrong but at least the kind of model I am describing has some hope of achieving widespread adoption. It is very good for the adult users as they can continue to have the frictionless experience as long as they are happy for their device to send a certificate to new services. It is good for the market of internet services if new services can bring users on easily. It is good for privacy by avoiding lots of services each collecting personal data, as most people access a multiplicity of services. Perhaps most importantly in terms of the Bill's objectives, it is good for children if services can separate out the vast majority of their users who are 18-plus and then focus their real efforts on tailoring the services for the minority of users who will be children. The Bill will introduce a whole set of new obligations.

We should not underestimate the scale of the challenge in practice; it will work only if major internet companies are willing to play the game and get into the market of offering 18-plus certificates. Companies such as Google, Meta, Amazon, Apple and Microsoft—the ones we normally love to hate—will potentially provide the solution, as well as not-for-profits. There will be foundations for those who object to the big internet companies, but it is those big internet companies which will have the reach; they each have millions of users in the United Kingdom. This is not to fly the flag for those companies; it is simply a question of efficiency. I suspect that everyone in the Chamber uses a combination of services from those big providers. We already share with them the personal data necessary for age assurance, and there would be no additional sharing of data. If they were willing to provide a certificate, they could do so at the kind of scale necessary for the 50 million or so adult internet users in the United Kingdom to be able to get one easily and then pass it to services when they choose to access them.

There may be some discomfort with big tech playing this role, but I cannot see the kind of aggressive targets that we are setting in the amendments working unless we take advantage of those existing platforms and use them to make this work. Amendment 230 tells us that we have about 18 months, which is very soon in terms of trying to build something. We should be clear that if we are to deliver this package it will depend on persuading some of those big names in tech to create age certification schemes for UK users.

For this to have widespread adoption and a competitive market, we need it to be free of direct financial costs to individual users and to services choosing to age-verify, as we have asked them to do so. We need to think very carefully about that, as it raises a whole series of competition questions that I am sure Ofcom and the Competition and Markets Authority will have to address, not least because we will be asking companies to provide age certification free of charge that will be used by their existing and future competitors to meet their compliance requirements.

[Lord Allan of Hallam]

There may be some listening who think that we can rely on small age-assurance start-ups. Some of them have a really important role to play and we should be proud of our homegrown industry, but we should be realistic that they will reach scale only if they work with and through the large service providers. Many of them are already seeking those kinds of relationship.

As a test case, we might think of an application such as Signal, a messaging app that prides itself on being privacy-first. It does not want to collect any additional information from its users, which is perfectly reasonable, given where it is coming from. It will be really interesting to see how comfortable such a service will be with working with certification schemes, under which it can prove that users are over 18 by taking advantage of the data held by other services which collect significant amounts of data and have a very good idea of how old we are.

I have not focused on under-18s but, once this system is in place, application providers will be thinking very carefully about the pros and cons of allowing under-18s on at all. I know that the noble Baroness, Lady Kidron, is also concerned about this. There will be services that will think very carefully, if they find that the vast majority of their users are 18-plus, about the extent to which they want to put time and effort into tailoring them for users under 18. We do not intend that outcome from the Bill, but we need realistically to consider it.

Baroness Kidron (CB): Just to be clear, I say that the purpose of my question to the Minister was to get at the fact that, for low-risk situations, there can be age assurance that is a lot less effective or intrusive, for that very reason.

Lord Allan of Hallam (LD): I agree; that is very helpful. I think Amendments 74, 93 and 99 also talk about the exclusion, as the noble Baroness raised, of services from the child safety duties if they can show that they are only 18-plus. It will be quite material and critical to know at what level they can demonstrate that.

I have avoided talking about pornography services directly, but there are interesting questions around what will happen if this model develops, as it likely will. If big tech is now starting to provide age certification for the kinds of mainstream services we may all want to access, they may be much less comfortable providing that same certification to pornography providers, for reputational reasons. A mainstream provider would not want to enter that market. Ofcom will need to take a view on this. We have talked about interoperability in the framework we have created, but it is a big question for Ofcom whether it wants to steer all age certification providers also to provide 18-plus certification for pornography providers or, effectively, to allow two markets to develop—one for mainstream certification and one for certification for pornography.

I have taken a few minutes because this is a very high-risk area for the Bill. There are material risks in willing into existence a model that depends on technical infrastructure that has not yet been built. The noble Lord, Lord Bethell, referred to prior experience; one of the reasons why we have not delivered age assurance before is that the infrastructure was not there. We now want it built, so must recognise that it is quite a high-risk endeavour. That does not mean it is not worth attempting, but we must recognise the risks and work on them.

If the implementation is poor, it will frustrate adult users, which may bring the Bill into disrepute. We need to recognise that as a genuine risk. There are people out there already saying that the Bill means that every internet service in the world will ask you for your passport. If that is not the case, we need to stress that we do not expect that to happen. There are also potentially significant impacts on the market for online services available to both adults and children in the UK, depending on the design of this system.

The purpose of thinking about some of these risks today is not to create a doom-laden scenario and say that it will not work. It is entirely the opposite—to say that, if we are to move ahead into a world in which children are protected from harmful content, for which very good reasons have been articulated and a huge amount of work has gone ahead, and in which services can tailor and gear access to the age of the child, we have to be able to take the 18-plus out of that, put it into a separate box and do so in a really easy, straightforward manner. If not, the 18-plus will end up dragging down what we want to do for the underage.

I hope that explanation helps in the context of these amendments. We will need to test them against it as implementation happens over the next few months.

4.30 pm

Lord Farmer (Con): My Lords, I thank the Minister for engaging with the amendment in my name and that of the noble Baroness, Lady Benjamin, in Committee, to ensure parity between the regulation of online and offline pornography. We did not table it for Report because of the welcome news of the Government's review. At this point, I would like to give my backing to all that my noble friend Lord Bethell said and would like to thank him for his great encouragement and enthusiasm on our long journey, as well as the noble Baroness, Lady Kidron. I would particularly like to mention the noble Baroness, Lady Benjamin, who, as my noble friend Lord Bethell mentioned, must be very frustrated today at not being able to stand up and benefit us with her passion on this subject, which has kept a lot of us going.

I have some questions and comments about the review, but first I want to stand back and state why this review is so necessary. Our society must ask how pornography was able to proliferate so freely, despite all the warnings of the danger and consequences of this happening when the internet was in its infancy. Human appetites, the profit motive and the ideology of cyberlibertarianism flourished freely in a zeitgeist where notions of right and wrong had become deeply unfashionable. Pre-internet, pornography was mainly on top shelves, in poky and rather sordid sex shops, or in specialist cinemas. There was recognition that exposure to intimate sex acts should never be accidental but always the result of very deliberate decisions made by adults—hence the travesty of leaving children exposed

to the danger of stumbling across graphic, violent and frequently misogynistic pornography by not bringing Part 3 of the Digital Economy Act 2017 into force.

I have talked previously in this House about sociology professor Christie Davies' demoralisation of society thesis: what happens when religiously reinforced moralism, with its totemic notion of free will, is ditched along with God. Notions of right and wrong become subjective, individually determined, and a kind of blindness sets in; how else can we explain why legislators ignored the all-too-predictable effects of unrestrained access to pornography on societal well-being, including but not limited to harms to children? For this Bill to be an inflection point in history, this review, birthed out of it, must unashamedly call out the immorality of what has gone before. How should we define morality? Well, society simply does not work if it is governed by self-gratification and expressive individualism. Relationships—the soil of society—including intimate sexual relationships, are only healthy if they are self-giving, rather than self-gratifying. These values did not emerge from the Enlightenment but from the much deeper seam of our Judeo-Christian foundations. Pornography is antithetical to these values.

I turn to the review's terms of reference. Can the Minister confirm that the lack of parity between online and offline regulation will be included in the legal gaps it will address? Can he also confirm that the review will address gaps in evidence? As I said in Committee, a deep seam of academic research already exists on the harmful effects of the ubiquity of pornography. The associations with greater mental ill health, especially among teenagers, are completely unsurprising; developing brains are being saturated with dark depictions of child sexual abuse, incest, trafficking, torture, rape, violence and coercion. As I mentioned earlier, research shows that adults whose sexual arousal is utterly dependent on pornography can be catastrophically impaired in their ability to form relationships with flesh-and-blood human beings, let alone engage in intimate physical sex.

Will the review also plug gaps in areas that remain underresearched and controversial and where vested interests are bound? On that point, whoever chairs this review will have to be ready, willing and able to take on powerful, ideologically motivated and profit-driven lobbies.

Inter alia, we need to establish through research the extent to which some young women are driven to change their gender because of hyper-sexualised, porn-depicted female stereotypes. Anecdotally, some individuals have described their complete inability to relate to their natal sex. It can be dangerous and distasteful to be a woman in a world of pornified relationships which expects them to embrace strangulation, degradation and sexual violence. One girl who transitioned described finding such porn as a child: "I am ashamed that I was fascinated by it and would seek it out. Despite this interest in watching it, I hated the idea of myself actually being in the position of the women. For a while, I even thought I was asexual. Sex is still scary to me, complicated".

Finally, the Government's announcement mentioned several government departments but does not make it clear that they will also draw in the work of DfE and DHSC—the departments for children's and adult mental health—for reasons I have already touched on. Can the Minister confirm that the remit will include whatever areas of government responsibility are needed so that the review is genuinely broad enough to look across society at how to protect not just children but adults?

Baroness Fox of Buckley (Non-Afl): My Lords, I rise to speak to Amendment 184 in my name—

Lord Harlech (Con): My Lords, the guidance in the *Companion* states that Peers who were not present for the opening of this debate last week should not speak in the debate today, so I will have to ask the noble Baroness to reserve her remarks on this occasion.

Lord Clement-Jones (LD): My Lords, that neatly brings me to the beginning of my own speech. I have expressed to the Chief Whip and the Minister my great regret that my noble friend Lady Benjamin is not able to take part in today's debate because of the rather arbitrary way the group was started at the very end of proceedings on Thursday. The Minister is very much aware of that; it is a very sad thing.

I pay huge tribute to my noble friend, as the noble Lords, Lord Bethell and Lord Farmer, have. She is sitting behind me, yet she cannot make her contribution after a decade of campaigning so passionately on these issues. That includes pushing for age verification for pornographic content. We stood shoulder to shoulder on Part 3 of the Digital Economy Act, and she has carried that passion through into the debates on this Bill.

My noble friend believes that the Minister's amendments in particular are a huge step forward. She describes this as a landmark moment from her point of view. She wants me to thank Barnardo's, CARE and CEASE for their support and for bringing evidence and research to us on pornography. She would like to thank the Secretary of State and the Minister in particular for taking us to this point.

My noble friend also welcomes the review that was announced last week but, like the noble Lords, Lord Bethell and Lord Farmer, she has some questions that have be asked. This review is a good opportunity to examine the gaps in regulation, but it is proposed that the review will take a year. Is that the proposal and is it a firm year? What happens thereafter? Is there a commitment by the Government to legislate on this, if they are still the Government in a year's time? What are their intentions and what is the road map to legislation? For instance, the gambling review started four years ago and we have not seen real change yet, so I think it is important to have some assurance in that respect.

Who will be involved in the review? Will the third sector and charity organisations working in this space be involved? The noble Lord, Lord Farmer, asked about scientific and medical research, which are all important aspects. I know that my noble friend would want to pay her own tribute to the noble Lords, Lord Farmer and Lord Bethell, to others involved in this exercise—"exercise" should be what it is called as it certainly feels like exercise—and in particular to the noble Baroness, Lady Kidron. I hope that the Minister will give my noble friend those assurances, despite the fact that she is not able to take part in this debate today.

[Lord Clement-Jones]

From my point of view, I welcome the Government's decision to strengthen the Bill's age-verification requirements for online pornography, especially in respect of the principles for age assurance. But—and there always is a "but"—we absolutely need that age assurance to be privacy protecting. Amendment 125 is crucial and I am disappointed that it has not been included so far.

My noble friend Lord Allan referred to one of the major objections. We had a huge argument and debate about the efficacy of age verification when we discussed Part 3. There were great fears that age verification was going to be privacy invading and there was not a great deal of certainty about the kind of technology that was available for this kind of privacy-protecting age verification. I personally prefer and wanted to see third-party age verification; at the time, I thought it far better and safer to have third parties, such as Yoti, being responsible for our certification rather than the big tech companies, for all kinds of reasons and not just competitive ones. If we do not have some privacy-protecting language, we will be back in that situation of suspicion if we are not very careful.

Like my noble friend, I welcome the announcement of a review on the issue. There is a huge gap currently, and I give credit to the Secretary of State for understanding that that gap between the treatment of online pornography and offline pornography is very large indeed, as the BBFC can say from its experience. There is a wealth of evidence showing the link between violent pornography and real-life violence against women and girls. That is one of the reasons that I am so pleased that this review is taking place.

I mentioned the BBFC and have mentioned it before. It was going to be the regulator under Part 3 of the Digital Economy Bill. I very much hope that the Government will consult the BBFC, as it has a great deal of experience in offline certification, so I hope it will be heavily involved in a review of this kind.

I listened to my noble friend very intently and I think he made many points that resonate about the practical way in which will need to age-verify to make it simple for the public who are 18 and over. I much prefer the idea of third-party age verification to putting myself in the hands of big tech. I hope that Ofcom and the Government will do everything they can to make sure that those kinds of services are readily available and are not just controlled by the big tech companies in an anti-competitive way.

4.45 pm

I think we have done a great service here in this group of amendments. The noble Lord, Lord Bethell, and other noble Lords have achieved a level playing field between Part 3 and Part 5 and, in doing so, have introduced a much more robust and safer form of age verification and age assurance which, nevertheless, as the noble Baroness, Lady Kidron, pointed out, is proportionate in the circumstances. So I pay tribute to all those involved, including the Minister for his flexibility and the Secretary of the State likewise, but we must have that privacy-protecting aspect to it.

Lord Stevenson of Balmacara (Lab): My Lords, this has been a good debate, perhaps unfairly curtailed in terms of the range of voices we have heard, but I am sure the points we wanted to have on the table are there and we can use them in summarising the debate we have had so far.

I welcome the Government's amendments in this group. They have gone a long way to resolving a number of the difficulties that were left after the Digital Economy Act. As the noble Lord, Lord Clement-Jones, has said, we now have Part 3 and Part 5 hooked together in a consistent and effective way and definitions of "age verification" and "age estimation". The noble Lord, Lord Grade, is sadly not in his place today—I normally judge the quality of the debate by the angle at which he resides in that top corner there. He is not here to judge it, but I am sure he would be upright and very excited by what we have been hearing so far. His point about the need for companies to be clearly responsible for what they serve up through their services is really important in what we are saying here today.

However, despite the welcome links across to the ICO age-appropriate design code, with the concerns we have been expressing on privacy there are still a number of questions which I think the Minister will want to deal with, either today or in writing. Several noble Lords have raised the question of what "proportionate" means in this area. I have mentioned it in other speeches in other groups. We all want the overall system to be proportionate in the way in which it allocates the powers, duties and responsibilities on the companies providing us with the services they do. But there is an exception for the question of whether children should have access to material which they should not get because of legal constraints, and I hope that "proportionate" is not being used in any sense to evade that.

I say that particularly because the concern has been raised in other debates—and I would be grateful if the Minister could make sure when he comes to respond that this issue is addressed—that smaller companies with less robust track records in terms of their income and expenditures might be able to plead that some of the responsibilities outlined in this section of the Bill do not apply to them because otherwise it would bear on their ability to continue. That would be a complete travesty of where we are trying to get to here, which is an absolute bar on children having access to material that is illegal or in the lists now in the Bill in terms of priority content.

The second worry that people have raised is: will the system that is set up here actually work in practice, particularly if it does not apply to all companies? That relates perhaps to the other half of the coin that I have just mentioned.

The third point, raised by a number of Peers, is: where does all this sit in relation to the review of pornography which was announced recently? A number of questions have been asked about issues which the Minister may be unable to respond to, but I suspect he may also want to write to us on the wider issue of timing and the terms of reference once they are settled.

I think we need to know this as we reach the end of the progress on this Bill, because you cannot expect a system being set up with the powers that are being

given to Ofcom to work happily and well if Ofcom knows it is being reviewed at the same time. I hope that some consideration will be given to how we get the system up and running, even if the timescale is now tighter than it was, if at the same time a review rightly positioned to try to look at the wider range of pornography is going to impact on its work.

I want to end on the question raised by a large number of noble Lords: how does all this work sit with privacy? Where information and data are being shared on the basis of assuring access to services, there will be a worry if privacy is not ensured. The amendments tabled by the noble Baroness, Lady Kidron, are very salient to this. I look forward to the Minister's response to them.

Lord Parkinson of Whitley Bay (Con): My Lords, I am sorry that the noble Baroness, Lady Benjamin, was unable to be here for the start of the debate on Thursday and therefore that we have not had the benefit of hearing from her today. I am very glad that she was here to hear the richly deserved plaudits from across the House for her years of campaigning on this issue.

I am very glad to have had the opportunity to discuss matters directly with her including, when it was first announced, the review that we have launched. I am pleased that she gave it a conditional thumbs up. Many of her points have been picked up by other noble Lords today. I did not expect anything more than a conditional thumbs up from her, given her commitment to getting this absolutely right. I am glad that she is here to hear some of the answers that I am able to set out, but I know that our discussions would have continued even if she had been able to speak today and that her campaigns on this important issue will not cease; she has been tireless in them. I am very grateful to her, my noble friends Lord Bethell and Lady Harding, the noble Baroness, Lady Kidron, and many others who have been working hard on this.

Let me pick up on their questions and those of the noble Baroness, Lady Ritchie of Downpatrick, and others on the review we announced last week. It will focus on the current regulatory landscape and how to achieve better alignment of online and offline regulation of commercial pornography. It will also look at the effectiveness of the criminal law and the response of the criminal justice system relating to pornography. This would focus primarily on the approach taken by law enforcement agencies and the Crown Prosecution Service, including considering whether changes to the criminal law would address the challenges identified.

The review will be informed by significant expert input from government departments across Whitehall, the Crown Prosecution Service and law enforcement agencies, as well as through consultation with the industry and with civil society organisations and regulators including, as the noble Baroness, Lady Ritchie, rightly says, some of the many NGOs that do important work in this area. It will be a cross-government effort. It will include but not be limited to input from the Ministry of Justice, the Home Office, the Department for Science, Innovation and Technology and my own Department for Culture, Media and Sport. I assure my noble friend Lord Farmer that other government departments will of course be invited to give their thoughts. It is not an exhaustive list.

I detected the enthusiasm for further details from noble Lords across the House. I am very happy to write as soon as I have more details on the review, to keep noble Lords fully informed. I can be clear that we expect the review to be complete within 12 months. The Government are committed to undertaking it in a timely fashion so that any additional safeguards for protecting UK users of online services can be put in place as swiftly as possible.

My noble friend Lord Bethell asked about international alignment and protecting Britain for investment. We continue to lead global discussions and engagement with our international partners to develop common approaches to online safety while delivering on our ambition to make the UK the safest place in the world to be online.

The noble Baroness, Lady Kidron, asked about the new requirements. They apply only to Part 3 providers, which allow pornography or other types of primary priority content on their service. Providers that prohibit this content under their terms of service for all users will not be required to use age verification or age estimation. In practice, we expect services that prohibit this content to use other measures to meet their duties, such as effective content moderation and user reporting. This would protect children from this content instead of requiring measures that would restrict children from seeing content that is not allowed on the service in the first place.

These providers can still use age verification and age estimation to comply with the existing duty to prevent children encountering primary priority content. Ofcom can still recommend age-verification and age-estimation measures in codes of practice for these providers where proportionate. On the noble Baroness's second amendment, relating to Schedule 4, Ofcom may refer to the age-assurance principles set out in Schedule 4 in its children's codes of practice.

On the 18-month timetable, I can confirm that 18 months is a backstop and not a target. Our aim is to have the regime in force as quickly as possible while making sure that services understand their new duties. Ofcom has set out in its implementation road map that it intends to publish draft guidance under Part 5 this autumn and draft children's codes next spring.

The noble Baroness, Lady Ritchie, also asked about implementation timetables. I can confirm that Part 3 and Part 5 duties will be implemented at the same time. Ofcom will publish draft guidance shortly after Royal Assent for Part 5 duties and codes for the illegal content duties in Part 3. Draft codes for Part 3 children's duties will follow in spring next year. Some Part 3 duties relating to category 1 services will be implemented later, after the categorisation thresholds have been set in secondary legislation.

The noble Lord, Lord Allan of Hallam, asked about interoperability. We have been careful to ensure that the Bill is technology neutral and to allow for innovation across the age-assurance market. We have also included a principle on interoperability in the new list of age-assurance principles in Schedule 4 and the Part 5 guidance.

[Lord Parkinson of Whitley Bay]

At the beginning of the debate, on the previous day on Report, I outlined the government amendments in this group. There are some others, which noble Lords have spoken to. Amendments 125 and 217, from the noble Baroness, Lady Kidron, seek to add additional principles on user privacy to the new lists of age-assurance principles for both Part 3 and 5, which are brought in by Amendments 124 and 216. There are already strong safeguards for user privacy in the Bill. Part 3 and 5 providers will need to have regard to the importance of protecting users' privacy when putting in place measures such as age verification or estimation. Ofcom will be required to set out, in codes of practice for Part 3 providers and in guidance for Part 5 providers, how they can meet these duties relating to privacy. Furthermore, companies that use age-verification or age-estimation solutions will need to comply with the UK's robust data protection laws or face enforcement action.

Adding the proposed new principles would, we fear, introduce confusion about the nature of the privacy duties set out in the Bill. Courts are likely to assume that the additions are intended to mean something different from the provisions already in the Bill relating to privacy. The new amendments before your Lordships imply that privacy rights are unqualified and that data can never be used for more than one purpose, which is not the case. That would introduce confusion about the nature of—

Lord Clement-Jones (LD): My Lords, I apologise to the Minister. Can he write giving chapter and verse for that particular passage by reference to the contents of the Bill?

Lord Parkinson of Whitley Bay (Con): I am very happy to do that. That would probably be better than me trying to do so at length from the Dispatch Box.

Government Amendment 124 also reinforces the importance of protecting children's privacy, including data protection, by ensuring that Ofcom will need to have regard to standards set out under Section 123 of the Data Protection Act 2018 in the age-appropriate design code. I hope that explains why we cannot accept Amendments 125 or 217.

The noble Baroness, Lady Fox, has Amendment 184 in this group and was unable to speak to it, but I am very happy to respond to it and the way she set it out on the Marshalled List. It seeks to place a new duty on Ofcom to evaluate whether internet service providers, internet-connected devices or individual websites should undertake user-identification and age-assurance checks. This duty would mean that such an evaluation would be needed before Ofcom produces guidance for regulated services to meet their duties under Clauses 16 and 72.

Following this evaluation, Ofcom would need to produce guidance on age-verification and age-assurance systems, which consider cybersecurity and a range of privacy considerations, to be laid before and approved by Parliament. The obligation for Ofcom to evaluate age assurance, included in the noble Baroness's amendment, is already dealt with by Amendment 271, which the Government have tabled to place a new duty on Ofcom to publish a report on the effectiveness of age-assurance solutions. That will specifically include consideration of cost to business, and privacy, including the processing of personal data.

5 pm

Lord Allan of Hallam (LD): I just realised I forgot to thank the Government for Amendment 271, which reflected something I raised in Committee. I will reflect back to the Minister that, as is reinforced by his response now, it goes precisely where I wanted to. That is to make sure—I have raised this many times—that we are not implementing another cookie banner, but are implementing something and then going back to say, "Did it work as we intended? Were the costs proportionate to what we achieved?" I want to put on the record that I appreciate Amendment 271.

Lord Parkinson of Whitley Bay (Con): I appreciate the noble Lord's interjection and, indeed, his engagement on this issue, which has informed the amendments that we have tabled.

In relation to the amendment of the noble Baroness, Lady Fox, as I set out, there are already robust safeguards for user privacy in the Bill. I have already mentioned Amendment 124, which puts age-assurance principles in the Bill. These require Ofcom to have regard, when producing its codes of practice on the use of age assurance, to the principle of protecting the privacy of users, including data protection. We think that the noble Baroness's amendment is also unnecessary. I hope that she and the noble Baroness, Lady Kidron, will be willing to not move their amendments and to support the government amendments in the group.

Amendment 34 agreed.

Amendment 35

Moved by ***Baroness Kidron***

35: Clause 10, page 9, line 37, at end insert—

"(iv) features, functionalities or behaviours (including those enabled or created by the design or operation of the service) that are harmful to children"

Member's explanatory statement

This amendment ensures that in carrying out risk assessments, user to user services must consider the potential for the design and operation of services to create harm separately and additionally to harm relating to the dissemination of or encountering harmful content.

Baroness Kidron (CB): My Lords, I rise to speak to all the amendments in this group. It is a cause of great regret that, despite many private meetings with officials, government lawyers and Ministers, we have not yet come to an agreement that would explicitly include in the Bill harm that does not derive from content. I will be listening very carefully to the Minister, if he should change his mind during the debate.

The amendments in this group fall into three categories. First, there is a series of amendments in my name and those of the noble Lord, Lord Stevenson, the noble Baroness, Lady Harding, and the right reverend Prelate the Bishop of Oxford: Amendments 35, 36, 37A and 85. I hope the Government will accept them as consequential because, in meetings last week, they would not accept that harm to children can arise from the functionality and design of services and not just

from the content. Each of these amendments simply makes it clear that harm can arise absent from content: nothing more, nothing less. If the Minister agrees that harm may derive from the design of products and services, can he please explain, when he responds, why these amendments are not acceptable? Simply put, it is imperative that the features, functionalities or behaviours that are harmful to children, including those enabled or created by the design or operation of the service, are in scope of the Bill. This would make it utterly clear that a regulated company has a duty to design its service in a manner that does not harm children.

The Government have primary priority harmful content, priority content or non-designated harmful content, the latter being a category that is yet to be defined, but not the harm that emerges from how the regulated company designs its service. For example, there are the many hundreds of small reward loops that make up a doomscroll or make a game addictive; commercial decisions such as Pokémon famously did for a time, which was to end every game in a McDonald's car park; or, more sinister still, the content-neutral friend recommendations that introduce a child to other children like them, while pushing children into siloed groups. For example, they deliberately push 13 year-old boys towards Andrew Tate—not for any content reason, but simply on the basis that 13 year-old boys are like each other and one of them has already been on that site.

The impact of a content-neutral friend recommendation has rocked our schools as female teachers and girls struggle with the attitudes and actions of young boys, and has torn through families, who no longer recognise their sons and brothers. To push hundreds of thousands of children towards Andrew Tate for no reason other than to benefit commercially from the network effect is a travesty for children and it undermines parents.

The focus on content is old-fashioned and looks backwards. The Bill is drafted as if it has particular situations and companies in mind but does not think about how fast the business moves. When we started the Bill, none of us thought about the impact of TikTok; last week, we saw a new service, Threads, go from zero to 70 million users in a single day. It is an act of stunning hubris to be so certain of the form of harm. To be unprepared to admit that some harm is simply design means that, despite repeated denials, this is just a content Bill. The promise of systems and processes being at the heart of the Bill has been broken.

The second set of amendments in this group are in the name of my noble friend Lord Russell. Amendments 46 and 90 further reveal the attitude of the Government, in that they are protecting the companies rather than putting them four-square in the middle of their regime. The Government specifically exempt the manner of dissemination from the safety duties. My noble friend Lord Russell's amendment would leave that out and ensure that the manner of dissemination, which is fundamental to the harm that children experience, is included. Similarly, Amendment 240 would take out "presented by content" so that harm that is the result of the design decisions is included in the Bill.

The third set are government Amendments 281C and 281D, and Amendment 281F, in my name. For absence of doubt, I am totally supportive of government Amendments 281C to 281E, which acknowledge the cumulative harms; for example, those that Molly Russell experienced as she was sent more and more undermining and harmful content. In as far as they are a response to my entreaties, and those of other noble Lords, that we ensure that cumulative harmful content is the focus of our concerns, I am grateful to the Government for tabling them. However, I note that the Government have conceded only the role of cumulative harm for content. Amendments 281D and 281E once again talk about content as the only harm to children.

The noble Lord, Lord Stevenson, the noble Baroness, Lady Harding, and the right reverend Prelate the Bishop of Oxford have added their names to Amendment 281F, and I believe I am right in saying that if there were not a limit to four names, there were a great many Peers who would have added their names also. For the benefit of the House, I will quote directly from the amendment:

> "When in relation to children, references to harm include the potential impact of the design and operation of a regulated service separately and additionally from harms arising from content, including the following considerations … the potential cumulative impact of exposure to harm or a combination of harms … the potential for harm to result from features, functionalities or behaviours enabled or created by the design and operation of services … the potential for some features and functionalities within a service to be higher risk than other aspects of the service … that a service may, when used in conjunction with other services, facilitate harm to a child on a different service … the potential for design strategies that exploit a child's developmental vulnerabilities to create harm, including validation metrics and compulsive reward loops … the potential for real time services, features and functionalities such as geolocation, livestream broadcasts or events, augmented and virtual environments to put children at immediate risk … the potential for content neutral systems that curate or generate environments, content feeds or contacts to create harm to children … that new and emerging harms may arise from artificial intelligence, machine generated and immersive environments".

Before I continue, I ask noble Lords to consider which of those things they would not like for their children, grandchildren or, indeed, other people's children. I have accepted that the Government will not add the schedule of harms as I first laid it: the four Cs of content, conduct, contact and commercial harms. I have also accepted that the same schedule, written in the less comfortable language of primary priority, priority and non-designated harms, has also been rejected. However, the list that I just set out, and the amendment to the duties that reflect those risks, would finally put the design of the system at the heart of the Bill. I am afraid that, in spite of all our conversations, I cannot accept the Government's argument that all harm comes from content.

Even if we are wrong today—which we are most definitely not—in a world of AI, immersive tech and augmented reality, is it not dangerous and, indeed, foolish, to exclude harm that might come from a source other than content? I imagine that the Minister will make the argument that the features are covered in the risk assessment duties and that, unlike content, features may be good or bad so they cannot be characterised as harmful. To that I say: if the risk assessment is the only process that matters, why do the Government feel

[Baroness Kidron]
it necessary to define the child safety duties and the interpretation of harm? The truth is, they have meaning. In setting out the duty of a company to a child, why would the Government not put the company's design decisions right at the centre of that duty?

As for the second part of the argument, a geolocation feature may of course be great for a map service but less great if it shows the real-time location of a child to a predator, and livestreaming from a school concert is very different from livestreaming from your bedroom. Just as the noble Lord, Lord Allan, explained on the first day on Report, there are things that are red lines and things that are amber; in other words, they have to be age-appropriate. This amendment does not seek—nor would it mean—that individual features or functionalities would be prevented, banned or stopped. It would mean that a company had a duty to make sure that their features and functionalities were age-appropriate and did not harm children—full stop. There would be no reducing this to content.

Finally, I want to repeat what I have said before. Sitting in the court at Molly Russell's inquest, I watched the Meta representative contest content that included blood cascading down the legs of a young woman, messages that said, "You are worthless", and snippets of film of people jumping off buildings. She said that none of those things met the bar of harmful content according to Meta's terms and conditions.

Like others, I believe that the Online Safety Bill could usher in a new duty of care towards children, but it is a category error not to see harm in the round. Views on content can always differ but the outcome on a child is definitive. It is harm, not harmful content, that the Bill should measure. If the Minister does not have the power to accede, I will, with great regret, be testing the opinion of the House. I beg to move.

Baroness Harding of Winscombe (Con): My Lords, as so often in the course of the Bill, I associate myself wholeheartedly with the comments that the noble Baroness, Lady Kidron, just made. I, too, thank my noble friend the Minister and the Secretary of State for listening to our debates in Committee on the need to be explicit about the impact of cumulative harmful content. So I support Amendments 281C, 281D and 281E, and I thank them for tabling them.

5.15 pm

In the previous group, we talked about and debated the hugely important topic of content harm, most particularly pornography, and the need to ensure an absolutely firm bar that prevents our children seeing such content. As my friend the noble Baroness, Lady Kidron, said, content is not the only harm on the internet—quite the opposite. Internet algorithms on social media platforms do not care what the content is. The computer does not read the content; the algorithm simply drives addiction. So the functionality is the root of an awful lot of the harms that our children are experiencing today, completely unregulated—whether it is driving addiction, creating dangerous friendship groups, connecting people who should not be able to be connected to our underage minors, or tracking individuals in real time.

My teenage daughter is currently in America on a school tour, and I have been stalking and tracking her to see where she is. But, each time I do, a shiver runs down my spine as I think how easy it would be for a predator to do the same thing, without recognising that non-content harm is a real and present danger to our children. As the noble Baroness, Lady Kidron, said, this is not to say that these functionalities are not brilliant. It makes me, as her mum, feel good that I can track her. As the noble Lord, Lord Allan, said last week, we need to remember that this is about priority harm and not primary priority harm. It is not black and white that it is always bad; it is a functionality, and we should require companies to assess the risk that it imposes on young people. That is why it is so important that we recognise this as a part of the Bill.

I know that my noble friend the Minister will want to say, "This is all included in the Bill anyway. Why have you all got your knickers in a twist about this? We're all on track, and we're going to do it. Ofcom has done all of the pre-work. It's there". My worry is that this is a complex and technical Bill. We have all got ourselves tangled up in the structure of it, and, if it is not in the Bill that non-content harms are real harms, the risk of it not being clear in the future is very great. I do not understand the argument—presented to us many times over the last few weeks—that, by putting it in the Bill, we make it worse, not better. I am no lawyer, but it seems strange to me that we are now specifying every other element of harm clearly in the Bill, but, together, we have not been able to find a wording that puts this in.

I am willing to accept that the amendments that I put my name to and that the noble Baroness, Lady Kidron, introduced so powerfully might not be the best way to do this. We might well have unintentionally fallen on to a landmine in this complex Bill. But I cannot accept that it is not necessary to put it in the Bill, so I urge my noble friend the Minister to accept the principle behind these amendments. If he cannot accept them today, I ask him to firmly commit to bring back government amendments that put non-content harms in the Bill. Otherwise, I will need to follow the noble Baroness, Lady Kidron, through the Lobbies.

The Lord Bishop of Oxford: My Lords, as often, it is a pleasure to follow the noble Baronesses, Lady Harding and Lady Kidron, and to support this group of amendments, especially those to which I put my name. I thank the Minister and the Secretary of State for the many amendments they are introducing, including in the last group, on which I was not able to speak for similar reasons to other noble Lords. I especially note Amendment 1, which makes safety by design the object of the Bill and makes implicit the amendments that we are speaking to this afternoon, each of which is consistent with that object of safety by design running through the Bill.

As others have said, this is an immensely complex Bill, and anything which introduces clarity for the technology companies and the users is to be welcomed. I particularly welcome the list in Amendment 281F, which the noble Baroness, Lady Kidron, has already

read aloud and which spells out very clearly the harm which results from functionality as well as content. It is imperative to have that in the Bill.

In Committee, I referred to the inequality of harms between the user of a service and the forces arrayed against them. You may like to imagine a child of eight, 12 or 15 using one of the many apps we are discussing this afternoon. Now imagine the five As as forces arrayed against them; they are all about functionality, not content. We must consider: the genius of the advertising industry, which is designed on a commercial basis for sales and profit; the fact that processes, applications and smartphones mean that there is 24/7 access to those who use these services and that there is no escape from them; the creation of addictions by various means of rewarding particular features, which have little to do with content and everything to do with design and function; the creative use of algorithms, which will often be invisible and undetectable to adult users and certainly invisible to children; and the creation of the generation of more harms through artificial intelligence, deep fakes and all the harms resulting from functionality. Advertising, access, addiction, algorithms and artificial intelligence are multiplying harms in a range of ways, which we have heard discussed so movingly today.

The quantity of harm means the socialisation, normalisation and creation of environments which are themselves toxic online and which would be completely unacceptable offline. I very much hope, alongside others, that the Government will give way on these amendments and build the naming of functionality and harm into the Bill.

Lord Russell of Liverpool (CB): My Lords, I will speak, in part, to two amendments with my name on them and which my noble friend Lady Kidron referred to: Amendments 46 and 90 on the importance of dissemination and not just content.

A more effective way of me saying the same thing differently is to personalise it by trying to give your Lordships an understanding of the experience taking place, day in, day out, for many young people. I address this not only to the Minister and the Bill team but, quite deliberately, to the Office of the Parliamentary Counsel. I know full well that the Bill has been many years in gestation and, because the online world, technology and now AI are moving so fast, it is almost impossible for the Bill and its architecture to keep pace with them. But that is not a good reason for not listening to and accepting the force of the argument which my noble friend Lady Kidron and many others have put forward.

Last week, on the first day on Report, when we were speaking to a group of amendments, I spoke to your Lordships about a particular functionality called dark patterns, which are a variety of different features built into the design of these platforms to drive more and more volume and usage.

The individual whose journey I will be describing is called Milly. Milly is online and she accepts an automatic suggestion that is on a search bar. Let us say it is about weight loss. She starts to watch videos that she would not otherwise have found. The videos she is watching are on something called infinite scroll, so one just follows another that follows another, potentially ad infinitum. To start off, she is seeing video after video of people sharing tips about dieting and showing how happy they are after losing weight. As she scrolls and interacts, the women she sees mysteriously seem to get thinner and thinner. The platform's content dispersal strategy—if indeed it has one, because not all do—that tempers the power of the algorithm has not yet kicked in. The Bill does not address this because, individually, not a single one of the videos Milly has been watching violates the definition of primary priority content. Coding an algorithm to meet a child's desire to view increasingly thin women is what they are doing.

The videos that Milly sees are captioned with a variety of hashtags such as #thinspo, #thighgap and #extremeweightloss. If she clicks on those, she will find more extreme videos and will start to click on the accounts that have posted the content. Suddenly, she is exposed to the lives of people who are presenting disordered eating not just as normal but as aspirational. Developmentally, Milly is at an age where she does not have the critical thinking skills to evaluate what she is seeing. She has entered a world that she is too young to understand and would never have found were it not for the design of the platform. Throughout her journey thus far, she has yet to see a single video that meets the threshold of primary priority harm content. This world is the result of cumulative design harms.

She follows some of the accounts that prompts the platform to recommend similar accounts. Many of the accounts recommended to her are even more extreme. They are managed by people who have active eating disorders but see what is known as their pro-ana status—that is, pro anorexia—as a lifestyle choice rather than a mental health issue. These accounts are very savvy about the platform's community guidelines, so the videos and the language they use are coded specifically to avoid detection.

Every aspect of the way Milly is interacting with the platform has now been polluted. It is not just the videos she sees. It is the autocomplete suggestions she gets on searches. It is the algorithmically determined account recommendations. It is the design strategies that make it impossible for her to stop scrolling. It is the notifications she receives encouraging her back to the platform to watch yet another weight-loss video or follow yet another account. It is the filters and effects she is offered before she posts. It is the number of likes her videos get. It goes on and on, and the Bill as it is stands will fail Milly. This is why I am talking directly to the Minister and the Office of the Parliamentary Counsel, because they need to sort this out.

Earlier on this afternoon, before we began this debate, I was talking to an associate professor in digital humanities at UCL, Dr Kaitlyn Regehr. We were talking about incels—involuntary celibates—and the strange world they live in, and she made a comment. This is a quote that I wrote down word for word because it struck me. She said:

"One off-day seeds the algorithm. The algorithm will focus on that and amplify that one off-day"—

[Lord Russell of Liverpool]
that one moment when we click on something and suddenly it takes us into a world and in a direction that we had no idea existed but, more importantly, because of the way these are designed, we feel we have no control over. We really must do something about this.

Baroness Benjamin (LD): My Lords, I rise to support the amendments in the names of the intrepid noble Baroness, Lady Kidron, the noble Lord, Lord Stevenson, the noble Baroness, Lady Harding, and the right reverend Prelate the Bishop of Oxford. They fit hand in hand with the amendments that have just been debated in the previous group. Sadly, I was unable to take part in that debate because of a technical ruling, but I thank the Minister for his kind words and thank other noble Lords for what they have said. But my heart is broken, because they included age verification, for which I have campaigned for the past 12 years, and I wanted to thank the Government for finally accepting that children need to be protected from online harmful content, pornography being one example; it is the gateway to many other harms.

5.30 pm

As we have heard around the House, the Government need to make it clear that harm to children can arise from functionality and design of online services too—not only content. These amendments would show the tech industry that there is no place to hide when it comes to fulfilling its obligations to protect children, especially as AI is emerging. The consequences of this could open a whole new Pandora's box of harms, which have already started to spread—with horror. These amendments are an excellent and golden opportunity to protect children from them.

Many of us from across the House have been fighting for years for this day, and it has been good to see that the Government have finally listened—I say, "Hallelujah". But why they should stop the Bill being absolutely clear about harm fails me. If they are saying that it is covered in the Bill, what is the objection to them making it explicit? These amendments would send a loud, long message to the industry that it is responsible for the design of its products. Surely, the Government should be on the side of children who have suffered for far too long from being exposed to harmful content, not on the side of the multinational tech companies.

As the children's charity Barnardo's said—and I declare an interest as vice president—children do not have a voice. I feel that we have a responsibility to protect them, and we must expect the Government to take children into consideration and show that they have a holistic view about protecting them from harm. I hope that the Government will embrace these amendments by continuing to listen to common sense and will support them.

Viscount Colville of Culross (CB): My Lords, it is a great pleasure to follow the veteran campaigner on this issue, the noble Baroness, Lady Benjamin. I, too, rise briefly to support Amendments 35 to 37A, 85 and 240 in the name of my noble friend Lady Kidron.

In Committee, I put my name to amendments that aimed to produce risk assessments on harms to future-proof the Bill. Sadly, they were thought unnecessary by the Government. Now the Minister has another chance to make sure that Ofcom will be able to assess and respond to potential harms from one of the fastest-changing sectors in the world in order to protect our children. I praise the Minister for having come so far but, if this Bill is to stand the test of time, we will have to be prepared for the ever-changing mechanisms that would deliver that content to children. Noble Lords have already told the House about the fast-changing algorithms and the potential of AI to create harms. Many tech companies do not even understand how their algorithms work; a risk assessment of their functions would ensure that they found out soon enough.

In the Communications and Digital Select Committee inquiry into regulating the internet, we recommended that, because the changes in digital delivery and technology were happening so fast, a specific body needed to be set up to horizon scan. In these amendments, we would build these technological changes into this Bill's regulatory mechanism to safeguard our children in future. I hope that noble Lords will support the amendment.

Lord Bethell (Con): My Lords, I also support the amendments from the noble Baroness, Lady Kidron. It is relatively easy to stand here and make the case for age verification for porn: it is such a black and white subject and it is disgusting pornography, so of course children should be protected from it. Making the case for the design of the attention economy is more subtle and complex—but it is incredibly important, because it is the attention economy that is driving our children to extreme behaviours.

I know this from my own personal life; I enjoy incredibly lovely online content about wild-water swimming, and I have been taken down a death spiral towards ice swimming and have become a compulsive swimmer in extreme temperatures, partly because of the addiction generated by online algorithms. This is a lovely and heart-warming anecdote to give noble Lords a sense of the impact of algorithms on my own imagination, but my children are prone to much more dangerous experiences. The plasticity of their brains is so much more subtle and malleable; they are, like other children, open to all sorts of addiction, depression, sleeplessness and danger from predators. That is the economy that we are looking at.

I point noble Lords to the intervention from the surgeon general in America, Admiral Vivek Murthy—an incredibly impressive individual whom I came across during the pandemic. His 25-page report on the impact of social media on the young of America is incredibly eye-opening reading. Some 95% of American children have come across social media, and one-third of them see it almost constantly, he says. He attributes to the impact of social media depression, anxiety, compulsive behaviours and sleeplessness, as well as what he calls the severe impact on the neurological development of a generation. He calls for a complete bar on all social media for the under-13s and says that his own children will never get anywhere near a mobile phone until they are 16. That is the state of the attention economy that

the noble Baroness, Lady Kidron, talks about, and that is the state of the design of our online applications. It is not the content itself but the way in which it is presented to our children, and it traps their imagination in the kind of destructive content that can lead them into all kinds of harms.

Admiral Murthy calls on legislators to act today—and that was followed on the same day by a commitment from the White House to look into this and table legislation to address the kind of design features that the noble Baroness, Lady Kidron, is looking at. I think that we should listen to the surgeon general in America and step up to the challenge that he has given to American legislators. I am enormously grateful to my noble friend the Minister for the incredible amount of work that he has already done to try to bridge the gap in this matter, but there is a way to go. Like my noble friend Lady Harding, I hope very much indeed that he will be able to tell us that he has been able to find a way across the gap, or else I shall be supporting the noble Baroness, Lady Kidron, in her amendment.

Baroness Morgan of Cotes (Con): I rise briefly to speak to this group of amendments. I want to pick up where my noble friend Lord Bethell has just finished. The Government have listened hugely on this Bill and, by and large, the Bill, and the way in which Ministers have engaged, is a model of how the public wants to see their Parliament acting: collaboratively and collegiately, listening to each other and with a clear sense of purpose that almost all of us want to see the Bill on the statute book as soon as possible. So I urge my noble friend the Minister to do so again. I know that there have been many conversations and I think that many of us will be listening with great care to what he is about to say.

There are two other points that I wanted to mention. The first is that safety by design was always going to be a critical feature of the Bill. I have been reminding myself of the discussions that I had as Culture Secretary. Surely and in general, we want to prevent our young people in particular encountering harms before they get there, rather than always having to think about the moderation of harmful content once it has been posted.

Secondly, I would be interested to hear what the Minister has to say about why the Government find it so difficult to accept these amendments. Has there been some pushback from those who are going to be regulated? That would suggest that, while they can cope with the regulation of content, there is still secrecy surrounding the algorithms, functionalities and behaviours. I speak as the parent of a teenager who, if he could, would sit there quite happily looking at YouTube. In fact, he may well be doing that now—he certainly will not be watching his mother speaking in this House. He may well be sitting there and looking at YouTube and the content that is served up automatically, time after time.

I wonder whether this is, as other noble Lords have said, an opportunity. If we are to do the Bill properly and to regulate the platforms—and we have decided we need to do that—we should do the job properly and not limit ourselves to content. I shall listen very carefully to what my noble friend says but, with regret, if there is a Division, I will have to support the indomitable noble Baroness, Lady Kidron, as I think she was called.

Lord Clement-Jones (LD): My Lords, I very strongly support the noble Baroness, Lady Kidron, in her Amendments 35, 36 and 281F and in spirit very much support what the noble Lord, Lord Russell, said in respect of his amendments. We have heard some very powerful speeches from the noble Baroness, Lady Kidron, herself, from the noble Baronesses, Lady Harding and Lady Morgan, from the right reverend Prelate the Bishop of Oxford, from my noble friend Lady Benjamin and from the noble Lords, Lord Russell and Lord Bethell. There is little that I can add to the colour and the passion that they brought to the debate today.

As the noble Baroness, Lady Kidron, started by saying that it is not just about content; it is about functionalities, features and behaviours. It is all about platform design. I think the Government had pretty fair warning throughout the progress of the Bill that we would be keen to probe this. If the Minister looks back to the Joint Committee report, he will see that there was a whole chapter titled "Societal harm and the role of platform design". I do not think we could have been clearer about what we wanted from this legislation. One paragraph says:

> "We heard throughout our inquiry that there are design features specific to online services that create and exacerbate risks of harm. Those risks are always present, regardless of the content involved, but only materialise when the content concerned is harmful".

It goes on to give various examples and says:

> "Tackling these design risks is more effective than just trying to take down individual pieces of content (though that is necessary in the worst cases). Online services should be identifying these design risks and putting in place systems and process to mitigate them before people are harmed".

That is the kind of test that the committee put. It is still valid today. As the noble Baroness said, platforms are benefiting from the network effect, and the Threads platform is an absolutely clear example of how that is possible.

The noble Lord, Lord Russell, gave us a very chilling example of the way that infinite scrolling worked for Milly. A noble Lord on the Opposition Bench, a former Home Secretary whose name I momentarily forget, talked about the lack of empathy of AI in these circumstances. The algorithms can be quite relentless in pushing this content; they lack human qualities. It may sound over the top to say that, but that is exactly what we are trying to legislate for. As the noble Lord, Lord Russell, says, just because we cannot always anticipate what the future holds, there is no reason why we should not try. We are trying to future-proof ourselves as far as possible, and it is not just the future but the present that we are trying to proof against through these amendments. We know that AI and the metaverse are coming down the track, but there are present harms that we are trying to legislate for as well. The noble Baroness, Lady Kidron, was absolutely right to keep reminding us about Molly Russell. It is this kind of algorithmic amplification that is so dangerous to our young people.

The Minister has a chance, still, to accede to these amendments. He has heard the opinion all around the House. It is rather difficult to understand what the

[Lord Clement-Jones]
Government's motives are. The noble Baroness, Lady Morgan, put her finger on it: why is it so difficult to accede to these? We have congratulated the Government, the Minister and the Secretary of State throughout these groups over the last day and a bit; they have been extremely consensual and have worked very hard at trying to get agreement on a huge range of issues. Most noble Lords have never seen so many government amendments in their life. So far, so good; why ruin it?

5.45 pm

Lord Stevenson of Balmacara (Lab): There is always a simple question. We are in a bit of a mess—again. When I said at Second Reading that I thought we should try to work together, as was picked up by the noble Baroness in her powerful speech, to get the best Bill possible out of what we had before us, I really did not know what I was saying. Emotion caught me and I ripped up a brilliant speech which will never see the light of day and decided to wing it. I ended up by saying that I thought we should do the unthinkable in this House—the unthinkable in politics, possibly—and try to work together to get the Bill to come right. As the noble Lord, Lord Clement-Jones, pointed out, I do not think I have ever seen, in my time in this House, so many government amendments setting out a huge number of what we used to call concessions. I am not going to call them concessions—they are improvements to the Bill. We should pay tribute to the Minister, who has guided his extensive team, who are listening anxiously as we speak, in the good work they have been doing for some time, getting questioned quite seriously about where it is taking us.

The noble Lord, Lord Clement-Jones, is quite right to pick up what the pre-legislative scrutiny committee said about this aspect of the work we are doing today and what is in the Bill. We have not really nailed the two big things that social media companies ask: this amplification effect, where a single tweet—or thread, let us call it now—can go spinning around the world and gather support, comment, criticism, complaint, anger and all sorts of things that we probably do not really understand in the short period of time it takes to be read and reacted to. That amplification is not something we see in the real world; we do not really understand it and I am not quite sure we have got to the bottom of where we should be going at this stage.

The second most important point—the point we are stuck on at the moment; this rock, as it were, in the ocean—is the commercial pressure which, of course, drives the way in which companies operate. They are in it for the money, not the social purpose. They did not create public spaces for people to discuss the world because they think it is a good thing. There is no public service in this—this is a commercial decision to get as much money as possible from as many people as possible and, boy, are they successful.

But commercial pressures can have harms; they create harms in ways that we have discussed, and the Bill reflects many of those. This narrow difference between the way the Bill describes content, which is meant to include many of the things we have been talking about today—the four Cs that have been brought into the debate helpfully in recent months—does not really deal with the commercial pressures under which people are placed because of the way in which they deal with social media. We do not think the Bill is as clear as it could be; nor does it achieve as much as it should in trying to deal with that issue.

That is in part to do with the structure. It is almost beyond doubt that the sensibility of what we are trying to achieve here is in the Bill, but it is there at such a level of opacity that it does not have the clarity of the messages we have heard today from those who have spoken about individuals—Milly and that sort of story—and the impact on people. Even the noble Lord, Lord Bethell, whose swimming exploits we must admire, is an unwitting victim of the drive of commercial pressures that sees him in his underwear at inappropriate moments in order that they should seek the profits from that. I think it is great, but I wonder why.

I want to set the Minister a task: to convince us, now that we are at the bar, that when he says that this matter is still in play, he realises what that must imply and will give us a guarantee that we will be able to gain from the additional time that he seeks to get this to settle. There is a case, which I hope he will agree to, for having in the Bill an overarching statement about the need to separate out the harms that arise from content and the harms that arise from the system discussions and debates we have been having today where content is absent. I suggest that, in going back to Clause 1, the overarching objectives clause, it might well be worth seeing whether that might be strengthened so that it covers this impact, so that the first thing to read in the Bill is a sense that we embrace, understand and will act to improve this question of harm arising absent content. There is a case for putting into Clauses 10, 11, 25 and 82 the wording in Amendments 35, 36, 37A and 240, in the name of the noble Baroness, Lady Kidron, and to use those as a way of making sure that every aspect of the journey through which social media companies must go to fulfil the duties set out in the Bill by Ofcom reflects both the content that is received and the design choices made by those companies in bringing forward those proposals for material content harms and the harms that arise from the design choices. Clauses 208 and 209 also have to provide a better consideration of how one describes harms so that they are not always apparently linked to content.

That is a very high hurdle, particularly because my favourite topic of how this House works will be engaged. We have, technically, already passed Clause 1; an amendment was debated and approved, and now appears in versions of the Bill. We are about to finish with Clauses 10 and 11 today, so we are effectively saying to the Minister that he must accept that there are deficiencies in the amendments that have already been passed or would be, if we were to pass Amendments 35, 36, 37A, 85 and 240 in the name of the noble Baroness, Lady Kidron, and others. It is not impossible, and I understand that it would be perfectly reasonable, for the Government to bring back a series of amendments on Third Reading reflecting on the way in which the previous provisions do not fulfil the aspirations expressed all around the House, and therefore there is a need to change them. Given the series of conversations throughout this debate—my phone is red hot with the exchanges

taking place, and we do not have a clear signal as to where that will end up—it is entirely up to the Minister to convince the House whether these discussions are worth it.

To vote on this when we are so close seems ridiculous, because I am sure that if there is time, we can make this work. But time is not always available, and it will be up to the Minister to convince us that we should not vote and up to the noble Baroness to decide whether she wishes to test the opinion of the House. We have a three-line Whip on, and we will support her. I do not think that it is necessary to vote, however—we can make this work. I appeal to the Minister to get over the bar and tell us how we are to do it.

Lord Parkinson of Whitley Bay (Con): My Lords, I am very grateful for the discussion we have had today and the parallel discussions that have accompanied it, as well as the many conversations we have had, not just over the months we have been debating the Bill but over the past few days.

I will turn in a moment to the amendments which have been the focus of the debate, but let me first say a bit about the amendments in this group that stand in my name. As noble Lords have kindly noted, we have brought forward a number of changes, informed by the discussions we have had in Committee and directly with noble Lords who have taken an interest in the Bill for a long time.

Government Amendments 281C, 281D, 281E and 281G relate to the Bill's interpretation of "harm", which is set out in Clause 209. We touched on that briefly in our debate on Thursday. The amendments respond to concerns which I have discussed with many across your Lordships' House that the Bill does not clearly acknowledge that harm and risk can be cumulative. The amendments change the Bill to make that point explicit. Government Amendment 281D makes it clear that harm may be compounded in instances where content is repeatedly encountered by an individual user. That includes, but is not limited to, instances where content is repeatedly encountered as a result of algorithms or functionalities on a service. Government Amendment 281E addresses instances in which the combination of multiple functionalities on a service cumulatively drives up the risk of harm.

Those amendments go hand in hand with other changes that the Government have made on Report to strengthen protections for children. Government Amendment 1, for instance, which we discussed at the beginning of Report, makes it clear that services must be safe by design and that providers must tackle harms which arise from the design and operation of their service. Government Amendments 171 and 172 set out on the face of the Bill the categories of "primary priority" and "priority" content which is harmful to children to allow the protections for children to be implemented as swiftly as possible following Royal Assent. As these amendments demonstrate, the Government have indeed listened to concerns which have been raised from all corners of your Lordships' House and made significant changes to strengthen the Bill's protections for children. I agree that it has been a model of the way in which your Lordships' House operates, and the Bill has benefited from it.

Let me turn to the amendments in the name of the noble Baroness, Lady Kidron. I am very grateful for her many hours of discussion on these specific points, as well as her years of campaigning which led to them. We have come a long way and made a lot of progress on this issue since the discussion at the start of Committee. The nature of online risk versus harm is one which we have gone over extensively. I certainly accept the points that the noble Baroness makes; I know how heartfelt they are and how they are informed by her experience sitting in courtrooms and in coroners' inquests and talking to people who have had to be there because of the harms they or their families have encountered online. The Government are firmly of the view that it is indisputable that a platform's functionalities, features or wider design are often the single biggest factor in determining whether a child will suffer harm. The Bill makes it clear that functions, features and design play a key role in the risk of harm occurring to a child online; I draw noble Lords' attention to Clause 11(5), which makes it clear that the child safety duties apply across all areas of a service, including the way it is designed, operated and used, as well as content present on the service. That makes a distinction between the design, operation and use, and the content.

In addition, the Bill's online safety objectives include that regulated services should be designed and operated so as to protect from harm people in the United Kingdom who are users of the service, including with regard to algorithms used by the service, functionalities of the services and other features relating to the operation of the service. There is no reference to content in this section, again underlining that the Bill draws a distinction.

This ensures that the role of functionalities is properly accounted for in the obligations on providers and the regulator, but I accept that noble Lords want this to be set out more clearly. Our primary aim must be to ensure that the regulatory framework can operate as intended, so that it can protect children in the way that they deserve and which we all want to see. Therefore, we cannot accept solutions that, however well meaning, may inadvertently weaken the Bill's framework or allow providers to exploit legal uncertainty to evade their duties. We have come back to that point repeatedly in our discussions.

6 pm

I will address the problems with the amendments as drafted; as the noble Baroness knows, if she presses them to a vote, we will not be able to accept them, although we are very happy to continue to discuss the concerns lying behind them. I am happy to reassure noble Lords that the Bill recognises and addresses that services can be risky by design and that features and functionalities can exacerbate the risk of harm to users, including children.

First, I have mentioned the new introductory clause that your Lordships have put into the Bill, which establishes safety by design as a key objective of it. As such, features and functionalities are captured in the existing children's risk assessment and safety duties. I am grateful to the noble Lord, Lord Stevenson, for his suggestion that, if there is interest from the noble Baroness, Lady Kidron, we could use the time between now and Third Reading, in addition to our continuing

[Lord Parkinson of Whitley Bay]
discussions, to look at that again and try to make it clearer. However, its inclusion in the Bill has already been of benefit.

Secondly, providers must comprehensively consider and assess the risk presented by the design and operation of their service, including the risk of their design choices, which, as many noble Lords have highlighted, are often motivated by commercial aims rather than safety. These assessments also require providers to assess the risk that a service's features and functionalities pose. Once this mandatory risk assessment is completed, they are required to mitigate and manage the risks to children that they have identified. For example, if a service has a direct messaging function, it will need to consider how this increases the risk of users encountering harms such as bullying and to follow steps in codes of practice, or take equivalent measures, to mitigate this.

It is not right to say that functionalities are excluded from the child safety duties. Clause 11(5) clearly sets out that safety duties apply across all areas of a service, including the way it is designed, operated and used, and not only to content that is present on the service.

The noble Lord, Lord Russell, spoke to his Amendments 46 and 90. They seek to remove the provisions in Clauses 11(15) and 25(13), which limit corresponding duties elsewhere in the Bill to cases where the risk of harm is presented by the nature of the content rather than the fact of its dissemination. Clause 209 is clear that harm from content may arise from the fact or manner of its dissemination. As I have mentioned, the Government's amendments to Clause 209 make it clear that this includes instances where algorithms bombard a user with content, such as in the scenario the noble Lord set out. As such, user-to-user and search service providers must take action to address this as part of their child safety duties.

The duties in Clauses 11(2) and 25(2) apply to content that is harmful due to the manner of its dissemination, requiring providers to design and operate their services so as to mitigate the risks of harm identified in their risk assessments. This includes risks such as an algorithm pushing content at high volume to a user. If Clauses 11(15) and 25(13) were removed, Clause 11(3) and (6) and Clause 25(3) would require children to be protected from inherently harmless content on the grounds that harm could be caused if that content were encountered repeatedly over time. I am sure that is not what the noble Lord, Lord Russell, has in mind with his amendments, but that is why, if he pushes them to a vote, we will not be able to accept them.

We have talked about this at great length. If we can use the time between now and Third Reading fruitfully to address the points I have raised on these amendments—the noble Baroness, Lady Kidron, has heard them repeatedly; I make them for the benefit of the rest of your Lordships' House, because we have had much discussion—I am very willing to look at that and bring forward points to address this at Third Reading. However, I have set out our concerns about the approach taken in the amendments she has tabled. I am very grateful to her for her time and for discussing this. Procedurally, if she presses them to a vote now, the matter will have been dealt with on Report and we will not be able to look at this again at Third Reading. I hope she may yet have found comfort in what I have said and be willing to continue those discussions, but if she wishes to press her amendments to a Division now, the Government will not be able to accept them and I would recommend that noble Lords vote against.

Baroness Kidron (CB): My Lords, I thank everybody who has spoken for these amendments. I also thank the Minister for our many discussions and apologise to the House for the amount of texts that I sent while we were trying to get stand-alone harms into the Bill—unfortunately, we could not; we were told that it was a red line.

It is with some regret that I ask the House to walk through the Lobbies. Before I do so, I acknowledge that the Government have met me on very many issues, for which I am deeply grateful. There are no concessions on this Bill, only making it better. From my perspective, there is no desire to push anybody anywhere, only to protect children and give citizens the correct relationship with the digital world.

I ask those who were not here when I said this before: please think about your children and grandchildren and other people's children and grandchildren before you vote against these amendments. They are not only heartfelt, as the Minister said, but have been drafted with reference to many experts and people in the business, who, in their best practice, meet some of these things already. We do not want the Bill, by concentrating on content, to be a drag on what we are pushing forward. We want it to be aspirational and to push the industry into another culture and another place. At a personal level, I am very sorry to the Minister, for whom I have a great deal of respect, but I would like to test the opinion of the House.

6.08 pm

Division on Amendment 35

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Amendment 35 agreed.

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Harris of Peckham, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Hintze, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Keen of Elie, L.
Kinnoull, E.
Lamont of Lerwick, L.
Lampard, B.
Lancaster of Kimbolton, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.

Lingfield, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marland, L.
Marlesford, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Minto, E.
Mobarik, B.
Montrose, D.
Morris of Bolton, B.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
O'Neill of Bexley, B.
Parkinson of Whitley Bay, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Ranger, L.
Reay, L.
Remnant, L.
Risby, L.
Robathan, L.
Roberts of Belgravia, L.
Rock, B.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sewell of Sanderstead, L.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Smith of Hindhead, L.
Soames of Fletching, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Strathcarron, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Swinburne, B.
Swire, L.
Taylor of Warwick, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vere of Norbiton, B.
Verma, B.
Waldegrave of North Hill, L.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

6.20 pm

Clause 11: Safety duties protecting children

Amendment 36

Moved by ***Baroness Kidron***

36: Clause 11, page 10, line 38, at end insert—

"(c) mitigate the impact of harm to children in different age groups presented by features, functionalities or behaviours enabled or created by the design or operation of the service."

Member's explanatory statement

This amendment ensures that User to user services' duty to protect children from harm includes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination of or encountering harmful content.

Amendment 36 agreed.

Amendment 37

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

37: Clause 11, page 10, line 42, leave out "(for example, by using age verification)"

Member's explanatory statement

This amendment is consequential on the next amendment of Clause 11 in my name.

Amendment 37 agreed.

Amendment 37A

Moved by ***Baroness Kidron***

37A: Clause 11, page 10, line 46, at end insert—

"(c) protect children in age groups judged to be at risk of harm from features, functionalities or behaviours enabled or created by the design or operation of the service"

Member's explanatory statement

This amendment ensures that user to user services' duty to protect children from harm includes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination or encountering harmful content.

Amendment 37A agreed.

Amendment 38

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

38: Clause 11, page 10, line 46, at end insert—

"(3A) The duty set out in subsection (3)(a) requires a provider to use age verification or age estimation (or both) to prevent children of any age from encountering primary priority content that is harmful to children which the provider identifies on the service.

(3B) That requirement applies to a provider in relation to a particular kind of primary priority content that is harmful to children in every case except where—

(a) a term of service indicates (in whatever words) that the presence of that kind of primary priority content that is harmful to children is prohibited on the service, and

(b) that policy applies in relation to all users of the service.

(3C) If a provider is required by subsection (3A) to use age verification or age estimation for the purpose of compliance with the duty set out in subsection (3)(a), the age verification or age estimation must be of such a kind, and used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child."

Member's explanatory statement

This amendment requires providers of user-to-user services to use age verification or age estimation to prevent children from encountering identified primary priority content that is harmful to children, unless the terms of service indicate that that kind of content is prohibited; and where that requirement applies, new subsection (3C) provides that the age verification or age estimation must be highly effective.

Lord Parkinson of Whitley Bay (Con): I beg to move.

Amendment 39 (to Amendment 38)

Moved by ***Lord Bethell***

39: Clause 11, at end insert—

"(3D) If the duty in subsection (3)(a) relates to pornographic content, the duty applies regardless of the size and capacity of a service."

Member's explanatory statement

This amendment does not allow a service to determine age verification or age estimation is not needed because of their size and capacity.

Lord Bethell (Con): My Lords, I commend the Minister for the great strides forward which have been made since Committee. There remains one concern which has necessitated a further amendment in my

name, that refers to this group. In Committee, I and others probed whether pornographic content would be caught by the Bill. It is the opening words of Clause 11(3) which give rise to this concern, while amendments helpfully put forward by the Government—which I wholeheartedly support—bolster age-verification amendments. These amendments are still subject to qualification.

The Government's amendments leave the beginning of Clause 11(3) unchanged. User-to-user services now have a duty to use age verification and age estimation, or both, to prevent children of any age from encountering primary priority content that is harmful to children. This duty is qualified by the words

"using proportionate systems and processes".

It is that word "proportionate" that gives rise to concern, and which Amendment 39 seeks to address for pornographic content.

In a document produced by the Government in January 2021, the British Board of Film Classification said that there were literally millions of pornographic websites. This study did not include social media websites, some of which also host pornographic content—a point made by the Children's Commissioner in her powerful recent report.

When announcing the new age-verification and age-estimation amendments on 30 June, the government press release said that

"pornography companies, social media platforms and other services"

will

"be explicitly required to use age verification or estimation measures to prevent children accessing pornography".

My question to the Minister is this: will all websites and social media be covered by the Bill? With millions of sites on the internet, it is not unreasonable to think that some sites will argue that despite hosting pornographic content, they are not of a size or a capacity that necessitates them investing in age verification or estimation technology.

A further concern relates to large, particularly social media, providers. A proportionality clause may leave it open to them to claim that while they host pornographic content, the amount of pornography or the number of children accessing the platform simply does not warrant age verification as it is statistically a small part of what they provide. I think most people expect that the Bill will ensure that all pornographic content, wherever it is found, is subject to age verification or estimation. In fact, I congratulated my noble friend the Minister on that point earlier this afternoon.

In Committee, many noble Lords across the House argued that Parts 3 and 5 should be subject to the same duties. I am pleased to say that this is the last anomaly regarding pornographic content in the Bill. The Government have gone a very long way to ensure that the duties across Parts 3 and 5 are identical, which is very welcome. However, websites which fall under the scope of Part 5 do not have any exceptions. There is no proportionality test: they must have age verification or estimation to meet that duty. All I am seeking to do with Amendment 39 is to ensure parity of regulation across the Bill.

Baroness Ritchie of Downpatrick (Lab): My Lords, the final issue I raised in Committee is dealt with in this group on so-called proportionality. I tabled amendments in Committee to ensure that under Part 3 no website or social media service with pornographic content could argue that it should be exempt from implementing age verification under Clause 11 because to do so would be disproportionate based on its size and capacity. I am pleased today to be a co-signatory to Amendment 39 tabled by the noble Lord, Lord Bethell, to do just that.

The noble Lord, Lord Russell, and the noble Baroness, Lady Kidron, have also tabled amendments which raise similar points. I am disappointed that despite all the amendments tabled by the Minister, the issue of proportionality has not been addressed; maybe he will give us some good news on that this evening. It feels like the job is not quite finished and leaves an unnecessary and unhelpful loophole.

I will not repeat all the arguments I made in Committee in depth but will briefly recap that we all know that in the offline world, we expect consistent regulation regardless of size when it comes to protecting children. We do not allow a small corner shop to act differently from a large supermarket on the sale of alcohol or cigarettes. In a similar online scenario, we do not expect small or large gambling websites to regulate children's access to gambling in a different way.

We know that the impact of pornographic content on children is the same whether it is accessed on a large pornographic website or a small social media platform. We know from the experience of France and Germany that pornographic websites will do all they can to evade age verification. As the noble Lord, Lord Stevenson, said on the eighth day of Committee, whether pornography

"comes through a Part 3 or Part 5 service, or accidently through a blog or some other piece of information, it has to be stopped. We do not want our children to receive it. That must be at the heart of what we are about, and not just something we think about as we go along".—[*Official Report*, 23/5/23; col. 821.]

By not shutting off the proportionality argument, the Government are allowing different-sized online services to act differently on pornography and all the other primary priority content, as I raised in Committee. At that stage, the noble Baroness, Lady Kidron, said,

"we do not need to take a proportionate approach to pornography".—[*Official Report*, 2/5/23; col. 1481.]

Amendment 39 would ensure that pornographic content is treated as a separate case with no loopholes for implementing age verification based on size and capacity. I urge the Minister to reflect on how best we can close this potential loophole, and I look forward to his concluding remarks.

Lord Russell of Liverpool (CB): My Lords, I will briefly address Amendments 43 and 87 in my name. I thank the noble Baronesses, Lady Harding and Lady Kidron, and the noble Lord, Lord Knight, for adding their names to these amendments. They are complementary to the others in this group, on which the noble Lord, Lord Bethell, and the noble Baroness, Lady Ritchie, have spoken.

In Committee the Minister argued that it would be unfair to place the same child safety duties across all platforms. He said:

[Lord Russell of Liverpool]

"This provision recognises that what it is proportionate to require of providers at either end of that scale will be different".—[*Official Report*, 2/5/23; col. 1443.]

Think back to the previous group of amendments we debated. We talked about functionality and the way in which algorithms drive these systems. They drive you in all directions—to a large platform with every bell and whistle you might anticipate because it complies with the legislation, but also, willy-nilly, without any conscious thought because that is how it is designed, to a much smaller site. If we do not amend the legislation as it stands, they will take you to smaller sites that do not require the same level of safety duties, particularly towards children. I think we all fail to understand the logic behind that argument.

6.30 pm

Child safety duties are based on the risk identified in the child risk assessments, which all services must carry out. If the risk is found to be low, the duties on that service will not be too onerous. If the risk is high, the duties should be onerous. Is the Minister seriously saying that, if the platform is small but the risk to children is high, because the platform is small it does not need the same level of safety duties as a large platform? That completely goes against the spirit and direction of the Bill.

Smaller is not safer. We know that, even with the very smallest platforms, real harm can transfer into the real world. I mentioned that I had been talking earlier today with an associate professor at UCL who has recently been looking at the world of incels—involuntary celibates. These forums often have very small memberships and numbers of people visiting, but their ability to get into a very unpleasant world of anti-immigrant hate speech, stirring up communities against refugees and migrants, and potentially women if they are incels, is a real-world problem.

I simply ask the Minister to reflect and look carefully at this and, frankly, the illogicality of the Government's current approach to see whether we can yet again improve the Bill—as he has on so many occasions.

Lord Allan of Hallam (LD): My Lords, I follow the noble Lord, Lord Russell, particularly in talking about Amendments 43, 87 and 242, which raise some interesting and quite profound questions on what we are expecting from the market of internet services once the Online Safety Bill is in place.

It is worth taking a moment to remind ourselves of what we do and do not want from the Bill. We want services that are causing harm and are unwilling to take reasonable steps to address that to leave the UK market. That is clear. As a result of this legislation, it will be likely that some services leave the UK market, because we have asked them to do reasonable things and they have said no; they are not willing to comply with the law and therefore they need to be out. There is a whole series of measures in the Bill that will lead to that.

Equally, we want services that are willing to take reasonable steps to stay in the UK market, do the risk assessments, work at improvements and have the risks under control. They may not all be resolved on day one—otherwise, we would not need the legislation—but they should be on a path to address the risks that have been identified. We want those people to be in the market, for two reasons.

The first is that we want choice for people; we do not take pleasure in shutting people who are providing services out of the market. Also, from a child safety point of view, there is a genuine concern that, if you limit choice too far, you will end up creating more of a demand for completely unregulated services that sit outside the UK and will fill the gap. There is a balance in making sure that there is a range of attractive services, so that teenagers in particular feel that their needs are being met. We want those services to be regulated and committed to improvement.

Something that is in between will be a hard decision for Ofcom—something that is not great today, but not so bad that we want it out tomorrow. Ofcom will have to exercise considerable judgment in how it deals with those services. This is my interpretation of where proportionality and capacity come in. If you are running a very large internet service, something such as PhotoDNA, which is the technology that allows you to scan photos and detect child abuse images, is relatively straightforward to implement. All the major providers do it, but there are costs to that for smaller services. There are some real capacity challenges around implementing those kinds of technology. It is getting better over time and we would like them to do it, but you would expect Ofcom to engage in a conversation as a smaller service—smaller not in terms of its users but in its engineers and capacity—may need a little longer to implement such a technology.

A larger service could do proactive investigations. If it has a large team, once it has identified that something is problematic, it can investigate proactively. Again, a smaller service may not have the bodies on the ground to do that, but you would hope it would develop that capacity. It is important to recognise something about capacity if we are to encourage those that are half way between to come to the light side rather than slip off to the dark side.

I am interested in the Minister's interpretation of these words and the instruction to Ofcom. We will be dependent on Ofcom, which will sit on the other side of a real or virtual table with the people who run these companies, as Ofcom can insist that they come in and talk to it. It will have to make these judgments, but we do not want it to be conned or to be a walkover for an organisation that has the capacity or could do things that are helpful, but is simply refusing to do them or somehow trying to pull the wool over Ofcom's eyes.

Equally, we do not want Ofcom to demand the impossible of a service that genuinely struggles to meet a demand and that has things broadly under control. That is the balance and the difficult judgment. I think we are probably aiming for the same thing, and I hope the Minister is able to clarify these instructions and the way the Government expect Ofcom to interpret them. We are looking for that point at which Ofcom is seriously demanding but does not get overbearing and unnecessarily drive out of the market people who are making best efforts to do their risk assessments and then work hard to resolve those risks.

Baroness Harding of Winscombe (Con): My Lords, as somebody who is only five feet and two inches, I have felt that size does not matter for pretty much all my life and have long wanted to say that in a speech. This group of amendments is really about how size does not matter; risk does. I will briefly build on the speech just given by the noble Lord, Lord Allan, very eloquently as usual, to describe why risk matters more than size.

First, there are laws for which size does matter—small companies do not need to comply with certain systems and processes—but not those concerned with safety. I have in my mind's eye the small village fête, where we expect a risk assessment if we are to let children ride on rides. That was not the case 100 years ago, but is today because we recognise those dangers. One of the reasons why we stumbled into thinking that size should matter in this Bill is that we are not being honest about the scale of the risk for our children. If the risk is large enough, we should not be worrying about size; we should be worrying about that risk. That is the first reason why we have to focus on risk and not size.

The second reason is subsequent to what I have just said—the principles of the physical world should apply to the online world. That is one of the core tenets of this Bill. That means that if you recognise the real and present risks of the digital world you have to say that it does not matter whether a small number of people are affected. If it is a small business, it still has an obligation not to put people in harm's way.

Thirdly, small becomes big very quickly—unfortunately, that has not been true for me, but it is true in the digital world as Threads has just shown us. Fourthly, we also know that in the digital world re-engineering something once it has got very big is really difficult. There is also a practical reason why you want engineers to think about the risks before they launch services rather than after the event.

We keep being told, rightly, that this is a Bill about systems and processes. It is a Bill where we want not just the outcomes that the noble Lord, Lord Allan, has referred to in terms of services in the UK genuinely being safer; we are trying to effect a culture change. I would argue one of the most important culture changes is that any bright, young tech entrepreneur has to start by thinking about the risks and therefore the safety procedures they need to put in place as they build their tech business from the ground up and not once they have reached some artificial size threshold.

Baroness Kidron (CB): My Lords, I have to admit that it was incompetence rather than lack of will that meant I did not add my name to Amendment 39 in the name of the noble Lord, Lord Bethell, and I would very much like the Government to accept his argument.

In the meantime, I wonder whether the Minister would be prepared to make it utterly clear that proportionality does not mean a little bit of porn to a large group of children or a lot of porn to a small group of children; rather, it means that high-risk situations require effective measures and low-risk situations should be proportionate to that. On that theme, I say to the noble Lord, Lord Allan, whose points I broadly agree with, that while we would all wish to see companies brought into the fold rather than being out of the fold, it rather depends on their risk.

This brings me neatly to Amendments 43 and 87 from the noble Lord, Lord Russell, to which I managed to add my name. They make a very similar point to Amendment 39 but across safety duties. Amendment 242 in my name, to which the noble Lord, Lord Stevenson, the noble Baroness, Lady Harding, and the right reverend Prelate the Bishop of Oxford have added their names, makes the same point—yet again—in relation to Ofcom's powers.

All these things are pointing in the same direction as Amendment 245 in the name of the noble Baroness, Lady Morgan, which I keep on trumpeting from these Benches and which offers an elegant solution. I urge the Minister to consider Amendment 245 before day four of Report because if the Government were to accept it, it would focus company resources, focus Ofcom resources and, as we discussed on the first day of Report, permit companies which do not fit the risk profile of the regime and are unable to comply with something that does not fit their model yet leaves them vulnerable to enforcement also to be treated in an appropriate way.

Collectively, the ambition is to make sure that we are treating things in proportion to the risk and that proportionate does not start meaning something else.

Lord Clement-Jones (LD): My Lords, I agree with the noble Baroness, Lady Kidron, that all these amendments are very much heading in the same direction, and from these Benches I am extremely sympathetic to all of them. It may well be that this is very strongly linked to the categorisation debate, as the noble Baroness, Lady Kidron, said.

The amendment from the noble Lord, Lord Bethell, matters even more when we are talking about pornography in the sense that child safety duties are based on risks. I cannot for the life of me see why we should try to contradict that by adding in capacity and size and so on.

My noble friend made a characteristically thoughtful speech about the need for Ofcom to regulate in the right way and make decisions about risk and the capacity challenges of new entrants and so on. I was very taken by what the noble Baroness, Lady Harding, had to say. This is akin to health and safety and, quite frankly, it is a cultural issue for developers. What after all is safety by design if it is not advance risk assessment of the kinds of algorithm that you are developing for your platform? It is a really important factor.

6.45 pm

I hope that we adopt that in AI regulation more broadly than simply online safety of this kind for social media platforms. We need a change of culture so that this is not just a question of developing without thinking about the ethical aspects of it. It is really important that we start with this kind of debate talking about assessing risk upfront. That should be the key test and not the size or capacity of a particular platform.

[Lord Clement-Jones]

I support these amendments. I hope the Minister can give us some indication that we are all heading in the same direction as he is or that he is heading in the same direction as us. That would be enormously helpful.

Lord Knight of Weymouth (Lab): My Lords, as we have heard, this is a small group of amendments concerned with preventing size and lack of capacity being used as a reasonable excuse for allowing children to be unsafe. Part of the problem is the complexity of the Bill and the way it has been put together.

For example, Clause 11, around user-to-user services, is the pertinent clause and it is headed "Safety duties protecting children". Clause 11(2) is preceded in italics with the wording "All services" so anyone reading it would think that what follows applies to all user-to-user services regardless of size. Clause 11(3) imposes a duty on providers

"to operate a service using proportionate systems and processes"

to protect children from harm. That implies that there will be judgment around what different providers can be expected to do to protect children; for example, by not having to use a particular unaffordable technical solution on age assurance if they can show the right outcome by doing things differently. That starts to fudge things a little.

The noble Lord, Lord Bethell, who introduced this debate so well with Amendment 39, supported by my noble friend Lady Ritchie, wants to be really sure that the size of the provider can never be used to argue that preventing all children from accessing porn is disproportionate and that a few children slipping through the net might just be okay.

The clarity of Clause 11 unravels even further at the end of the clause, where in subsection (12)(b) it reads that

"the size and capacity of the provider of a service"

is relevant

"in determining what is proportionate".

The clause starts to fall apart at that point quite thoroughly in terms of anyone reading it being clear about what is supposed to happen.

Amendment 43 seeks to take that paragraph out, as we have heard from the noble Lord, Lord Russell, and would do the same for search in Amendment 87. I have added my name to these amendments because I fear that the ambiguity in the wording of this clause will give small and niche platforms an easy get out from ensuring that children are safe by design.

I use the phrase "by design" deliberately. We need to make a choice with this Bill even at this late stage. Is the starting point in the Bill children's safety by design? Or is the starting point one where we do not want to overly disrupt the way providers operate their business first—which is to an extent how the speech from the noble Lord, Lord Allan, may have been heard—and then overlay children's safety on top of that?

Yesterday, I was reading about how children access inappropriate and pornographic content, not just on Twitter, Instagram, Snapchat, TikTok and Pinterest but on Spotify and "Grand Theft Auto"—the latter being a game with an age advisory of "over 17" but which is routinely played by teenaged children. Wherever we tolerate children being online, there are dangers which must be tackled. Listening to the noble Baroness, Lady Harding, took me to where a big chunk of my day job in education goes to—children's safeguarding. I regularly have to take training in safeguarding because of the governance responsibilities that I have. Individual childminders looking after one or two children have an assessment and an inspection around their safeguarding. In the real world we do not tolerate a lack of safety for children in this context. We should not tolerate it in the online world either.

The speech from the noble Lord, Lord Russell, reminded me of the breadcrumbing from big platforms into niche platforms that is part of that incel insight that he referenced. Content that is harmful to children can also be what some children are looking for, which keeps them engaged. Small, emergent services aggressively seeking growth could set algorithms accordingly. They must not be allowed to believe that engaging harmful content is okay until they get to the size that they need to be to afford the age-assurance technology which we might envisage in the Bill. I hope that the Minister shares our concerns and can help us with this problem.

Lord Parkinson of Whitley Bay (Con): My Lords, short debates can be helpful and useful. I am grateful to noble Lords who have spoken on this group.

I will start with Amendment 39, tabled by my noble friend Lord Bethell. Under the new duty at Clause 11(3)(a), providers which allow pornography or other forms of primary priority content under their terms of service will need to use highly effective age verification or age estimation to prevent children encountering it where they identify such content on their service, regardless of their size or capacity. While the size and capacity of providers is included as part of a consideration of proportionality, this does not mean that smaller providers or those with less capacity can evade the strengthened new duty to protect children from online pornography. In response to the questions raised by the noble Baronesses, Lady Ritchie of Downpatrick and Lady Kidron, and others, no matter how much pornographic content is on a service, where providers do not prohibit this content they would still need to meet the strengthened duty to use age verification or age estimation.

Proportionality remains relevant for the purposes of providers in scope of the new duty at Clause 11(3)(a) only in terms of the age-verification or age-estimation measures that they choose to use. A smaller provider with less capacity may choose to go for a less costly but still highly effective measure. For instance, a smaller provider with less capacity might seek a third-party solution, whereas a larger provider with greater capacity might develop their own solution. Any measures that providers use will need to meet the new high bar of being "highly effective". If a provider does not comply with the new duties and fails to use measures which are highly effective at correctly determining whether or not a particular user is a child, Ofcom can take tough enforcement action.

The other amendments in this group seek to remove references to the size and capacity of providers in provisions relating to proportionality. The principle of proportionate, risk-based regulation is fundamental to the Bill's regulatory framework, and we consider

that the Bill as drafted already strikes the correct balance. The Bill ultimately will regulate a large number of services, ranging from some of the biggest companies in the world to smaller, voluntary organisations, as we discussed in our earlier debate on exemptions for public interest services.

The provisions regarding size and capacity recognise that what it is proportionate to require of companies of various sizes and business models will be different. Removing this provision would risk setting a lowest common denominator standard which does not create incentives for larger technology companies to do more to protect their users than smaller organisations. For example, it would not be proportionate for a large multinational company which employs thousands of content moderators and which invests in significant safety technologies to argue that it is required to take only the same steps to comply as a smaller provider which might have only a handful of employees and a few thousand UK users.

While the size and capacity of providers is included as part of a consideration of proportionality, let me be clear that this does not mean that smaller providers or those with less capacity do not need to meet the child safety duties and other duties in the Bill, such as the illegal content safety duties. These duties set out clear requirements for providers. If providers do not meet these duties, they will face enforcement action.

I hope that is reassuring to my noble friend Lord Bethell and to the other noble Lords with amendments in this group. I urge my noble friend to withdraw his amendment.

Lord Bethell (Con): My Lords, I thank my noble friend the Minister for that reassurance. He put the points extremely well. I very much welcome his words from the Dispatch Box, which go a long way towards clarifying and reassuring.

This was a short and perfectly formed debate. I will not go on a tour d'horizon of everyone who has spoken but I will mention the noble Lord, Lord Allan of Hallam. He is entirely right that no one wants gratuitously to hound out businesses from the UK that contribute to the economy and to our life here. There are good regulatory principles that should be applied by all regulators. The five regulatory principles of accountability, transparency, targeting, consistency and proportionality are all in the Legislative and Regulatory Reform Act 2006. Ofcom will embrace them and abide by them. That kind of reassurance is important to businesses as they approach the new regulatory regime.

I take on board what my noble friend the Minister said in terms of the application of regulations regardless of size or capacity, and the application of these strengthened duties, such as "highly effective", regardless of any economic or financial capacity. I feel enormously reassured by what he has said. I beg leave to withdraw my amendment.

Amendment 39 (to Amendment 38) withdrawn.

Amendment 38 agreed.

Amendment 40 had been withdrawn from the Marshalled List.

Amendments 41 and 42

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

41: Clause 11, page 11, line 1, leave out from beginning to "may" in line 2 and insert "Age verification or age estimation to identify who is or is not a child user or which age group a child user is in are examples of measures which (if not required by subsection (3A))"

Member's explanatory statement

This amendment refers to age verification and age estimation as mentioned in the preceding amendment in my name, and clarifies the relationship between Clause 11(4) and new subsection (3A) of Clause 11 inserted by that amendment.

42: Clause 11, page 12, line 6, leave out "this section" and insert "section 11"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

Amendments 41 and 42 agreed.

Amendment 43 not moved.

Amendments 44 and 45

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

44: Clause 11, page 12, line 12, leave out "this section" and insert "section 11"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

45: Clause 11, page 12, line 16, leave out "subsections (3)(b)" and insert "section 11(3)(b)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

Amendments 44 and 45 agreed.

Amendment 46 not moved.

Amendments 47 to 52

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

47: Clause 11, page 12, line 21, leave out "subsections (3)" and insert "section 11(3)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

48: Clause 11, page 12, line 24, leave out "this section" and insert "section 11"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

49: Clause 11, page 12, line 27, leave out from "if" to "the" in line 29 and insert "age verification or age estimation is used on the service with"

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

50: Clause 11, page 12, line 31, after "In" insert "section 11 and"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

51: Clause 11, page 12, line 33, leave out "this section" and insert "section 11"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

52: Clause 11, divide Clause 11 into two clauses, the first (Safety duties protecting children) to consist of subsections (1) to (11) and the second (Safety duties protecting children: interpretation) to consist of subsections (12) to (19)

Member's explanatory statement

This amendment splits up Clause 11 into two Clauses.

Amendments 47 to 52 agreed.

Amendment 53

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

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

"Assessment duties: user empowerment

(1) This section sets out the duties about assessments related to adult user empowerment which apply in relation to Category 1 services (in addition to the duties about risk assessments set out in section 8 and, in the case of Category 1 services likely to be accessed by children, section 10).

(2) A duty to carry out a suitable and sufficient assessment for the purposes of section 12(2) at a time set out in, or as provided by, Schedule 3.

(3) A duty to take appropriate steps to keep such an assessment up to date.

(4) Before making any significant change to any aspect of a service's design or operation, a duty to carry out a further suitable and sufficient assessment for the purposes of section 12(2) relating to the impacts of that proposed change.

(5) An assessment of a service "for the purposes of section 12(2)" means an assessment of the following matters—

(a) the user base;

(b) the incidence of relevant content on the service;

(c) the likelihood of adult users of the service encountering, by means of the service, each kind of relevant content (with each kind separately assessed), taking into account (in particular) algorithms used by the service, and how easily, quickly and widely content may be disseminated by means of the service;

(d) the likelihood of adult users with a certain characteristic or who are members of a certain group encountering relevant content which particularly affects them;

(e) the likelihood of functionalities of the service facilitating the presence or dissemination of relevant content, identifying and assessing those functionalities more likely to do so;

(f) the different ways in which the service is used, and the impact of such use on the likelihood of adult users encountering relevant content;

(g) how the design and operation of the service (including the business model, governance, use of proactive technology, measures to strengthen adult users' control over their interaction with user-generated content, and other systems and processes) may reduce or increase the likelihood of adult users encountering relevant content.

(6) In this section "relevant content" means content to which section 12(2) applies (content to which user empowerment duties set out in that provision apply).

(7) See also—

(a) section 19(8A) and (9) (records of assessments), and

(b) Schedule 3 (timing of providers' assessments)."

Member's explanatory statement

This amendment requires providers of Category 1 services to carry out and update as necessary an assessment about how likely it is that adult users will encounter content to which Clause 12(2) applies (suicide and self-harm content and so on - see Clause 12(10), (11) and (12)).

Amendment 54 (to Amendment 53) not moved.

Amendment 53 agreed.

Clause 12: User empowerment duties

Amendments 55 and 56 not moved.

Amendment 57

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

57: Clause 12, page 13, line 9, after "(2)" insert "("control features")"

Member's explanatory statement

This amendment is a technical drafting change related to the next amendment in my name.

Amendment 57 agreed.

Amendments 58 and 59 not moved.

Amendments 60 to 62

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

60: Clause 12, page 13, line 10, at end insert—

"(4A) A duty to operate a service using a system or process which seeks to ensure that all registered adult users are offered the earliest possible opportunity, in relation to each control feature included in the service, to take a step indicating to the provider that—

(a) the user wishes to retain the default setting for the feature (whether that is that the feature is in use or applied, or is not in use or applied), or

(b) the user wishes to change the default setting for the feature.

(4B) The duty set out in subsection (4A)—

(a) continues to apply in relation to a user and a control feature for so long as the user has not yet taken a step mentioned in that subsection in relation to the feature;

(b) no longer applies in relation to a user once the user has taken such a step in relation to every control feature included in the service."

Member's explanatory statement

This amendment imposes a new duty on providers of Category 1 services to proactively ask all registered adult users whether they wish to opt in or opt out of any features offered in compliance with the duty in subsection (2), until a choice is made.

61: Clause 12, page 13, line 12, leave out from "which" to "and" in line 13 and insert "control features are offered"

Member's explanatory statement

This amendment is a technical drafting change related to the preceding amendment in my name.

62: Clause 12, page 13, line 13, at end insert—

"(5A) A duty to summarise in the terms of service the findings of the most recent assessment of a service under section (Assessment duties: user empowerment) (assessments related to the duty set out in subsection (2))."

Member's explanatory statement

This amendment requires providers of Category 1 services to summarise in their terms of service the findings of their latest assessment under the new clause proposed after Clause 11 in my name.

Amendments 60 to 62 agreed.

Amendments 63 and 64 not moved.

Amendments 65 to 73

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

65: Clause 12, page 13, line 24, leave out "subsection (2)" and insert "section 12(2)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

66: Clause 12, page 13, line 26, leave out paragraph (a) and insert—

"(a) all the findings of the most recent assessment under section (Assessment duties: user empowerment), and"

Member's explanatory statement

This amendment makes it clear that the findings of the latest assessment under the new Clause proposed after Clause 11 in my name are a relevant factor for the purposes of determining what it is proportionate for a provider to do to comply with the duty under Clause 12(2).

67: Clause 12, page 13, line 29, leave out "Subsection (2)" and insert "Section 12(2)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

68: Clause 12, page 14, line 3, at end insert—

"(12A) The duty set out in section 12(4A) applies in relation to all registered adult users, not just those who begin to use a service after that duty begins to apply."

Member's explanatory statement

This amendment makes it clear that the new duty on providers to offer registered users a choice about whether to use the user empowerment tools applies to existing as well as new users.

69: Clause 12, page 14, line 4, after "In" insert "section 12 and"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

70: Clause 12, page 14, line 12, after "In" insert "section 12 and"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

71: Clause 12, page 14, line 16, after first "of" insert "section 12 and"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

72: Clause 12, page 14, line 21, at end insert—

"(16) See also, in relation to duties set out in section 12, section 18 (duties about freedom of expression and privacy)."

Member's explanatory statement

This amendment inserts a signpost to Clause 18, to which the duties in Clause 12 are relevant.

73: Clause 12, divide Clause 12 into two clauses, the first (User empowerment duties) to consist of subsections (1) to (7) and the second (User empowerment duties: interpretation) to consist of subsections (8) to (16)

Member's explanatory statement

This amendment splits up Clause 12 into two Clauses.

Amendments 65 to 73 agreed.

Clause 16: Duty about content reporting

Amendment 74

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

74: Clause 16, page 19, line 26, leave out from "if" to "the" in line 28 and insert "age verification or age estimation is used on the service with"

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

Amendment 74 agreed.

Clause 17: Duties about complaints procedures

Amendments 75 and 76

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

75: Clause 17, page 21, line 2, leave out "11(3)" and insert "11(2) or (3)"

Member's explanatory statement

This amendment is about complaints of content being blocked because of an incorrect assessment of a user's age. A reference to Clause 11(2) is inserted, as the duty in that provision can also be complied with by using age verification or age estimation.

76: Clause 17, page 21, line 16, leave out from "if" to "the" in line 18 and insert "age verification or age estimation is used on the service with"

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

Amendments 75 and 76 agreed.

7 pm

Clause 18: Duties about freedom of expression and privacy

Amendment 77

Moved by ***Baroness Fox of Buckley***

77: Clause 18, page 21, line 30, after "implementing," insert "terms of service,"

Member's explanatory statement

This amendment, and others in the name of Baroness Fox of Buckley, ensure free speech is not just considered at an abstract policy level but is included in providers' terms of service.

Baroness Fox of Buckley (Non-Afl): My Lords, I am rather disappointed that, while this is a large group on freedom of expression, it is dominated by amendments by myself and the noble Lord, Lord Moylan. I welcome the noble Baroness, Lady Fraser of Craigmaddie, and the noble Lord, Lord Stevenson of Balmacara, dipping their toes in the free-expression water here and I am glad that the Minister has added his name to their amendment, although it is a shame that he did not add his name to one of mine.

Earlier today we heard a lot of congratulations to the Government for listening. I have to say, it depends who you are, because the Government have not listened to all of us. It is notable that, of the hundreds of new government concessions that have taken the form of amendments on Report, none relates to free speech. Before I go through my amendments, I want to note that, when the noble Lord, Lord Moylan, and I raise concerns about free speech, it can be that we get treated as being slightly eccentric. There has been a generally supportive and generous mood from the regulars in this House. I understand that, but I worry that free speech is being seen as peripheral.

This country, our country, that we legislate for and in, has a long history of boasting that it is the home of liberty and adopts the liberal approach that being free is the default position: that free speech and the plurality and diversity of views it engenders are the cornerstone of democracy in a free society and that any deviation from that approach must require extraordinary and special justification. A comprehensive piece of law, such as the one we are dealing with, that challenges many of those norms, deserves thorough scrutiny through the prism of free speech.

When I approached this Bill, which I had been following long before I arrived in this House, I assumed that there would be packed Benches—as there are on the Illegal Migration Bill—and that everybody, including all these Law Lords, would be in quoting the European Court of Human Rights on Article 8 and Article 10. I assumed there would be complaints about Executive power grabs and so on. But it has been a bit sparse.

That is okay; I can live with that, even if it is a bit dispiriting. But I am concerned when the Government cite that the mood of the Committee has been reflected in their amendments, because it has not been a very large Committee. Many of the amendments that I, the noble Lord, Lord Moylan, and others tabled about free expression represent the concerns of a wide range of policy analysts, civil rights groups, academics, lawyers, free speech campaigners and industry representatives. They have been put forward in good faith—I continue to do that—to suggest ways of mitigating some of the grave threats to free speech in this Bill, with constructive ideas about how to tackle flaws and raising some of the problems of unintended consequences. I have, at times, felt that those concerns were batted away with a certain indifference. Despite the Minister being very affable and charming, none the less it can be a bit disappointing.

Anyway, I am here to bat again. I hope that the Government now will listen very closely and consider how to avoid the UK ending up with the most restrictive internet speech laws of any western democracy at the end of this. I have a lot of different amendments in my name in this group. I wholeheartedly support the amendments in the name of the noble Lord, Lord Moylan, requiring Ofcom to assess the impact of its codes on free speech, but I will not speak to them.

I will talk about my amendments, starting with Amendments 77, 78, 79, 80 and 81. These require platforms to have particular regard to freedom of expression, not just when implementing safety measures and policies but when writing their terms of service. This is to ensure that freedom of expression is not reduced to an abstract "have regard to" secondary notion but is visible in drafting terms of services. This would mean that users know their rights in clear and concrete terms. For example, a platform should be expected to justify how a particular term of service, on something such as religious hatred, will be balanced with consideration of freedom of expression and conscience, in order to allow discussions over different beliefs to take place. Users need to be able to point to specific provisions in the terms of service setting out their free speech protections.

This is all about parity between free speech and safety. Although the Government—and I welcome this—have attempted some balance, via Clause 18, to mitigate the damage to individual rights of free expression from the Bill, it is a rather weak, poor cousin. We need to recognise that, if companies are compelled to prevent and minimise so-called harmful content via operational safety duties, these amendments are saying that there should be parity with free expression. They should be compelled to do the same on freedom of expression, with a clear and positive duty, rather than Clause 64, which is framed rather negatively.

Amendment 188 takes on the issue of terms of service from a different direction, attempting to ensure that duties with regard to safety must not be allowed to restrict lawful expression or that protected by Article 10 of the European Convention on Human Rights. That states that interference in free speech rights is not lawful unless it is a last resort. I note, in case anyone is reading the amendment carefully, and for *Hansard*, that the amendment cites Article 8—a rather Freudian slip on my part that was not corrected by the Table Office. That is probably because privacy rights are also threatened by the Bill, but I meant Article 10 of course.

Amendment 188 addresses a genuine dilemma in terms of Ofcom enforcing safety duties via terms and conditions. These will transform private agreements between companies and users into statutory duties under Clause 65. This could mean that big tech companies would be exercising public law functions by state-backed enforcement of the suppression of lawful speech. One worry is that platforms' terms of service are not neutral; they can change due to external political or commercial pressures. We have all been following with great interest what is happening at Twitter. They are driven by values which can be at odds with UK laws. So I hope the Minister will answer the query that this amendment poses: how is the UK able to uphold its Article 10 obligations if state regulators are legally instructed to enforce terms of service attitudes to free speech, even when they censor far more than UK domestic law requires?

Amendment 162 has a different focus and removes offences under Section 5 of the Public Order Act from the priority offences to be regulated as priority illegal content, as set out in Schedule 7. This amendment is prompted by a concern that the legislation enlists social media companies to act as a private online police force and to adjudicate on the legality of online content. This is especially fraught in terms of the legal limits on speech, where illegality is often contested and contentious—offline as well as online.

The inclusion of Section 5 would place a duty on service providers to take measures to prevent individuals ever encountering content that includes

"threatening or abusive words or behaviour, or disorderly behaviour"

that is likely to cause "harassment, alarm or distress". It would also require service providers to minimise the length of time such content is present on the service.

I am not sure whether noble Lords have been following the dispute that broke out over the weekend. There is a film on social media doing the rounds of a trans speaker, Sarah Jane Baker, at the Trans Pride event screaming pretty hysterically "If you see a TERF, punch them in the effing face"—and I am being polite. You would think that that misogynistic threat would be the crime people might be concerned about, yet some apologists for Trans Pride claim that those women—TERFs such as myself—who are outraged, and have been treating the speech as saying that, are the ones who are stirring up hate.

Now, that is a bit of a mess, but asking service providers, or indeed algorithms, to untangle such disputes can surely lead only to the over-removal of online expression, or even more of a muddle. As the rule of law charity Justice points out, this could also catch content that depicts conflict or atrocities, such as those taking place in the Russia-Ukraine war. Justice asks whether the inclusion of Section 5 of the POA could lead to the removal of posts by individuals sharing stories of their own abuse or mistreatment on internet support forums.

Additionally, under Schedule 7 to the Bill, versions of Section 5 could also be regulated as priority illegal conduct, meaning that providers would have to remove or restrict content that, for instance, encourages what is called disorderly behaviour that is likely to cause alarm. Various organisations are concerned that this could mean that content that portrayed protest activity, that might be considered disorderly by some, was removed unless you condemned it, or even that content which encouraged people to attend protests would be in scope.

I am not a fan of Section 5 of the Public Order Act, which criminalises stirring up hatred, at the best of times, but at least those offences have been and are subject to the full rigour of the criminal justice system and case law. Of course, the courts, the CPS and the police are also bound, for example by Article 10, to protect free speech. But that is very different to compelling social media companies, their staff or automated algorithms to make such complex assessments of the Section 5 threshold of illegality. Through no fault of their own, those companies are just not qualified to make such determinations, and it is obvious that that could mean that legitimate speech will end up being restricted. Dangerously, it also makes a significant departure from the UK's rule of law in deciding what is legal or illegal speech. It has the potential to limit UK users' ability to engage in important aspects of public life, and prevent victims of abuse from sharing their stories, as I have described.

I turn finally to the last amendment, Amendment 275—I will keep this short, for time's sake. I will not go into detail, but I hope that the Minister will take a look at it, see that there is a loophole, and discuss it with the department. In skeleton form, the Free Speech Union has discovered that the British Board of Film Classification runs a mobile classification network, an agreement with mobile network providers that means that it advises mobile providers on what content should be filtered because it is considered suitable for adults only. This arrangement is private, not governed by statute, and as such means that even the weak free speech safeguards in this Bill can be sidestepped. This affects not only under-18s but anyone with factory settings on their phone. It led to a particular bizarre outcome when last year the readers of the online magazine, "The Conservative Woman", reported that the website was inaccessible. This small online magazine was apparently blacklisted by the BBFC because of comments below the line on its articles. The potential for such arbitrary censorship is a real concern, and the magazine cannot even appeal to the BBFC, so I ask the Minister to take this amendment back to the DCMS, which helped set up this mobile classification network, and find out what is going on.

That peculiar tale illustrates my concerns about what happens when free speech is not front and centre, even when you are concerned about safety and harm. I worry that when free speech is casually disregarded, censorship and bans can become the default, and a thoughtless option. That is why I urge the Minister before Third Reading to at least make sure that some of the issues and amendments in this group are responded to positively.

Lord Moylan (Con): My Lords, my noble friend on the Front Bench said at various points when we were in Committee that the Bill struck an appropriate balance between protecting the rights of children and the rights of those wishing to exercise their freedom of expression. I have always found it very difficult indeed to discern that point of balance in the Bill as originally drafted, but I will say that if there were such a point, it has been swamped by the hundreds of amendments tabled to the Bill by my noble friend since Committee which push the Bill entirely in the opposite direction.

Among those amendments, I cannot find—it may be my fault, because I am just looking by myself; I have no help to find these things—a single one which seeks to redress the balance back in favour of freedom of expression. My Amendments 123, 128, 130, 141, 148 and 244 seek to do that to some extent, and I am grateful to the noble Baroness, Lady Fox of Buckley, for the support she has expressed for them.

7.15 pm

The Bill includes various provisions requiring providers to have regard to freedom of speech. The group of amendments I am about to speak to addresses the fact that nowhere in the Bill is there any obligation placed

[Lord Moylan]

on Ofcom to have regard to freedom of speech, unless—it is just possible—it is in that swathe of amendments that has been tabled which I have been swimming in over the weekend looking for a few pearls but finding none. I will take noble Lords through those amendments very briefly, and say what they actually do. I cannot see that there could be any objection to them from any Member of the House, but it seems that the Government are uninterested.

Amendment 123 appears in Chapter 6 of the Bill, which deals with codes of conduct, and imposes a new duty on Ofcom in exercising the functions listed in that regard to

"have special regard to the importance of protecting the rights of users of a service and … interested persons to freedom of expression within the law".

Who can object to that? Amendment 128 requires Ofcom to issue a statement when it is issuing a code of conduct, showing how it has complied with this new duty. Amendment 130 requires the Secretary of State to lay that statement before Parliament alongside the draft code of conduct, when he lays it.

Amendment 141 relates to how Ofcom responds to a direction—we are moving away from codes of conduct now—from the Secretary of State made under Clause 39. It requires the document Ofcom submits to the Secretary of State in response to that direction to specify how it has complied with the new duty. Amendment 148 requires Ofcom to issue a similar statement to accompany minor amendments to a code of conduct. Amendment 244 imposes a similar duty on Ofcom in relation to the issuance of guidance, which is separate from codes of conduct and from responding to a direction from the Secretary of State. Finally, Amendment 269, which is slightly different, relates to Ofcom's guidance to providers on enforcement activities, because Ofcom is required to give guidance to providers on how they conduct enforcement activities. Again, it requires Ofcom to have regard to freedom of speech in doing that.

These are not wild and woolly demands. One of the briefs I have received in relation to Report stage reads as follows:

"The proposed duties on providers of Category 1 Services … that seek to protect freedom of expression … should be replaced with a single comprehensive duty to protect the right to freedom of expression. This duty should require Category 1 Service providers to take all reasonable steps to ensure that freedom of expression is not infringed by measures taken to comply with the other duties in the Bill. This should include giving the duty to protect freedom of expression similar status and form as the duties on illegal content".

That does not come from some strange right-wing think tank; it comes from the Equality and Human Rights Commission.

If I may briefly trespass on the House by quoting a little bit more, the commission goes further:

"The duty to protect the right to freedom of expression should be included in the list of relevant duties for which Ofcom will be required to develop a code of practice".

I think I referred to it as a code of conduct in my remarks so far; code of practice is the correct term. This is precisely what part of one of my amendments seeks to do, so these recommendations have a very good pedigree. I cannot see, for the life of me, why the Government would want to resist them.

Before I sit down, I will turn briefly to some of the amendments in the name of the noble Baroness, Lady Fox of Buckley, to which I have added my name. Amendment 162 seeks to remove the offence in Section 5 of the Public Order Act from the list of priority illegal content. This provision criminalises

"threatening or abusive words or behaviour, or disorderly behaviour"

likely to lead to "harassment, alarm or distress". In this House, we spent a considerable amount of time last year, in relation to the then Police, Crime, Sentencing and Courts Bill, seeking new statutory guidance—which has subsequently arrived—to the College of Policing about how this complex and difficult offence should be enforced in the non-virtual world. Here we are, in effect, simply handing it over to private companies, many of them abroad, under the strange and remote supervision of Ofcom, and assuming it is all going to work very well. It is not. The example of transgender disputes, given by the noble Baroness, is a particularly rich example of how difficult it is going to be for private companies to enforce it online. There is a strong case for removing it altogether from the Bill.

Amendment 188 relates to Clause 65, which is about providers' terms of service. It requires Ofcom to enforce terms of service in a way that is compatible with our rights to freedom of expression under the European Convention on Human Rights. Noble Lords may remember that many of these companies come from countries that are not European. They do not live under the legal cosh of the European Convention on Human Rights. Why should we be enforcing terms of service that might be perfectly legal in California, or Russia, or Kazakhstan—we do not know where the next popular phenomena on the web are going to come from—without having the restriction placed on Ofcom that it cannot be done in a way that contravenes, or at least does not uphold, our rights under the European convention?

I turn to Amendment 275 and the peculiar discovery that the British Board of Film Classification is running its own parallel censorship system—they used to be called censors, so I think I can call them that fairly—in an entirely private arrangement that has no supervision from Ofcom at all. The suggestion is that perhaps, if we are going to have one system supervised by Ofcom, everything might be brought within it so that we have a degree of consistency. Again, I find it very hard to understand why the Government would resist an amendment that is so pellucidly commonsensical.

With that, I will sit down. I do not think these issues are going to go away; there is a very strong public interest in this, as there is, increasingly in recent days, in various other amendments that are going to come up later in the Bill. By pushing things through in the way we have with the amendments the Government have conceded to those who argue for stronger enforcement and more restriction on access to the internet, it may all pass through the Commons and simply become law. I seriously have my doubts, as I have expressed in relation to, for example, Wikipedia and the threat to Welsh Wicipedia, whether some of this is going to survive first contact with reality. The amendments I propose would make it easier to do so.

Lord Hope of Craighead (CB): My Lords, I speak to Amendments 286 and 294, which are the last two amendments in this group, and I will explain what they are about. They are in the name of the noble Baroness, Lady Fraser of Craigmaddie, who unfortunately cannot be here this evening, to which I and the noble Lord, Lord Stevenson of Balmacara, have added our names, as has the Minister, for which we are very grateful. They serve a simple purpose: they seek to insert a definition of the phrase "freedom of expression" into the list of definitions in Clause 211 and add it to the index of defined expressions in Clause 212.

They follow an amendment which I proposed in Committee. My amendment at that stage was to insert the definition into Clause 18, where the phrase

"freedom of expression within the law"

appears. It was prompted by a point made by the Constitution Committee in its report on the Bill, which said that the House might wish to consider defining that expression in the interests of legal certainty.

The same point arose when the House was considering the then Higher Education (Freedom of Speech) Bill. Following a similar amendment by me, a government amendment on Report, to achieve the same result, was agreed to that Bill. My amendment in Committee on this Bill adopted the same wording as the government amendment to that Bill. In his response to what I said in Committee, the Minister pointed out, quite correctly, that the Higher Education (Freedom of Speech) Act and this Bill serve quite different purposes, but he did say that the Bill team—and he himself—would consider our amendment closely between then and Report.

What has happened since is the amendment we are now proposing, which has undergone some changes since Committee. They are the product of some very helpful discussions with the Bill team. The most important is that the definition placed in Clause 211 extends to the use of the expression "freedom of expression" wherever it appears in the Bill, which is obviously a sensible change. It also now includes the word "receive" as well as the word "impart", so that it extends to both kinds of communication that are within the scope of the Bill. The words "including in electronic form", which are in my amendment, have been removed as unnecessary, as the Bill is concerned with communications in electronic form only.

There are also two provisions in the Bill which refer to freedom of expression to which, as the definition now makes clear, this definition is not to apply. They are in Clauses 36(6)(f) and 69(2)(d). This is because the context in which the expression is used there is quite different. They require Ofcom to consult people with expertise as to this right when preparing codes of conduct. They are not dealing with the duties of providers, which is what the definition aims to do.

As the discussion in Committee showed, and as the noble Baroness, Lady Fox, demonstrated again this evening, we tend to use the phrases "freedom of speech" and "freedom of expression" interchangeably, perhaps without very much thought as to what they really mean and how they relate to other aspects of the idea. That is why legal certainty matters when they appear in legislation. The interests of legal certainty will be met if this definition finds a place in the Bill, and it makes it clear that the reference is to the expression referred to in Article 10(1) of the convention as it has effect for the purposes of the Human Rights Act. That is as generous and comprehensive a definition as one would wish to have for the purposes of the Bill.

I am grateful to the Minister for his support and to the Bill team for their help. When the times come, either the noble Baroness, Lady Fraser, or I will move the amendment; it comes at the very end of the Bill so it will be at the last moment of the last day, when we are finishing Report. I look forward to that stage, as I am sure the Minister does himself.

Lord Allan of Hallam (LD): My Lords, I want to respond to some of the comments made by the noble Baroness, Lady Fox, and the noble Lord, Lord Moylan. I have been looking forward to this debate equally, as it touches on some crucial issues. One of the mistakes of the Bill that I place on the Government is that it was sold as somehow a balancing Bill. It is not; it is a speech-limiting Bill, as all Bills of this kind are. Its primary purpose is to prevent people in the United Kingdom encountering certain types of content.

If you support the Bill, it is because you believe that those restrictions are necessary and proportionate in the context of Article 8. Others will disagree. We cannot pretend that it is boosting free speech. The United States got it right in its first amendment. If you want to maximise speech, you prohibit your parliament regulating on speech: "Congress shall make no law that limits speech". As soon as you start regulating, you tend towards limitations; the question in the UK and European contexts is whether those limitations are justified and justifiable.

7.30 pm

I happen to think that certain limitations are, and there are reasons for that—not least, as we have to remind ourselves, because the Bill does not regulate the entire internet. As we discussed when we talked about exemptions, most direct speech by an individual in the United Kingdom remains unaffected. Email is unaffected; personal websites are unaffected. It regulates search and user to user. If you have concerns, as perhaps the noble Baroness, Lady Fox, does, you may feel that it goes too far, but we should be careful not to equate social media with the entire internet. When you are thinking about one's right to speak, all those channels matter, not just the channels we are talking about. There is a case for saying that restrictions are necessary and proportionate with respect to Article 8, in the context of a regulation that regulates part—albeit an important part—of the internet.

Another thing to recognise—and this is where I perhaps depart from the noble Baroness, Lady Fox, and the noble Lord, Lord Moylan—is that we are in a sense dealing with privately managed public spaces on the internet. There is a lot of debate around this but, for me, they are functionally equivalent to other privately managed public spaces such as pubs, hotels or sports grounds. In none of those context do we expect all legal speech to be permissible. Rather, they all have their own norms and they enforce them. I cannot go into a sports ground and say what I like; I will get thrown out if I carry out certain actions within most

[Lord Allan of Hallam]
of those public spaces. We are talking about privately managed public spaces; anyone can go in but, in entering that space, you have to conform to the norms of that space. As I said, I am not aware of many spaces where all legal speech is permitted.

Lord Moylan (Con): I understand the point the noble Lord is making but, if he were thrown out, sacked or treated in some other way that was incompatible with his rights to freedom of expression under Article 10 of the European convention, he would have cause for complaint and, possibly, cause for legal redress.

Lord Allan of Hallam (LD): That point is well made. In support of that, if the public space treated me in a discriminatory way, I would expect to have redress, but I do not think I have a right in every public space to say everything I like in the classic Article 8 sense. My right vis-à-vis the state is much broader than my right vis-à-vis any public space that I am operating in where norms apply as well as my basic legal rights. Again, to take the pub example, if I went in and made a racist speech, I may well be thrown out of the pub even though it is sub-criminal and the police are never called; they do not need to be as the space itself organises it.

I am making the point that terms of service are about managing these privately managed public services, and it would be a mistake to equate them entirely with our right to speak or the point at which the state can step in and censor us. I understand the point about state interference but it cuts both ways: both the state interfering in excessively censoring what we can say but also the state potentially interfering in the management of what is, after all, a private space. To refer back to the US first amendment tradition, a lot of that was about freedom of religion and precisely about enabling heterodoxy. The US did not want an orthodoxy in which one set of rules applied everywhere to everybody. Rather, it wanted people to have the right to dissent, including in ways that were exclusive. You could create your own religious sect and you could not be told not to have those beliefs.

Rolling that power over to the online world, online services, as long as they are non-discriminatory, can have quite different characters. Some will be very restrictive of speech like a restrictive religious sect; some will be very open and catholic, with a small "c", in the sense of permitting a broad range of speech. I worry about some of the amendments in case there is a suggestion that Ofcom would start to tell a heterodox community of online services that there is an orthodox way to run their terms of service; I would rather allow this to be a more diverse environment.

Having expressed some concerns, I am though very sympathetic to Amendment 162 on Section 5 of the Public Order Act. I have tried in our debates to bring some real experience to this. There are two major concerns about the inclusion of the Public Order Act in the Bill. One is a lack of understanding of what that means. If you look at the face of the language that has been quoted at us, and go back to that small service that does not have a bunch of lawyers on tap, it reads as though it is stopping any kind of abusive content. Maybe you will google it, as I did earlier, and get a little thing back from the West Yorkshire Police. I googled: "Is it illegal to swear in the street?". West Yorkshire Police said, "Yes, it is". So if you are sitting somewhere googling to find out what this Public Order Act thing means, you mind end up thinking, "Crikey, for UK users, I have to stop them swearing". There is a real risk of misinterpretation.

The second risk is that of people deliberately gaming the system; again, I have a real-life example from working in one of the platforms. I had people from United Kingdom law enforcement asking us to remove content that was about demonstrations by far-right groups. They were groups I fundamentally disagree with, but their demonstrations did not appear to be illegal. The grounds cited were that, if you allow this content to go ahead and the demonstration happens, there will be a Public Order Act offence. Once you get that on official notepaper, you have to be quite robust to say, "No, I disagree", which we did on occasion.

I think there will be other services that receive Public Order Act letters from people who seem official and they will be tempted to take down content that is entirely legal. The critical thing here is that that content will often be political. In other parts of the Bill, we are saying that we should protect political speech, yet we have a loophole here that risks that.

I am sure the Minister will not concede these amendments, but I hope he will concede that it is important that platforms are given guidance so that they do not think that somebody getting upset about a political demonstration is sufficient grounds to remove the content as a Public Order Act offence. If you are a local police officer it is much better to get rid of that EDL demonstration, so you write to the platform and it makes your life easier, but I do not think that would be great from a speech point of view.

Finally, I turn to the point made by the noble Lord, Lord Moylan, on Amendment 188 about the ECHR Article 8 exemption. As I read it, if your terms of service are not consistent with ECHR Article 8—and I do not think they will be for most platforms—you then get an exemption from all the other duties around appeals and enforcing them correctly. It is probably a probing amendment but it is a curious way of framing it; it essentially says that, if you are more restrictive, you get more freedom in terms of the Ofcom relationship. I am just curious about the detail of that amendment.

It is important that we have this debate and understand this relationship between the state, platforms and terms of service. I for one am persuaded that the general framework of the Bill makes sense; there are necessary and proportionate restrictions. I am strongly of the view that platforms should be allowed to be heterodox in their terms of service. Ofcom's job is very much to make sure that they are done correctly but not to interfere with the content of those terms of service beyond that which is illegal. I am persuaded that we need to be extraordinarily careful about including Public Order Act offences; that particular amendment needs a good hearing.

Baroness Stowell of Beeston (Con): My Lords, I have said several times when we have been debating this Bill—and I will probably say it again when we get to

the group about powers—that, for me, the point of the Online Safety Bill is to address the absence of accountability for the extraordinary power that the platforms and search engines have over what we see online and, indeed, how we live and engage with each other online. Through this Bill, much greater responsibility for child safety will be placed on the platforms. That is a good thing; I have been very supportive of the measures to ensure that there are strong protections for children online.

The platforms will also have responsibility, though, for some measures to help adults protect themselves. We must not forget that, the more responsibility that platforms have to protect, the more power we could inadvertently give them to influence what is an acceptable opinion to hold, or to shape society to such an extent that they can even start to influence what we believe to be right or wrong—we are talking about that significant amount of power.

I was of the camp that was pleased when the Government removed the legal but harmful aspects of the Bill, because for me they represented a serious risk to freedom of expression. As I just described, I felt that they risked too much inadvertent power, as it were, going to the platforms. But, with the Government having done that, we have seen through the passage of the Bill some push-back, which is perfectly legitimate and understandable—I am not criticising anyone—from those who were concerned about that move. In response to that, the Government amended the Bill to provide assurances and clarifications on things like the user-empowerment tools. As I said, I do not have any problem; although I might not necessarily support some of the specific measures that were brought forward, I am okay with that as a matter of principle.

However, as was explained by my noble friend Lord Moylan and the noble Baroness, Lady Fox, there has not been a similar willingness from the Government to reassure those who remain concerned about the platforms' power over freedom of expression. We have to bear in mind that some people's concerns in this quarter remained even when the legal but harmful change was made—that is, the removal of legal but harmful was a positive step, but it did not go far enough for some people with concerns about freedom of expression.

I am sympathetic to the feeling behind this group, which was expressed by my noble friend and the noble Baroness, Lady Fox. I am sympathetic to many of the amendments. As the noble Lord, Lord Allan of Hallam, pointed out, specifically Amendment 162 in relation to the Public Order Act seems worthy of further consideration by the Government. But the amendments in the group that caught my attention place a specific duty on Ofcom in regard to freedom of expression when drawing up or amending codes of practice or other guidance—these amendments are in my noble friend Lord Moylan's name. When I looked at them, I did not think that they undermined anything else that the Government brought forward through the amendments to the Bill, as he said, but I thought that they would go a long way towards enforcing the importance of freedom of expression as part of this regulatory framework—one that we expect Ofcom to attach serious importance to.

I take on board what the noble Lord, Lord Allan, said about the framework of this legislation being primarily about safeguarding and protection. The purpose of the Bill is not to enhance freedom of expression, but, throughout its passage, that has none the less always been a concern. It is right that the Government seek to balance these two competing fundamental principles. I ask whether more can be done—my noble friend pointed to the recommendations of the Equality and Human Rights Commission and how they reinforce some of what he proposed. I would like to think that my noble friend the Minister could give some greater thought to this.

As was said, it is to the Government's credit how much they have moved on the Bill during its passage, particularly between Committee and Report. That was quite contrary to the sense that I think a lot of us felt during the early stages of our debates. It would be a shame if, once the Bill leaves the House, it is felt that the balance is not as fine—let me put it like that—as some people feel it needs to be. I just wanted to express some support and ask my noble friend the Minister to give this proper and serious consideration.

7.45 pm

Baroness Kidron (CB): My Lords, I rise briefly to note that, in the exchange between the noble Lords, Lord Allan and Lord Moylan, there was this idea about where you can complain. The independent complaints mechanism would be as advantageous to people who are concerned about freedom of speech as it would be for any other reason. I join and add my voice to other noble Lords who expressed their support for the noble Baroness, Lady Fox, on Amendment 162 about the Public Order Act.

Lord Clement-Jones (LD): My Lords, we are dangerously on the same page this evening. I absolutely agree with the noble Baroness, Lady Kidron, about demonstrating the need for an independent complaints mechanism. The noble Baroness, Lady Stowell, captured quite a lot of the need to keep the freedom of expression aspect under close review, as we go through the Bill. The noble Baroness, Lady Fox, and the noble Lord, Lord Moylan, have raised an important and useful debate, and there are some crucial issues here. My noble friend captured it when he talked about the justifiable limitations and the context in which limitations are made. Some of the points made about the Public Order Act offences are extremely valuable.

I turn to one thing that surprised me. It was interesting that the noble Lord, Lord Moylan, quoted the Equality and Human Rights Commission, which said it had reservations about the protection of freedom of expression in the Bill. As we go through the Bill, it is easy to keep our eyes on the ground and not to look too closely at the overall impact. In its briefing, which is pretty comprehensive, paragraph 2.14 says:

> "In a few cases, it may be clear that the content breaches the law. However, in most cases decisions about illegality will be complex and far from clear. Guidance from Ofcom could never sufficiently capture the full range or complexity of these offences to support service providers comprehensively in such judgements, which are quasi-judicial".

[Lord Clement-Jones]
I am rather more optimistic than that, but we need further assurance on how that will operate. Its life would probably be easier if we did not have the Public Order Act offences in Schedule 7.

I am interested to hear what the Minister says. I am sure that there are pressures on him, from his own Benches, to look again at these issues to see whether more can be done. The EHRC says:

"Our recommendation is to create a duty to protect freedom of expression to provide an effective counterbalance to the duties".

The noble Lord, Lord Moylan, cited this. There is a lot of reference in the Bill but not to the Ofcom duties. So this could be a late contender to settle the horses, so to speak.

This is a difficult Bill; we all know that so much nuance is involved. We really hope that there is not too much difficulty in interpretation when it is put into practice through the codes. That kind of clarity is what we are trying to achieve, and, if the Minister can help to deliver that, he will deserve a monument.

Lord Stevenson of Balmacara (Lab): It is always nice to be nice to the Minister.

I will reference, briefly, the introduction of the amendments in the name of the noble Baroness, Lady Fraser of Craigmaddie, which I signed. They were introduced extremely competently, as you would expect, by my noble and learned kinsman Lord Hope. It is important to get the right words in the right place in Bills such as this. He is absolutely right to point out the need to be sure that we are talking about the right thing when we say "freedom of expression"—that we do mean that and not "freedom of speech"; we should not get them mixed up—and, also, to have a consistent definition that can be referred to, because so much depends on it. Indeed, this group might have run better and more fluently if we had started with this amendment, which would have then led into the speeches from those who had the other amendments in the group.

The noble Baroness is not present today, but not for bad news: for good news. Her daughter is graduating and she wanted to be present at that; it is only right that she should do that. She will be back to pick up other aspects of the devolution issues she has been following very closely, and I will support her at that time.

The debate on freedom of expression was extremely interesting. It raised issues that, perhaps, could have featured more fully had this been timetabled differently, as both noble Lords who introduced amendments on this subject said. I will get my retaliation in first: a lot of what has been asked for will have been done. I am sure that the Minister will say that, if you look at the amendment to Clause 1, the requirement there is that freedom of expression is given priority in the overall approach to the Bill, and therefore, to a large extent, the requirement to replace that at various parts of the Bill may not be necessary. But I will leave him to expand on that; I am sure that he will.

Other than that, the tension I referred to in an earlier discussion, in relation to what we are made to believe about the internet and the social media companies, is that we are seeing a true public square, in which expressions and opinions can be exchanged as freely and openly as they would be in a public space in the real world. But, of course, neither of those places really exists, and no one can take the analogy further than has been done already.

The change, which was picked up by the noble Baroness, Lady Stowell, in relation to losing "legal but harmful", has precipitated an issue which will be left to social media companies to organise and police—I should have put "policing" in quotation marks. As the noble Baroness, Lady Kidron, said, the remedy for much of this will be an appeals mechanism that works both at the company level and for the issues that need rebalancing in relation to complexity or because they are not being dealt with properly. We will not know that for a couple of years, but at least that has been provided for and we can look forward to it. I look forward to the Minister's response.

Lord Parkinson of Whitley Bay (Con): My Lords, I hope that the noble Baroness, Lady Fox, and my noble friend Lord Moylan do feel that they have been listened to. It was striking, in this debate, that they had support from all corners of your Lordships' House. I know that, at various points in Committee, they may have felt that they were in a minority, but they have been a very useful and welcome one. This debate shows that many of the arguments that they have made throughout the passage of the Bill have resonated with noble Lords from across the House.

Although I have not signed amendments in the names of the noble Baroness and my noble friend Lord Moylan, in many cases it is not because I disagree with them but because I think that what they do is already covered in the Bill. I hope to reassure them of that in what I say now.

Amendments 77 to 81 from the noble Baroness, Lady Fox, would require services to have particular regard to freedom of expression and privacy when deciding on their terms of service. Services will already need to have particular regard to users' rights when deciding on safety systems to fulfil their duties. These requirements will be reflected in providers' terms of service, as a result of providers' duties to set out their safety measures in their terms of service. The framework will also include a range of measures to allow scrutiny of the formulation, clarity and implementation of category 1 providers' own terms of service.

However, there are some points on which we disagree. For instance, we do not think that it would be appropriate for all providers to have a general duty to have a particular regard to freedom of expression when deciding on their own terms of service about content. We believe that the Bill achieves the right balance. It requires providers to have regard to freedom of expression when carrying out their safety duties, and it enables public scrutiny of terms of service, while recognising providers' own freedom of expression rights as private entities to set the terms of service that they want. It is of course up to adults to decide which services to use based on the way those services are drawn up and the way the terms of service set out what is permissible in them.

Nothing in the Bill restricts service providers' ability to set their own terms and conditions for legal content accessed by adults—that is worth stressing. Ofcom will not set platforms' terms and conditions, nor will it take decisions on whether individual pieces of content should, or should not, be on a platform. Rather, it will ensure that platforms set clear terms and conditions, so that adults know what to expect online, and ensure that platforms have systems and processes in place to enforce those terms and conditions themselves.

Amendment 226 from the noble Baroness, Lady Fox, would require providers to use all relevant information that is reasonably available to them whenever they make judgments about content under their terms of service. That is, where they have included or drafted those terms of service in compliance with duties in the Bill. Her amendment would be to an existing requirement in Clause 173, which already requires providers to take this approach whenever they implement a system or process to comply, and this system is making judgments about certain content. For example, Clause 173 already covers content judgments made via systems and processes that a category 1 provider implements to fulfil its Clause 65 duties to enforce its own terms of service consistently. So we feel that Clause 173 is already broad enough to achieve the objectives that the noble Baroness, Lady Fox, seeks.

My noble friend Lord Moylan's amendments seek to require Ofcom to have special regard to the importance of protecting freedom of expression when exercising its enforcement duties and when drafting codes or guidance. As we discussed in Committee, Ofcom has existing obligations to protect freedom of expression, and the Bill will include additional measures in this regard. We are also making additional amendments to underline the importance of freedom of expression. I am grateful to the noble and learned Lord, Lord Hope of Craighead, and my noble friend Lady Fraser of Craigmaddie for their work to define "freedom of expression" in the Bill. The Bill's new overarching statement at Clause 1, as the noble Lord, Lord Stevenson, rightly pointed out, lists "freedom of expression", signalling that it is a fundamental part of the Bill. That is a helpful addition.

Amendment 188 in the name of the noble Baroness, Lady Fox, seeks to disapply platforms' Clause 65 duties when platforms' terms of service restrict lawful expression, or expression otherwise protected by Article 10 of the European Convention on Human Rights. Her amendment would mean that category 1 providers' Clause 65 duties to enforce clear, accessible terms of service in a consistent manner would not apply to any of their terms of service, where they are making their own decisions restricting legal content. That would greatly undermine the application of these provisions in the Bill.

Article 10 of the European Convention on Human Rights concerns individuals' and entities' rights to receive and impart ideas without undue interference by public authorities, not private entities. As such, it is not clear how a service provider deciding not to allow a certain type of content on its platform would engage the Article 10 rights of a user.

Beyond the legal obligations regarding the treatment of certain kinds of user-generated content imposed by this Bill and by other legislation, platforms are free to decide what content they wish, or do not wish, to have on their services. Provisions in the Bill will set out important duties to ensure that providers' contractual terms on such matters are clear, accessible and consistently enforced.

8 pm

Moreover, as we have discussed before, Ofcom is bound by the Human Rights Act 1998. So, when carrying out all its functions under this Bill, including the preparation of guidance and codes, it will need to ensure that freedom of expression is protected. There is already a range of other measures in the Bill which ensure that Ofcom protects freedom of expression; for instance, it has a duty in Clause 143 to set out the steps it has taken, and the processes it operates, to ensure that its online safety functions have been exercised compatibly with Articles 8 and 10 of the European Convention on Human Rights. As such, my noble friend Lord Moylan's amendments would be largely duplicative, since Ofcom already has an obligation to set out similar information in an annual statement.

The illegal content duties, in relation to the points raised about Section 5 of the Public Order Act in Schedule 7, remain risk-based and proportionate. Platforms must use proportionate systems and processes designed to prevent users encountering illegal content and to minimise the length of time that any priority illegal content is present on the service. We are not requiring platforms to ensure that users never encounter illegal content. Companies could take proportionate measures, such as user reporting, user empowerment and enforcing policies which prohibit threats or abuse, but the Bill also creates strong safeguards to protect freedom of expression. All services will need to have particular regard to freedom of expression when implementing safety duties. I certainly agree with the noble Lord, Lord Allan of Hallam, when he says that good and clear guidance is vital here. That is why we have put in place a requirement through Clause 174 for Ofcom to produce guidance about how to make judgments about illegal content.

Amendment 162 from the noble Baroness, Lady Fox, seeks to remove offences under Section 5 of the Public Order Act 1986 from the priority offences list. Section 5 of the Public Order Act makes it an offence to use

"threatening or abusive words or behaviour, or disorderly behaviour"

or to display any

"visible representation which is threatening or abusive".

Given that that activity can cause harm, it is right that companies have duties to tackle it and, subject to the guidance that I have just mentioned, we think that the Bill sets that out appropriately.

The noble Baroness's Amendment 275 would require Ofcom to ensure that content classification frameworks created by the British Board of Film Classification, which act as a reference for providers' online safety duties, should not undermine the Bill's safeguards for freedom of expression. If it is the case that a content classification scheme produced by the BBFC is unsuitable to be used as a reference for whether content falls within the scope of providers' new online safety duties,

[Lord Parkinson of Whitley Bay]
Ofcom should not recommend it in its codes of practice. Ofcom has specific duties in the Bill to protect freedom of expression when drafting its codes of practice, which will ensure that any measures it recommends are designed in that light. However, I will take the point and case study she raised back to the department to see whether I can find out any further detail about what went on in that instance.

Amendments 286 and 294 would insert a definition of "freedom of expression" into the Bill. As I mentioned, I am grateful to the noble and learned Lord, Lord Hope, and my noble friend Lady Fraser for proposing these amendments, which align the definition of freedom of expression in the Bill with that in the European Convention on Human Rights. We agree with them that it will increase clarity about freedom of expression in the Bill, which is why I have added my name to their amendments and, when we come to the very end of Report—to which I look forward as well—I will be very glad to support them.

Lord Moylan (Con): My Lords, before my noble friend sits down, perhaps I could seek a point of clarification. I think I heard him say, at the beginning of his response to this short debate, that providers will be required to have terms of service which respect users' rights. May I ask him a very straightforward question: do those rights include the rights conferred by Article 10 of the European Convention on Human Rights? Put another way, is it possible for a provider operating in the United Kingdom to have terms and conditions that abridge the rights conferred by Article 10? If it is possible, what is the Government's defence of that? If it is not possible, what is the mechanism by which the Bill achieves that?

Lord Parkinson of Whitley Bay (Con): As I set out, I think my noble friend and the noble Baroness, Lady Fox, are not right to point to the European Convention on Human Rights here. That concerns individuals' and entities' rights

"to receive and impart ideas without undue interference"

by public authorities, not private entities. We do not see how a service provider deciding not to allow certain types of content on its platform would engage the Article 10 rights of the user, but I would be very happy to discuss this further with my noble friend and the noble Baroness in case we are talking at cross-purposes.

Lord Allan of Hallam (LD): On that point specifically, having worked inside one of the companies, they fear legal action under all sorts of laws, but not under the European Convention on Human Rights. As the Minister explained, it is for public bodies; if people are going to take a case on Article 10 grounds, they will be taking it against a public body. There are lots of other grounds to go after a private company but not ECHR compliance.

Baroness Fox of Buckley (Non-Afl): My Lords, I genuinely appreciate this debate. The noble Lord, Lord Clement-Jones, made what I thought was a very important point, which is, in going through the weeds of the Bill—and some people have been involved in it for many years, looking at the detail—I appreciate that it can be easy to forget the free speech point. It is important that it has been raised but it also constantly needs to be raised. That is the point: it is, as the noble Lord, Lord Allan of Hallam, admitted, a speech-restricting Bill where we are working out the balance.

I apologise to the noble and learned, Lord Hope of Craighead, for not acknowledging that he has constantly emphasised the distinction between free speech and free expression. He and I will not agree on this; it is that we do not have time for this argument now rather than me not understanding. But he has been diligent in his persistence in trying to at least raise the issues and that is important.

I was a bit surprised by the Minister's response because, for the first time ever, since I have been here, there has been some enthusiasm across the House for one of my amendments—it really is unprecedented—Amendment 162 on the public order offences. I thought that the Minister might have noted that, because he has noted it every other time there has been a consensus across the House. I think he ought to look again at Amendment 162.

To indicate the muddle one gets in, in terms of public order offences and illegality, the police force in Cheshire, where I am from, has put out a film online today saying that misgendering is a crime. That is the police who have said that. It is not a crime and the point about these things, and the difficulty we are concerned with, is asking people to remove and censor material based on illegality or public offences that they should not be removing. That is my concern: censorship.

To conclude, I absolutely agree with the noble Lord, Lord Allan of Hallam, that of course free speech does not mean saying whatever you want wherever you want. That is not free speech, and I am a free speech absolutist. Even subreddits—if people know what they are—think they are policing each other's speech. There are norms that are set in place. That is fine with me—that multitude.

My concern is that a state body such as Ofcom is going to set norms of what is acceptable free speech that are lower than free speech laws by demanding, on pain of breach of the law, with fines and so on, that these private companies have to impose their own terms of service, which can actually then set a norm, leading them to be risk-averse, and set a norm for levels of speech that are very dangerous. For example, when you go into work, you cannot just say anything, but there are people such as Maya Forstater, who said something at work and was disciplined and lost her job and has just won more than £100,000, because she was expressing her views and opinions. The Equality Act ran to her aid and she has now won and been shown to be right. You cannot do that if your words have disappeared and are censored.

I could talk about this for a long time, as noble Lords know. I hope that at least, as the Bill progresses, even when it becomes an Act, the Government could just stamp on its head, "Don't forget free speech"—but before then, as we end this process, they could come back with some concessions to some of the amendments that have been raised here today. That would be more than just words. I beg leave to withdraw the amendment.

Amendment 77 withdrawn.

Amendments 78 to 81 not moved.

Clause 19: Record-keeping and review duties

Amendments 82 and 83

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

82: Clause 19, page 23, line 30, at end insert—

"(8A) A duty to make and keep a written record, in an easily understandable form, of all aspects of every assessment under section (Assessment duties: user empowerment) (assessments related to the adult user empowerment duty set out in section 12(2)), including details about how the assessment was carried out and its findings."

Member's explanatory statement

This amendment requires providers of Category 1 services to keep full records of their assessments under the new Clause proposed after Clause 11 in my name.

83: Clause 19, page 23, line 31, leave out "a risk assessment as required by subsection (2)" and insert "an assessment as required by subsection (2) or (8A)"

Member's explanatory statement

This amendment requires providers of Category 1 services to supply OFCOM with copies of records of their assessments under the new Clause proposed after Clause 11 in my name.

Amendments 82 and 83 agreed.

Consideration on Report adjourned until not before 8.42 pm.

Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023

Motion to Regret

8.12 pm

Moved by ***Baroness Willis of Summertown***

That this House regrets that the Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023 and accompanying guidance give insufficient clarity of purpose and, combined with the approach taken by the Government, will impact on the practical implementation of the guidance and the achievement of the Government's environmental targets.

Relevant document: 36th Report from the Secondary Legislation Scrutiny Committee

Baroness Willis of Summertown (CB): My Lords, formally, this is a Motion to Regret on the instrument, but really it is a Motion to Regret the lost opportunity to halt the decline of biodiversity in the UK. We are now one of the most species-depauperate countries in the world. The UK not only comes at the bottom of the list of G7 countries in terms of the amount of biodiversity retained—it is also third from the bottom of the list of all European countries, ahead of only Ireland and Malta.

This really serious situation that we face as a country in terms of declining biodiversity has been stated many times in this House and in the other place, and ambitious targets to restore nature have been most recently outlined in the Environment Act. For example, in January we had secondary legislation laid on environmental targets, which contained legally binding targets for restoration of certain species in areas with important habitats. These legally binding targets include protecting and restoring at least 500,000 hectares of wildlife-rich habitats by 31 December 2042; ending species decline by 2030; and our 30 by 30 target, which the Minister knows as well as I do, to protect 30% of our land and ocean by 2030. So we should all be really heartened by these ambitious targets—I certainly was—but they do not describe the specific mechanisms by which these targets are to be delivered on the ground. For this, we were promised secondary legislation, such as the instrument that we have before us today, on the local nature recovery strategies.

The point of this statutory instrument is to enable the delivery of a consensual process whereby 48 local nature partnerships across England will map out what remains of the important habitats in their county and then develop a plan for nature recovery. The intention is that these spatial plans for biodiversity recovery will then influence critical land-use decisions and be used alongside strategic planning for food, infrastructure and other land uses. So far, so good—but when it was published in May, a couple of months ago, I and many others were really dismayed by the content of these local nature recovery strategies and the regulations delivered by the secondary legislation. I would go so far as to say that I simply do not believe that what we have in front of us in secondary legislation will achieve the purpose that it is set out to deliver, which is to reverse England's biodiversity loss.

I want to express my regret for three missed opportunities in this legislation. First, I regret the fact that in the guidance there is no mention of the specific legally binding targets, which I have just mentioned, set out in the environment targets regulations, published in January. Instead, the guidance refers to the vague sentence that strategies

"should also reflect what contribution the strategy area can make to national environmental objectives, commitments and targets".

It does go on to say

"including those legally binding targets established by the Act",

but what that means in practice is that each of the 48 partnerships, which in themselves will have another 30 or 40 members, will have to come up with their own individual targets and priorities of recovering and enhancing biodiversity and hopefully—I am not sure how—they are all going to add up to meet the Government's legally binding targets.

I simply cannot understand how this will work without some overarching centralised co-ordination and specifically determined species and habitat targets provided, as a starting point if nothing else, for each county. In effect, we are asking all 48 authorities to work in the dark. Equally problematic under this heading is the fact that there is almost no guidance given to identifying or creating corridors for nature. Without enabling wildlife to move across landscapes, we end up with a series of islands surrounded by a desert of agricultural land or a desert of an urban area. The islands become smaller and smaller, and that is an absolutely guaranteed way to lose species, for species to go extinct.

I know the Minister understands the importance of nature recovery and corridors, which we have discussed many times, but how can he be sure that the local nature recovery strategies we have in front of us will

[Baroness Willis of Summertown]
actually add up to these overall targets, which are legally binding? Because there is no mention of it in any of this statutory guidance.

Closely linked to this is my second regret, which is that the local nature recovery strategy guidance is totally silent on output format and the development of a centralised platforms. All we have is regulation 19, which requires that local authorities publish their local nature recovery strategies on their own council websites or, if they cannot do that, they can create their own website and put a link back to the council website. In practice, this means the creation of 48 different websites and, very likely, 48 different formats for the local nature recovery strategies of each of the 48 partnerships.

There is also no guidance or requirement for a centralised data deposition, so the data could all be in completely different formats and we would have no idea how it all added up to meet the legally binding targets we agreed in January. Again, I simply cannot understand how this will work. It will make it even more difficult to determine a transparent overall picture across England and to know how we are doing on reaching these legally binding targets. So I would appreciate it if the Minister would explain how his department will support a regularly updated digital platform for local nature recovery strategies that is transparent, digital and consistent, so that everyone is starting with a level playing field, both the public and developers alike. I sincerely hope that this is an area that we can make some progress on.

Probably the most worrying, and my third and final regret, is that the statutory guidance does not set out how the strategies, once developed, will actually inform decision-making. There is a duty for public bodies to "have regard" for local nature recovery strategies. This, quite frankly, is feeble. We know that it will not change decisions on planning, licensing or incentives for better land management. There is one phrase that I find it equally worrying in terms of governance in the accompanying guidance for landowners:

> "The strategies do not force the owners or managers of the land identified to make any changes. Instead, the government is encouraging action through, for example, opportunities for funding and investment".

So, in effect, there is no requirement for owners or managers of land on which potentially important habitats are located to do anything if they do not wish to, nor is there any clarification on incentives to take part—for example, through payments via the Environmental Land Management Scheme.

To summarise, even though the Government have just announced a really welcome £14 million pot to fund local nature recovery strategies, all the effort and expenditure could be wasted if they do not actually influence what is happening on the ground due to this vague guidance on targets, lack of centralised co-ordination and extremely weak governance on their delivery. I would go as far as to say that, while the legal link between local nature recovery strategies and decisions by public authorities is weak, I actually regret that no amount of guidance can fill the gap, even if it were significantly better guidance than we have today, due to this very weak governance. I look forward to the Minister's response and just note that we could make progress on this issue in the Levelling-up and Regeneration Bill, where noble Lords across the House are supporting amendments to fix the legal weaknesses at the heart of the problem.

Baroness Jones of Whitchurch (Lab): My Lords, I support the noble Baroness, Lady Willis, who has made an excellent case today as to why the omissions in these regulations need to be urgently addressed.

Throughout the development of local nature recovery strategies, we have been hugely supportive of the concept. There is no doubt that they have the potential to be an important vehicle for the delivery of many of our environmental ambitions set out in the Environment Act. Already, around the country, councils are coming together at county level to address the challenges of meeting our environmental targets locally, and they want to make the process work. However, as the Minister knows, we already have concerns about the status of those local nature recovery strategies once they are produced. Without the right legislative underpinning, there is a risk that much of their work will go to waste and we will lose the enthusiasm and good will of those involved in the process.

Under the current wording of the Environment Act, planning authorities are required only to have regard to the LNRS as part of a general biodiversity duty. That is why the noble Baroness, Lady Parminter, and I have tabled an amendment to the levelling-up Bill which would require local planning authorities to deliver the objectives of the relevant local nature recovery strategy in their development plans. We will debate this further when the amendment comes up on Report, and I hope that we can make some progress at that point in resolving the issue. I am very grateful to the Minister for meeting us to discuss this last week. I hope that he is able to come back with a little more information—we were rather hoping for some alternative proposals. Given that the amendment is potentially due next week, we are running out of time. I just say that as a general nudge. I mention it also because it is symptomatic of a very narrow interpretation of the role of local nature recovery strategies, combined with overreliance on guidance notes rather than the formal statutory underpinning which can deliver real change.

I thought that the noble Baroness, Lady Willis, made a very powerful case for the combined local nature recovery strategies to connect up and form a national nature recovery network. This could provide the essence of the well-known Lawton ambition of "bigger, better and more joined up", which everyone understands to be the holy grail of nature recovery. But nowhere in these regulations is this spelled out as an objective. There is no requirement for county-based representatives to look over the border to see what approach their neighbours are taking. There is no overarching objective of joined-up corridors across the country which could facilitate the spread of flora and fauna across wide landscapes. There is no requirement to look at the wider geographic challenges or to use the opportunities that the current protected landscapes such as national parks and AONBs could provide.

While there is a role for Natural England in advising on the habitat and species priorities, there is no obligation for wider collaboration between local nature recovery partnerships or for a national map to be produced. Why has Defra largely omitted the need for such national connectivity from the regulations and guidance, which the noble Baroness has been a great champion of and has made a powerful case for today?

There is a further obstacle to the development of a national nature recovery plan in that each local authority is required to publish its recovery strategy on its website. That is good, but there is no requirement for these websites to be on a shared platform. There is a danger that we will end up with 48 individual proposals, with artificial political boundaries, that bear no relation to one other in the language used, impact on habitat and species revival, and other deliverables towards the targets. Equally, there is no requirement for quality control, so the local nature recovery strategies may well vary in scope, evidence and ambition.

Can the Minister explain whether a national online platform for LNRSs is being considered, and how we can be assured that a quality assurance programme will be enacted to ensure that the objectives set out in the Environment Act really are being delivered? I look forward to his response.

Lord Lucas (Con): My Lords, I take a much more optimistic view of these regulations, although I expect to be in the lists with the noble Baronesses opposite when it comes to their status in terms of planning regulations. These are local nature recovery strategies, whereas both noble Baronesses appear to want a national nature recovery strategy, imposed from the top down. I think that 30 by 30 will work only if it becomes an intensely personal local thing, if it exists in every community and is worked out locally in a way that suits local people within the context of an overarching national objective that is not set out not as obligations but ambitions. I am dead certain that local wildlife trusts and many other locally based nature organisations will support what is going on and be part of it, but I see no reason to despair that these things are not centrally specified. It is their great strength that they are local.

There is a general question for all the nature-related organisations as to how they gather data so that it is synchronised. I hope that Defra is talking to the Natural History Museum about that so that we have a common structure and that the data each of us gathers in all the organisations we are involved in can find a common use. Why should Sussex have to express its local nature recovery strategy in the same framework as central London? It is just daft. This is local—we should be expressing our local convictions and ambitions.

There is provision in this for the consultation draft to be given to neighbouring authorities, which will doubtless result in some co-ordination, but surely the key to this is being local. If it is to be effective, that means local people in the driving seat.

8.30 pm

Lord Teverson (LD): My Lords, I declare my interest as chair of the Cornwall and Isles of Scilly Local Nature Partnership, one of the 48 we have in England—I had forgotten the number. If this is reported in Cornwall, I will be told off for referring to Cornwall as part of England; in the Isles of Scilly, it will not be as bad.

Earlier, I was at a reception in this House held by Natural England. It was one of the best I have been to. There were four speakers and they were all really good. They were short and to the point but also humorous. The key message that its chief executive, Marian Spain, put over as the mission of Natural England was deliverability. Exactly as the noble Baroness, Lady Willis of Summertown, has said, this secondary legislation does not ensure that.

I have some sympathy with the noble Lord, Lord Lucas. I quite like the local nature of the strategies and think it is quite important. It is easy for us in Cornwall because, apart from the Republic of Ireland and Wales, we have only Devon to deal with; we have an area of outstanding natural beauty called Tamar that straddles both, so we are solving the issue of connectivity across borders. It is quite something for Cornwall and Devon to co-operate—normally, we disagree over where we put cream and jam on our scones, as noble Lords know, and over even more important things.

At the latest board meeting of the Cornwall and Isles of Scilly Local Nature Partnership, I laid down to our supporters—including Cornwall Council, which does an excellent job for us—that we had to look at deliverability and how to make this strategy into something that works, because I do not fully understand that. The trouble is how to get the people whom we quite successfully communicated with and consulted during our pilot study—we were one of five that did those pilot studies and enjoyed it very much—to really contribute if they do not believe it will lead to something that works and is important and transformative, as I am sure the majority of our stakeholders do.

As we all know, our most important community terrestrially is farming and land management and our most important community for marine is our fishing industries, which are understated in these strategies but are very important and should not be forgotten. I do not understand how we can work effectively with the farming and landowner sector through schemes such as ELMS, which it seems to me does not co-ordinate with this at all, to make sure that we have a way to drive these strategies forward so that everyone, both the farming sector and nature, can benefit.

The other area, as mentioned by the noble Baroness, Lady Jones of Whitchurch, is planning. I cannot see how these strategies will be effectively deliverable without being embedded in some way into the planning system and planning decisions. For me, the litmus test is whether local authorities feel empowered enough to take them into consideration, and will have to do so, when they make real planning decisions about land use management locally. I would be very interested to hear from the Minister, as the noble Baroness, Lady Jones, has asked him, where we will get in terms of that amendment in the levelling-up Bill.

One other thing that I found totally depressing, which no one else has mentioned, is on page 12 of the SI under the guidance, where it says, quite boldly:

[Lord Teverson]

"A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen".

Well, why are we doing it? I rest my case, and I am interested to hear the reply from the Minister.

Baroness Parminter (LD): My Lords, I will be brief, given the steer that was given that there was only half an hour for the dinner break, and there are other speakers to come after me. I thank the noble Baroness, Lady Willis of Summertown, for bringing forward this debate. Not only is she right to highlight the inadequacies in the statutory guidance; it also provides a vital opportunity to raise the issue which has been referred to by the noble Baroness, Lady Jones of Whitchurch, and my noble friend Lord Teverson. It is that unless local nature recovery strategies have a sufficiently strong statutory underpinning, when the rubber hits the road and they actually come into contact with local planning authorities, they are not going to be able to do the job that we all want them to do.

I was at the same reception as my noble friend Lord Teverson. The Secretary of State there made it clear that she thought that LNRSs were a critical means of delivering on the ambition to halt the decline in species abundance by 2030. She is absolutely right. As the noble Baroness, Lady Jones, said, we all agree on this. We really congratulate the Government on bringing forward local nature recovery strategies, but we need to do all we can now, at this critical juncture, to make sure they work.

I am not an expert on whether we need one single data format or not. I will take advice from the expert, the noble Baroness, Lady Willis. All I would say is that our committee has been looking at the issue of protected areas. I do not think it would be breaking confidence to say that the paucity of monitoring information out there and the lack of standardisation is already a problem; so let us not add to that but instead create mechanisms so that local planning authorities, farm managers and local developers can see what is important.

I want to ram home this point. I know it is a point that the Minister understands, and I am grateful, like the noble Baroness, Lady Jones, that he did agree to meet us to talk about why the wording in the Environment Act in the moment, "have regard to", is not sufficient. The noble Baroness, Lady Willis, also referred to it. It does not matter if the Government transpose it into the LUR Bill; it has got to be much stronger than that. There has to be a significant strengthening to ensure that local planning authorities, as opposed to just the upper tiers, really take this forward. We need a stronger steer on them and we need reporting back.

I urge the Minister to carry on having discussions with noble Lords around the Chamber who are with him in his intentions. We need to make sure that the opportunities in the LUR Bill are taken.

Baroness Hayman of Ullock (Lab): My Lords, I start by thanking the noble Baroness, Lady Willis of Summertown, for her expert introduction to her concerns about the statutory instrument before us today. We know the local nature recovery strategies have a really important role to play in delivering on the Environment Act targets and of course the commitment to protect 30% of land, as noble Lords have said.

If you have these regulations, it is also important that they are then actually able to meet their policy objectives. I agree with the noble Baroness, Lady Willis, that this is a missed opportunity if we do not do that. Clearly a number of noble Lords have talked about the Environment Act, and the fact that it makes it clear that the local nature recovery strategies should give equal consideration to both habitats and species. I think that is a really important part of it.

I would also like to reiterate what my noble friend Lady Jones of Whitchurch and the noble Baroness, Lady Parminter, have said. We have all been incredibly supportive of what the Government are trying to achieve. Having said that, the Wildlife and Countryside Link has expressed concerns to the Secondary Legislation Scrutiny Committee about exactly how this is going to be delivered. I think that is what a lot of the concerns expressed today are actually about.

One thing it drew attention to was the recommendation from environmental groups that a species expert hub should be set up as part of the preparation process. It would be designed to identify a national priority list for species groups and—thinking about what the noble Lord, Lord Lucas, said about the need for a local focus—would provide advice for individual local nature recovery strategies about what their local species priorities should be. So, there is a recognition that we need more support for those local strategies.

However, the regulations and guidance do not include such a hub. While direction to take reasonable steps to identify local nature sites is given to authorities through regulation 6, there is no corresponding regulation requiring efforts to identify local key species considerations. The Government responded to the concerns raised by the Wildlife and Countryside Link, but this particular question was not addressed. So, can I ask the Minister why Defra has decided not to progress these plans for a species expert hub?

We also know that the amount of weight given to LNRSs in the planning system has been raised, both in this debate and by others, as a concern. The regulations impose several duties on local authorities to help the successful preparation of LNRSs, including engaging with other authorities on consultation and strategy, for example. The concern is that, although the regulations do this, they omit the most consequential duty: the requirement to deliver the objectives of the local nature recovery strategy through the relevant local authority's development plan—which, of course, is why this issue has also come up in the levelling-up Bill.

As the noble Baroness, Lady Willis, and my noble friend Lady Jones said, what is really concerning is that authorities are required to have only a general regard to LNRSs in making planning decisions. That is a pretty weak duty. We tabled amendments to require a stronger duty, but the Government did not want to take them on board. Again, that is why we have returned to this issue in the Levelling-up and Regeneration Bill.

In Committee, the Minister pledged to reflect on the case for greater planning weight for LNRSs. As we move into Report, we will continue to seek progress on

this, particularly through the amendment in the names of my noble friend Lady Jones and the noble Baroness, Lady Parminter. Will the reflections the Minister has been carrying out lead to the Government accepting my noble friend's amendment—or would they consider tabling an amendment of their own—in order to strengthen the position of LNRSs within our planning legislation? As the noble Lord, Lord Teverson, said, these decisions need to be embedded in the planning system if we are to make genuine progress.

Concerns have recently been raised about the Government's ongoing commitment to the environment. I do not doubt the Minister's commitment at all, but the recently published Climate Change Committee report has some worrying comments in the foreword written by the noble Lord, Lord Deben, including the paragraph where he says:

"I urge Government to find the courage to place climate change once again at the heart of its leadership. It would be a terrible error if we in Britain hesitate just as the rest of the world wakes up to the opportunity of Net Zero".

The report also notes:

"Land use and agriculture in England remains one of the few sectors where the Government has not set out a coherent, strategic approach to coordinated policy to meet the multiple needs for land".

Both the noble Baroness, Lady Willis, and the noble Lord, Lord Teverson, mentioned ELMS as a way to drive the strategy forward. The report also notes that the land use strategy will be important for biodiversity, but warns that it

"must clearly outline the relationships and interactions with other relevant strategies and action plans across the UK".

Can the Minister give an assurance that the strategy will work alongside local nature recovery strategies rather than building in more layers of complexity?

The report also mentions the spatial planning system, noting that it

"continues to cause issues, with inconsistent and misaligned decisions undermining local efforts to deliver Net Zero actions. The Government has committed to undertake a full review of the National Planning Policy Framework … to ensure it contributes to mitigation and adaptation as fully as possible".

As local nature recovery strategies will interact with the NPPF and form part of the biodiversity net gain requirements, how will these different schemes interact?

Finally, in his resignation letter, former Minister the noble Lord, Lord Goldsmith, wrote:

"Our efforts on a wide range of domestic environmental issues have simply ground to a standstill".

The noble Baroness, Lady Willis, demonstrated her expertise in her excellent introduction. I am sure we will all listen carefully to the Minister's response to see whether he is able both to reassure her on these issues and to restore some confidence in his Government's commitment and approach to the environment.

8.45 pm

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I draw noble Lords' attention to my interests in the register. I thank the noble Baroness, Lady Willis of Summertown, for introducing this Motion and the other noble Lords who have contributed to this debate. I too recognise the expertise of the noble Baroness; it is wonderful to have that kind of expertise. I so much enjoy how this end of the building attracts people with real knowledge, and I absolutely bow to the noble Baroness's knowledge and experience on these matters.

I, my Secretary of State and others feel passionately that, in a way, we are lucky to be making policy on this issue. We have the chance to really make a difference, to reverse the declines in species and to address the greatest challenge that mankind has ever faced in climate change. I am grateful for her comments, but I assure the noble Baroness, Lady Hayman, that this Government not only are proud of our record on climate change and our leadership on issues such as this around the world but are determined to fix this at home. We cannot tell people abroad to put 30% of their land and sea into protection if we are not doing it properly at home and following the advice of experts.

Declines in nature have far-reaching impacts and implications, and reversing them is something that both I and this Government are committed to doing. Local nature recovery strategies are a key part of how we plan to reverse these declines and meet the ambitious targets set out in the Environment Act.

The development of these strategies builds on lessons learned from previous initiatives, which go all the way back to the national ecosystems assessment that the last Labour Government instigated and the natural environment White Paper that we introduced in 2011. That was clearly informed by the work of Sir John Lawton's seminal *Making Space for Nature* report, which was fundamental to the kinds of policies we are now bringing forward.

To the noble Baroness, Lady Jones, I say this: I have a more positive view of humanity and certainly of the people drawing up these strategies. If they are not working across boundaries with their neighbours, I, as a member of the Wildlife Trusts, want to know why the Wildlife Trusts are not ensuring that they are. People will be writing to their local MPs. In this respect, civil society has an enormous job to do, quite apart from the guidance that we are giving to these LNRSs to make sure that they are working in a connected way.

I want to see from this a resurgence of the ambition that, for example, we saw with Big Chalk, which was an attempt to draw a degree of Lawton-esque connectivity between the North Wessex Downs and the Ridgeway, right through Wiltshire, over Salisbury Plain, across the downlands of Cranborne Chase to the Jurassic Coast. Cranborne Chase AONB has worked to map areas of species-rich grassland in the downlands—tiny pinpricks of different retained high-biodiversity grasslands. Joining them all up is exactly what this is about. It cannot be done just in Dorset or Cranborne Chase AONB; it has to be done by working across borders.

There is a requirement in LNRS regulations to share information and engage at strategic points in the process. Natural England, as the supporting authority for LNRSs, also has a lay role in making sure that happens.

Local nature recovery strategies will be a powerful new tool for helping public, private and voluntary sectors work together to decide where to focus nature

[Lord Benyon]
recovery efforts to improve co-ordination, spatial coherence, efficiency and impact. The legal foundations provided by the Environment Act ensure that local nature recovery strategies will cover the whole of England and be locally led and supported by the best data that government has to offer. There is a difference of nuance here, a difference of opinion, and I entirely understand where the noble Baroness is coming from. I also understand what my noble friend says when he talks about the importance of this having a local heft, and that has to be the way forward—with some national guidance and sharing of data.

The regulations and guidance that form the backdrop to this evening's debate ensure that the strategies will be prepared to a consistent high standard and properly involve key local partners in decision-making. As we have heard from Members of this House, there is real urgency in the need for action and, since the regulations and guidance were laid in March, we have continued to make rapid progress. At the end of last month, we announced the formal appointment of the 48 responsible authorities that will lead preparation of the strategies across the country and the £14 million the Government are providing so that they can do so.

We are committed to providing further guidance on links to the planning system and the national objectives we want local nature recovery strategies to contribute to, which will make even clearer the important role that we see these strategies fulfilling. I am really grateful to the noble Baronesses, Lady Parminter and Lady Jones, and others who are leading on the amendment in the Levelling-up and Regeneration Bill.

I know that we all want the same outcome. It is just a question of whether we have the right wording in the Bill that can deliver it. I cannot give the noble Baroness, Lady Hayman, an answer as to whether we are going to find accommodation in the wording of the amendment or in an alternative form of words, or whether we can find some other way of giving reassurance. I absolutely understand the sincerity of those who are asking for these measures.

The connection with the planning system is vital. I know that this is an issue of great and considerable interest to a number of noble Lords and I anticipate another passionate and informed debate when the amendment is considered on Report, which, as has been said, will happen very slowly.

Noble Lords: Oh!

Lord Benyon (Con): Very soon—it will not happen slowly. While local nature recovery strategies should consider both habitats and species, this guidance refers more often to habitats. This is because habitat types give a helpful indication of an area's general environmental characteristics, including which species it is likely to support and what environmental benefits it may provide.

Responsible authorities should refer to habitat types throughout their statement of biodiversity priorities to help them link together and connect the statement to the local habitat map. This is not in any way suggesting that habitats are more important than species. The importance of species is repeatedly highlighted throughout the guidance. I take the noble Baroness's point, but I hope that we are moving in the right direction.

For nature to recover we need people to work together and, crucially, the people who decide how land is used and managed to be involved in identifying nature recovery proposals. The noble Lord, Lord Teverson, is right that farmers are pivotal in this. The best available data and the insights of experts such as the noble Baroness are hugely important too. We know that we need to target our efforts where they will achieve the most. Understanding this requires expertise and evidence, and the need for local nature recovery strategies to be evidence based is stated clearly in the statutory guidance. Our experts in Natural England have a crucial role to play.

The local nature recovery strategy regulations make Natural England a "supporting authority" in the preparation of all strategies. This gives it a strong say in what each strategy includes and in providing further guidance and advice if needed. We are keen that other experts also engage with the preparation of strategies in areas that they are interested in, to help strengthen and improve them, and they will have the opportunity to do so. As a Berkshire boy, I will be very upset if they are not talking to Hampshire, Oxfordshire, Wiltshire and any other surrounding areas producing these. The noble Lord, Lord Teverson, made the point about getting people from Cornwall and Devon to get on and talk to each other. That will be an achievement that he will be able to look back on as something that is good not only for those two counties but for nature.

This input from technical experts needs to be part of a wider open and collaborative approach—this will ensure that each strategy also benefits from local knowledge and understanding of the conditions on the ground—and to help build support for the action to be delivered. This is because local nature recovery strategies are designed to encourage and incentivise landowners and managers into making positive changes, not to force them to do so. Biodiversity net gain, the biodiversity duty on public authorities, planning policy, and private and public funding will work together to encourage action to be taken, with progress reviewed every few years and plans updated to reflect what has been done and what still needs to be done.

I know from previous conversations that the noble Baroness has concerns about biodiversity net gain. However, we are starting to see, through our early-stage pilot programmes, some really exciting connectivity being delivered in places such as London. The London Wildlife Trust is delivering biodiversity net gain in south-east London, with a development which will include 4,800 new homes over the next 20 years, alongside 20 hectares of parkland, connecting it to nature reserves at Kidbrooke Green and Birdbrook Road. This is an example of the sort of project that we want to see emerging out of a variety of different things that have come from the Environment Act.

Involving the landowners and managers in the preparation process and helping them to understand both the evidence base and the support from local communities for what changes are proposed can work alongside these other measures to persuade and enable

changes to be made. Part of how we encourage this engagement is by being sparing in our use of technical language. However, I assure the noble Baroness that each strategy will still have a strong technical underpinning. How many strategies have sat on local government officials' shelves and not been accessed by the public—people who mind about their local nature reserve and mind about their little piece of England, which they want to see restored? This must be, in the words and delivery, accessible, but it must also have that technical heft. Again, the role of Natural England in supporting every responsible authority is key, explaining the importance of increasing habitat connectivity and extent in planning for nature's recovery.

With local nature recovery strategy preparation under way across England, we are at a critical point on the road towards reversing nature's decline. Groups such as the RSPB have responded to the progress we have made to endorse the crucial role that strategies have to play, through ensuring that local action can deliver national progress for nature's recovery. For them to truly succeed, we need to work together and to lend our support to encouraging others to do this. I urge the noble Baroness to add her considerable expertise to this common cause, which I know that she does, and for this House to provide their clear support.

Those words that politicians say but usually do not mean, about their door always being open, I really do mean. I am very keen for the noble Baroness and others who are greatly exercised that we get this right to meet me and my officials and to ensure that they are conveying their inevitable concerns about different parts of this very important work that we are doing, so that we can get this right.

Baroness Willis of Summertown (CB): I thank the Minister for his response. We have had a good debate. I am mindful of time, so I will keep it short. I just say to the noble Lord, Lord Lucas, that I do not disagree; I think these need to be locally delivered. If you do not have local buy-in, it will not happen. All I am asking is that we also have scientific data underpinning those local delivery plans so that, at the end of the day, we can all say "Ah, species declines have stopped. Things are going up". Without co-ordinating that centrally, I still struggle to see how we are going to add everything up.

9 pm

Having said that, I very much appreciate the Minister's words. Obviously, I am not going to press this to a vote. For now, I just ask the House to join me in waiting to see whether indeed the Government can support a stronger legal link between the local nature recovery networks and the planning system. I hope that the Minister is able to address some of the more pragmatic issues. There are small tweaks that could be made to this guidance to make a huge difference. We would then all be right behind these legally binding goals. I was delighted when those targets came out in January. I thought, "Brilliant, we are actually going to get some proper targets and some proper action to be able to measure change".

A lot of this is, as I said, a regret—a disappointment—that we are not there yet with the statutory guidance. I am very happy to work with the Minister and others to try to help move this in the right direction. I withdraw my Motion to Regret.

Motion withdrawn.

Online Safety Bill

Report (2nd Day) (Continued)

9.01 pm

Amendment 84

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

84: Clause 19, page 24, line 4, at end insert ", and (Disclosure of information about use of service by deceased child users) (deceased child users)."

Member's explanatory statement

This amendment has the effect that OFCOM have a duty to review compliance by user-to- user service providers with the new duties imposed by the Clause proposed after Clause 67 in my name.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, as I set out in Committee, the Government are bringing forward a package of amendments to address the challenges that bereaved parents and coroners have faced when seeking to access data after the death of a child.

These amendments have been developed after consultation with those who, so sadly, have first-hand experience of these challenges. I thank in particular the families of Breck Bednar, Sophie Parkinson, Molly Russell, Olly Stephens and Frankie Thomas for raising awareness of the challenges they have faced when seeking access to information following the heartbreaking cases involving their children. I am also grateful to the noble Baroness, Lady Kidron, for championing this issue in Parliament and more widely. I am very happy to say that she is supporting the government amendments in this group.

The loss of any life is heartbreaking, but especially so when it involves a child. These amendments will create a more straightforward and humane process for accessing data and will help to ensure that parents and coroners receive the answers they need in cases where a child's death may be related to online harms. We know that coroners have faced challenges in accessing relevant data from online service providers, including information about a specific child's online activity, where that might be relevant to an investigation or inquest. It is important that coroners can access such information.

As such, I turn first to Amendments 246, 247, 249, 250, 282, 283 and 287, which give Ofcom an express power to require information from regulated services about a deceased child's online activity following a request from a coroner. This includes the content the child had viewed or with which he or she had engaged, how the content came to be encountered by the child, the role that algorithms and other functionalities played,

[Lord Parkinson of Whitley Bay]
and the method of interaction. It also covers any content that the child generated, uploaded or shared on the service.

Crucially, this power is backed up by Ofcom's existing enforcement powers, so that, where a company refuses to provide information requested by Ofcom, companies may be subject to enforcement action, including senior management liability. To ensure that there are no barriers to Ofcom sharing information with coroners, first, Amendment 254 enables Ofcom to share information with a coroner without the prior consent of a business to disclose such information. This will ensure that Ofcom is free to provide information it collects under its existing online safety functions to coroners, as well as information requested specifically on behalf of a coroner, where that might be useful in determining whether social media played a part in a child's death.

Secondly, coroners must have access to online safety expertise, given the technical and fast-moving nature of the industry. As such, Amendment 273 gives Ofcom a power to produce a report dealing with matters relevant to an investigation or inquest, following a request from a coroner. This may include, for example, information about a company's systems and processes, including how algorithms have promoted specific content to a child. To this end, the Chief Coroner's office will consider issuing non-statutory guidance and training for coroners about social media as appropriate, subject to the prioritisation of resources. We are confident that this well-established framework provides an effective means to provide coroners with training on online safety issues.

It is also important that we address the lack of transparency from large social media services about their approach to data disclosure. Currently, there is no common approach to this issue, with some services offering memorialisation or contact-nomination processes, while others seemingly lack any formal policy. To tackle this, a number of amendments in this group will require the largest services—category 1, 2A and 2B services—to set out policies relating to the disclosure of data regarding the online activities of a deceased child in a clear, accessible and sufficiently detailed format in their terms of service. These companies will also be required to provide a written response to data requests in a timely manner and must provide a dedicated helpline, or similar means, for parents to communicate with the company, in order to streamline the process. This will address the painful radio silence experienced by many bereaved parents. The companies must also offer options so that parents can complain when they consider that a platform is not meeting its obligations. These must be easy to access, easy to use and transparent.

The package of amendments will apply not only to coroners in England and Wales but also to Northern Ireland and equivalent investigations in Scotland, where similar sad events have occurred.

The Government will also address other barriers which are beyond the scope of this Bill. For example, we will explore measures to introduce data rights for bereaved parents who wish to request information about their deceased children through the Data Protection and Digital Information Bill. We are also working, as I said in Committee, with our American counterparts to clarify and, where necessary, address unintended barriers to information sharing created by the United States Stored Communications Act. I beg to move.

Baroness Kidron (CB): My Lords, I thank the Minister and indeed the Secretary of State for bringing forward these amendments in the fulsome manner that they have. I appreciate it, but I know that Bereaved Families for Online Safety also appreciates it. The Government committed to bringing forward these amendments on the last day in Committee, so they have been pre-emptively welcomed and discussed at some length. One need only read through *Hansard* of 22 June to understand the strength of feeling about the pain that has been caused to families and the urgent need to prevent others experiencing the horror faced by families already dealing with the loss of their child.

I will speak briefly on three matters only. First, I must once again thank bereaved families and colleagues in this House and in the other place for their tireless work in pressing this issue. This is one of those issues that does not allow for celebration. As I walked from the Chamber on 22 June, I asked one of the parents how they felt. They said: "It is too late for me". It was not said in bitterness but in acknowledgement of their profound hurt and the failure of companies voluntarily to do what is obvious, moral and humane. I ask the Government to see the sense in the other amendments that noble Lords brought forward on Report to make children safer, and make the same, pragmatic, thoughtful solution to those as they have done on this group of amendments. It makes a huge difference.

Secondly, I need to highlight just one gap; I have written to the Secretary of State and the Minister on this. I find it disappointing that the Government did not find a way to require senior management to attend an inquest to give evidence. Given that the Government have agreed that senior managers should be subject to criminal liability under some circumstances, I do not understand their objections to summoning them to co-operate with legal proceedings. If a company submits information in response to Ofcom and at the coroner's request the company's senior management is invited to attend the inquest, it makes sense that someone should be required to appear to answer and follow up those questions. Again, on behalf of the bereaved families and specifically their legal representatives, who are very clear on the importance of this part of the regime, I ask the Government to reconsider this point and ask the Minister to undertake to speak to the department and the MoJ, if necessary, to make sure that, if senior managers are asked to attend court, they are mandated to do so.

Thirdly, I will touch on the additional commitments the Minister made beyond the Bill, the first of which is the upcoming Data Protection and Digital Information Bill. I am glad to report that some of the officials working on the Bill have already reached out, so I am grateful to the Minister that this is in train, but I expect it to include guidance for companies that will, at a minimum, cover data preservation orders and guidance about the privacy of other users in cases where a child has died. I think that privacy for other users is central to this being a good outcome for everybody, and I hope we are able to include that.

I am pleased to hear about the undertaking with the US regarding potential barriers, and I believe—and I would love to hear from the Minister—that the objective is to make a bilateral agreement that would allow data to be shared between the two countries in the case of a child's death. It is very specific requirement, not a wide-ranging one. I believe, if we can do it on a bilateral basis, it would be easier than a broad attempt to change the data storage Act.

I turn finally to training for coroners. I was delighted that the Chief Coroner made a commitment to consider issuing non-legislative guidance and training on social media for coroners and the offer of consultation with experts, including Ofcom, the ICO and bereaved families and their representatives, but this commitment was made subject to funding. I ask the Minister to agree to discuss routes to funding from the levy via Ofcom's digital literacy duty. I have proposed an amendment to the government amendment that would make that happen, but I would welcome the opportunity to discuss it with the Minister. Coroners must feel confident in their understanding of the digital world, and I am concerned that giving this new route to regulated companies via Ofcom without giving them training on how to use it may create a spectre of failure or further frustration and distress for bereaved families. I know there is not a person in the House who would want that to be the outcome of these welcome government amendments.

Lord Allan of Hallam (LD): My Lords, I also welcome this group of amendments. I remember a debate led by the noble Baroness, Lady Kidron, some time ago in the Moses Room, where we discussed this, and I said at the time I thought it would get fixed in the Online Safety Bill. I said that in a spirit of hope, not knowing any of the detail, and it is really satisfying to see the detail here today. As she said, it is testimony to the families, many of whom got in touch with me at that time, who have persisted in working to find a solution for other families—as the noble Baroness said, it is too late for them, but it will make a real difference to other families—and it is so impressive that, at a time of extreme grief and justifiable anger, people have been able to channel that into seeking these improvements.

The key in the amendments, which will make that difference, is that there will be a legal order to which the platforms know they have to respond. The mechanism that has been selected—the information notice—is excellent because it will become well known to every one of the 25,000 or so platforms that operate in the United Kingdom. When they get an information notice from Ofcom, that is not something that they will have discretion over; they will need to comply with it. That will make a huge difference.

9.15 pm

The noble Baroness made an important point on this around privacy. Importantly, the platforms will be handing the data over to a public authority in the United Kingdom. So it will go to Ofcom and then, through Ofcom, to a coroner's court. Again, legal order and public authority are quite critical and we have a mechanism that deals with that. If we want to test the amendments, we can look at the practical effect they will have in light of what the barriers have been to date. The companies have been stubborn in taking an extreme position on non-disclosure, to a point that seems completely irrational to anyone outside.

There have been three barriers. I will outline them briefly so that we understand how the amendments tackle them. The first barrier is legal concerns. This is not just the "I can't give you the data because of data protection" type of limp excuse that we are all used to getting these days from different authorities. There are serious lawyers with genuine concerns that disclosure of data would lead a business into a risky area; businesses will tend to be risk-averse on data disclosures that they perceive to be optional or voluntary as opposed to those that they perceive to be mandatory. People may feel that they should feel the ethical or moral compulsion to disclose but, often, that has not been sufficient and legal concerns have been raised.

The second barrier concerns real fears about what may happen with the data. I come back to the point raised by the noble Baroness, Lady Kidron. I know that people have been through this stuff and they want to see what has been going on. Much of the content on social media sites is hard to fully anonymise without it failing to fulfil the purpose of helping people to understand what was going on. There is a difficult line to tread here. I know that people who work on this will sometimes find that the content they are being asked to disclose feels very sensitive. Their overwhelming fear is that, by disclosing that data, they will create a knock-on effect where, because of the disclosure, other individuals will become distressed and may even harm themselves. Again, that is a genuine fear.

The third barrier is embarrassment or shame at what has been going on and the platform not wanting to give transparency. I will not shy away from that; it is of course there as a strong motivation. People are sitting there defending their organisation and thinking, "Oh my goodness, we can't disclose this". So all three of these barriers exist at once. There are genuine legal fears, genuine fears about what may happen down the track—which is unknown—and then this corporate defensiveness which says, "Let's not disclose".

If we look at the orders here and the mechanisms that have been proposed, the legal barriers are overcome, at least in relation to the basic compulsion to disclose. There are some interesting issues about the Stored Communications Act, and when you look at the history of the Cloud Act, which was an attempt to reform the Stored Communications Act, you see that it is all quite messy when you are dealing with disclosing personal data from the United States to Europe. It becomes particularly problematic if the data is about Americans; of course, if you are using a social media platform, it may be that some of the content that people or families want to see is associated with an American. So it is gratifying to hear from the Minister that the Government are going to look at that.

Essentially, at least for much of the data, we will now have a straightforward legal mechanism that works. It cannot altogether fix this question of what happens with the data downstream. For that we have to trust

[Lord Allan of Hallam]
Ofcom, working with the Information Commissioner's Office and the coroners, to do the right thing and, when they get the data, to look after it. Then, if a platform is handing data over to agents of the British state with that kind of authority, it will feel that it can trust them. Let us hope that nothing happens and the trust will be there to move the data over and rely on their professionalism. The third issue of corporate embarrassment then becomes irrelevant, because they have no choice; that is then resolved and no longer a sufficient barrier to disclosure.

I have a few questions on the specifics of this. The first is on Amendment 190, on platforms declaring in their terms how they will handle the data of deceased children. Again, I lived through this, and most of the stuff to do with memorialisation and bereavement was entirely ad hoc. Platforms were built in an incredibly optimistic fantasy California world where no one died, so they did not think about that. But then a friend of someone did, and they got in touch and said, "What should we do?" and they replied, "Oh, we'll come up with something". That is literally the origin story of a lot of these memorialisation policies and things like that. Someone then said, "Well, that doesn't work very well", and someone else asked, "Who constitutes a family member who can make the request?" It all happened in this very ad hoc way, so Amendment 190 is welcome in making sure that that is more consistent.

It would be interesting if the Minister has any thoughts on how that extends to other people. Clearly, we are focused on deceased children, but some of the same considerations, certainly around transparency, apply to any deceased family member, whatever their age. Having a dedicated hotline specifically for children is right, but there is something interesting in Amendment 190 about filling the gaps around disclosure, transparency and memorialisation more generally, and making that consistent.

The second question is on Amendment 273, on reports into a death. My understanding is that this relates to a death of anyone of any age and that it is not limited to children specifically. Again, it would be interesting to hear more about how the Government see that working because, as I understand it, the volume through that channel could be much greater if we are talking about any death at any age, which is how I read Amendment 273, unless I have misunderstood it.

I have another question, on Amendment 249, which is on information notices specifically about child deaths. I do not want to broaden this out, but we need to flag that we will need some clarity around what assistance can be given to people where the death is of someone who is not a child. There will be situations that are important to families and where everyone has a huge amount of sympathy but where we are not dealing with a child. Again, it is right that we have this specific set of measures around deceased children, but we should expect that Ofcom will be asked, "What about other circumstances?" We need a reasonable answer to that: that other things are in place. I hope that the answer will be that, if it is a serious enough case, without the information notice powers Ofcom could still, under Amendment 273 as I read it, look into other deaths that involve adults, as well as the specific powers it has in relation to children. I would appreciate clarification from the Minister.

Baroness Harding of Winscombe (Con): My Lords, given the hour, I will be brief. I wanted to thank my noble friend the Minister and the Secretary of State, and to congratulate my friend the noble Baroness, Lady Kidron, on such an important group. It is late at night and not many of us are left in the Chamber, but this is an important thing that they have succeeded in doing together, and it is important that we mark that. It is also a hugely important thing that the bereaved families for justice have achieved, and I hope that they have achieved a modicum of calm from having made such a big difference for future families.

I will make one substantive point, referencing where my noble friend the Minister talked about future Bills. In this House and in this generation, we are building the legal scaffolding for a digital world that already exists. The noble Lord, Lord Allan of Hallam, referenced the fact that much of this was built without much thought—not maliciously but just without thinking about the real world, life and death. In Committee, I was taken by the noble Lord, Lord Knight, mentioning the intriguing possibility of using the Data Protection and Digital Information Bill to discuss data rights and to go beyond the dreadful circumstances that these amendments cover to make the passing on of your digital assets something that is a normal part of our life and death. So I feel that this is the beginning of a series of discussions, not the end.

I hope that my noble friend the Minister and whichever of his and my colleagues picks up the brief for the forthcoming Bill can take to heart how we have developed all this together. I know that today has perhaps not been our most wholly collaborative day, but, in general, I think we all feel that the Bill is so much the better for the collaborative nature that we have all brought to it, and on no more important a topic than this amendment.

Lord Clement-Jones (LD): My Lords, I will be extremely brief. We have come a very long way since the Joint Committee made its recommendations to the Government, largely, I think, as a result of the noble Baroness, Lady Kidron. I keep mistakenly calling her "Baroness Beeban"; familiarity breeds formality, or something.

I thank the Minister and the Secretary of State for what they have done, and the bereaved families for having identified these issues. My noble friend Lord Allan rightly identified the sentiments as grief and anger at what has transpired. All we can do is try to do, in a small way, what we can to redress the harm that has already been done. I was really interested in his insights into how a platform will respond and how this will help them through the process of legal order and data protection issues with a public authority.

My main question to the Minister is in that context—the relationship with the Information Commissioner's Office—because there are issues here. There is, if you like, an overlap of jurisdiction with the ICO, because the potential or actual disclosure of personal data is involved, and therefore there will necessarily have to

be co-operation between the ICO and Ofcom to ensure the most effective regulatory response. I do not know whether that has emerged on the Minister's radar, but it certainly has emerged on the ICO's radar. Indeed, in the ideal world, there probably should be some sort of consultation requirement on Ofcom to co-operate with the Information Commissioner in these circumstances. Anything that the Minister can say on that would be very helpful.

Again, this is all about reassurance. We must make sure that we have absolutely nailed down all the data protection issues involved in the very creative way the Government have responded to the requests of the bereaved families so notably championed by the noble Baroness, Lady Kidron.

Lord Knight of Weymouth (Lab): My Lords, first, I associate myself with the excellent way in which the noble Baroness, Lady Harding, paid tribute to the work of the noble Baroness, Lady Kidron, on behalf of Bereaved Families for Online Safety, and with the comments she made about the Minister and the Secretary of State in getting us to this point, which were echoed by others.

I have attached my name, on behalf of the Opposition, to these amendments on the basis that if they are good enough for the noble Baroness, Lady Kidron, it ought to be good enough for me. We should now get on with implementing them. I am also hopeful to learn that the Minister has been liaising with the noble Baroness, Lady Newlove, to ensure that the amendments relating to coroners' services, and the equivalent procurator fiscal service in Scotland, will satisfy her sense of what will work for victims. I am interested, also, in the answer to the question raised by the noble Baroness, Lady Kidron, regarding a requirement for senior managers to attend inquests. I liked what she had to say about the training for coroners being seeing as media literacy and therefore fundable from the levy.

All that remains is for me to ask three quick questions to get the Minister's position clear regarding the interpretation of the new Chapter 3A, "Deceased Child Users". First, the chapter is clear that terms of service must clearly and easily set out policy for dealing with the parents of a deceased child, and must provide a dedicated helpline and a complaints procedure. In subsection (2), does a helpline or similar—the "similar" being particularly important—mean that the provider must offer an accessible, responsive and interactive service? Does that need to be staffed by a human? I think it would be helpful for the Minister to confirm that is his intention that it should be, so that parents are not fobbed off with solely an automated bot-type service.

9.30 pm

Secondly, the requirement to provide a complaints service is clear. The duties on Ofcom in the group are also clear enough. Can he make sure he has summarised on the record the consequences for the provider if they fail in their duties and, in particular, if the platform's complaints service is insufficient.

Finally, in the circumstance of a complaints service failing a parent, what should they then do? Do they have direct recourse to Ofcom? Will the regulator need to offer individual parents a channel to report problems if they have satisfied all the provider's own processes, as set out in these clauses?

Again, I repeat my thanks to all across the House who have worked so hard to get substantial progress on this key issue.

Lord Parkinson of Whitley Bay (Con): My Lords, I am grateful for the recognition of the work that has been done here, led by the noble Baroness, Lady Kidron, but involving many others, including officials who have worked to bring this package forward.

Noble Lords took the opportunity to ask a number of questions. The noble Baroness, Lady Kidron, asked about senior management liability. Ofcom will have extensive enforcement powers at its disposal if service providers do not comply with its information requests issued on behalf of a coroner. The powers will include the ability to hold senior managers criminally liable for non-compliance. Those powers are in line with Ofcom's existing information-gathering powers in the Bill. Where Ofcom has issued an information request to a company, that company may be required to name a senior manager who is responsible for ensuring compliance with the requirements of the notice. If the named senior manager is found to have failed to comply with that information notice, or has failed to take all reasonable steps to prevent a failure to comply with the notice, that individual will be held personally liable and could be subject to imprisonment.

On the point about them not appearing in court, coroners have well-established powers to require senior managers to attend court. The enforcement powers available to Ofcom are in line with Ofcom's existing information-gathering powers in the Bill. They do not extend to Ofcom requiring senior managers to appear in court as part of a coronial investigation. We do not think that would be appropriate for Ofcom, given that the coroner's existing remit already covers this. The noble Baroness raised many specific instances that had come to her attention, and if she has specific examples of people not attending court that she would like to share with us and the Ministry of Justice, of course we would gladly follow those up.

The noble Lord, Lord Knight, rightly mentioned my noble friend Lady Newlove. I can reassure him that I have discussed this package of amendments with her, and had the benefit of her experience as a former Victims' Commissioner.

On the training for coroners, which is an issue she raised, as did the noble Baroness, Lady Kidron, in her remarks just now, the Chief Coroner for England and Wales has statutory responsibility for maintaining appropriate arrangements for the training of coroners. That is of course independent of government, and exercised through the Judicial College, but the training is mandatory and the Chief Coroner is aware of the issues we are debating now.

The noble Lords, Lord Allan of Hallam and Lord Knight of Weymouth, raised the helpline for parents. Yes, we expect our approach of requiring a dedicated helpline or similar means will involve a human. As we

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say, we want a more humane process for those who need to use it; we think it would be more effective than requiring a company to provide a named individual contact. We touched on this briefly in Committee, where the point was raised, understandably, about staff turnover or people being absent on leave—that a requirement for a named individual could hinder the contact which families need to see there.

The noble Lord, Lord Allan, also asked some questions about deaths of people other than a child. First, Ofcom's report in connection with investigations into a death covers any coronial inquest, not just children. More broadly, of course, social media companies may have their own terms and conditions or policies in place setting out when they will share information after somebody has passed away. Companies based outside the UK may have to follow the laws of the jurisdiction in which they are based, which may limit the sharing of data without a court order. While we recognise the difficulty that refusing to disclose data may cause for bereaved relatives in other circumstances, the right to access must, of course, be balanced with the right to privacy. Some adult social media users may be concerned, for instance, about the thought of family members having access to information about their private life after their deaths, so there is a complexity here, as I know the noble Lord understands.

The noble Baroness, Lady Kidron, asked about data preservation orders. I am very glad that officials from another Bill team are already in touch with her, as they should be. As we set out in Committee, we are aware of the importance of data preservation to coroners and bereaved parents, and the Government agree with the principle of ensuring that those data are preserved. We will work towards a solution through the Data Protection and Digital Information Bill. My noble friend Lord Camrose—who is unable to be with us today, also for graduation reasons—and I will be happy to keep the House and all interested parties updated about our progress in resolving the issue of data preservation as we work through this complex problem.

The noble Lord, Lord Clement-Jones, asked about the Information Commissioner's Office. We expect Ofcom to consult the ICO on all the guidance where its expertise will be relevant, including on providers' new duties under these amendments. I am grateful, as I say, for the support that they have had and the recognition that this has been a long process since these issues were first raised in the pre-legislative committee. We believe that it is of the utmost importance that coroners and families can access information about a child's internet use following a bereavement, and that companies' responses are made in a humane and transparent way.

This group of amendments should be seen alongside the wider protections for children in the Bill, and I hope they will help bereaved parents to get the closure that they deserve. The noble Lord, Lord Allan, was right to pay tribute to how these parents, who have campaigned so bravely, have turned their grief and frustration into a determination to make sure that no other parents go through the sorts of ordeals that they have. That is both humbling and inspiring, and I am glad that the Bill can help to be a part of the change that they are seeking. I share my noble friend Lady Harding's wish that it may bring them a modicum of calm. I beg to move.

Amendment 84 agreed.

Clause 25: Safety duties protecting children

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): Amendment 85 is consequential to Amendment 35, which was previously agreed.

Amendment 85

Moved by ***Baroness Kidron***

85: Clause 25, page 28, line 33, at end insert—

"(c) mitigate the impact of harm to children in different age groups presented by search functions that expose children to features, functionalities or behaviours that are harmful to children."

Member's explanatory statement

This amendment ensures that Search services' duty to protect children from harm includes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination or encountering harmful content.

Amendment 85 agreed.

Amendment 86

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

86: Clause 25, page 29, line 28, leave out "this section" and insert "section 25"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

Amendment 86 agreed.

Amendment 87 not moved.

Amendments 88 and 89

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

88: Clause 25, page 29, line 34, leave out "this section" and insert "section 25"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

89: Clause 25, page 29, line 38, leave out "subsection (3)(b)" and insert "section 25(3)(b)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

Amendments 88 and 89 agreed.

Amendment 90 not moved.

Amendments 91 to 96

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

91: Clause 25, page 29, line 42, leave out "subsection (3)" and insert "section 25(3)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

92: Clause 25, page 30, line 1, leave out "this section" and insert "section 25"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

93: Clause 25, page 30, line 4, leave out from "if" to "the" in line 6 and insert "age verification or age estimation is used on the service with"

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

94: Clause 25, page 30, line 8, after "In" insert "section 25 and"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

95: Clause 25, page 30, line 10, leave out "this section" and insert "section 25"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

96: Clause 25, divide Clause 25 into two clauses, the first (Safety duties protecting children) to consist of subsections (1) to (9) and the second (Safety duties protecting children: interpretation) to consist of subsections (10) to (17)

Member's explanatory statement

This amendment splits up Clause 25 into two Clauses.

Amendments 91 to 96 agreed.

Clause 27: Duties about complaints procedures

Amendment 97

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

97: Clause 27, page 32, line 2, leave out "25(3)" and insert "25(2) or (3)"

Member's explanatory statement

This amendment is about complaints of content being blocked because of an incorrect assessment of a user's age. A reference to Clause 25(2) is inserted, as the duty in that provision can also be complied with by using age verification or age estimation.

Amendment 97 agreed.

Clause 29: Record-keeping and review duties

Amendment 98

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

98: Clause 29, page 33, line 41, at end insert ",

and for the purposes of subsection (6), also includes the duties set out in section (Disclosure of information about use of service by deceased child users) (deceased child users)."

Member's explanatory statement

This amendment has the effect that OFCOM have a duty to review compliance by search service providers with the new duties imposed by the Clause proposed after Clause 67 in my name.

Amendment 98 agreed.

Clause 30: Children's access assessments

Amendment 99

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

99: Clause 30, page 34, line 12, leave out from "if" to "the" in line 13 and insert "age verification or age estimation is used on the service with"

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

Amendment 99 agreed.

Amendment 100

Moved by ***Baroness Kidron***

100: Clause 30, page 34, line 23, after "significant" insert "in itself or"

Member's explanatory statement

This amendment aligns the definition of "significant" with the ICO's Age Appropriate Design Code and draft guidance to ensure regulatory alignment and to ensure the protection of the greatest number of children.

Baroness Kidron (CB): My Lords, I apologise for speaking once more today. I shall introduce Amendments 100 and 101 on the child user condition. They are very technical in nature and simply align the definition of "significant" in the Bill with the ICO's age-appropriate design code to ensure regulatory alignment and to ensure the protection of the greatest number of children.

The Minister has stated on the record that the child-user condition is the same as the age-appropriate design code; however, in Clause 30(3) of the Bill, a service is "likely to be accessed" by children if

"(a) there is a significant number of children who are users of the service or of that part of it, or (b) the service, or that part of it, is of a kind likely to attract a significant number of users who are children".

At Clause 30(4),

"the reference to a 'significant' number includes a reference to a number which is significant in proportion to the total number of United Kingdom users of a service or … part of a service".

That is a key issue: "in proportion". Because, by contrast, the ICO's age-appropriate design code states that a service is "likely to be accessed" if

"children form a substantive and identifiable user group".

That is quite a different threshold.

In addition, the ICO's draft guidance on "likely to be accessed" sets out a list of factors that should be taken into consideration when making this assessment. These factors are far more extensive than Clause 30(4) and specifically state:

[Baroness Kidron]

"'Significant' in this context does not mean that a large number of children must be using the service or that children form a substantial proportion of your users. It means that there are more than a de minimis or insignificant number of children using the service".

In other words, it is possibly quite a small group, or a stand-alone group, that is not in proportion to the users. I will stop here to make the point that sometimes users are in their millions or tens of millions, so a small proportion could be many hundreds of thousands of children—just to be really clear that this matters and I am not quite dancing on the head of a pin here.

Amendment 101 mirrors the ICO's draft guidance on age assurance on this point. I really struggle to see, if the intention of the Government is that these two things align, why this would not be just a technical amendment that they can just say yes to and we can move on.

I finish by reminding the House that the legal opinion of my noble and learned friend Lord Neuberger, the former head of the Supreme Court, which I shared with the Government, highlights the importance of regulatory alignment, clarity and consistency, particularly in new areas of law where concepts such as "likely to be accessed" are becoming a phrase that is in more than one Act.

My noble and learned friend states:

"As the Minister rightly says, simplicity and clarity are desirable in a statute, and it serves both simplicity and clarity if the same expression is used in the two statutes, and it is made clear that the same meaning is intended … The currently drafted reference in the Bill to 'a significant number of children' appears to me to be something of a recipe for uncertainty, especially when compared with the drafting of section 123 of the DPA".

With that, I beg to move.

9.45 pm

Lord Clement-Jones (LD): My Lords, very briefly, I commend these two amendments. Again, the provenance is very clear; the Joint Committee said:

"This regulatory alignment would simplify compliance for businesses, whilst giving greater clarity to people who use the service, and greater protection to children."

It suggested that the Information Commissioner's Office and Ofcom should issue a joint statement on how these two regulatory systems will interact once the Online Safety Bill has been enacted. That still sounds eminently sensible, a year and a half later.

Lord Parkinson of Whitley Bay (Con): My Lords, Amendments 100 and 101 seek further to define the meaning of "significant" in the children's access assessment, with the intention of aligning this with the meaning of "significant" in the Information Commissioner's draft guidance on the age-appropriate design code.

I am grateful to the noble Baroness, Lady Kidron, for the way in which she has set out the amendments and the swiftness with which we have considered it. The test in the access assessment in the Bill is already aligned with the test in the code, which determines whether a service is likely to be accessed by children in order to ensure consistency for all providers. The Information Commissioner's Office has liaised with Ofcom on its new guidance on the likely to access test for the code, with the intention of aligning the two regulatory regimes while reflecting that they seek to do different things. In turn, the Bill will require Ofcom to consult the ICO on its guidance to providers, which will further support alignment between the tests. So while we agree about the importance of alignment, we think that it is already catered for.

With regard to Amendment 100, Clause 30(4)(a) already states that

"the reference to a 'significant' number includes a reference to a number which is significant in proportion to the total number of United Kingdom users of a service".

There is, therefore, already provision in the Bill for this being a significant number in and of itself.

On Amendment 101, the meaning of "significant" must already be more than insignificant by its very definition. The amendment also seeks to define "significant" with reference to the number of children using a service rather than seeking to define what is a significant number.

I hope that that provides some reassurance to the noble Baroness, Lady Kidron, and that she will be content to withdraw the amendment.

Baroness Kidron (CB): I am not sure that, at this late hour, I completely understood what the Minister said. On the basis that we are seeking to align, I will withdraw my amendment, but can we check that we are aligned as my speech came directly from a note from officials that showed a difference? On that basis, I am happy to withdraw.

Amendment 100 withdrawn.

Amendment 101 not moved.

Clause 31: Duties about children's access assessments

Amendment 102

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

102: Clause 31, page 35, line 1, leave out from "of" to "as" in line 2 and insert "age verification or age estimation that is used on the service"

Member's explanatory statement

This amendment is consequential on the amendment of clause 30 in my name.

Amendment 102 agreed.

Schedule 3: Timing of providers' assessments

Amendments 103 to 122

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

103: Schedule 3, page 195, line 34, at end insert—

"5A (1) In this paragraph "the relevant day", in relation to a regulated user-to- user service, means—

(a) the first day on which the service is a Category 1 service, or

(b) the first day on which the service again becomes a Category 1 service (following a period during which the service was not a Category 1 service).

(2) If, on the relevant day, section 12(2) guidance is available, a section 12(2) assessment of the service must be completed within the period of three months beginning with that day.

(3) Sub-paragraph (4) applies if—

(a) on the relevant day, the first section 12(2) guidance has not yet been published, and

(b) immediately before the publication of that guidance, the service is still a Category 1 service.

(4) The first section 12(2) assessment of the service must be completed within the period of three months beginning with the day on which the first section 12(2) guidance is published."

Member's explanatory statement

This amendment and the rest of the amendments of Schedule 3 in my name provide for the timing of the first assessments under the new Clause proposed after Clause 11 in my name.

104: Schedule 3, page 196, line 36, leave out "and 12" and insert "to 12A"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

105: Schedule 3, page 196, line 43, at end insert—

"(2A) If the effect of paragraph 5A is that the period within which the first section 12(2) assessment of the service must be completed begins on a day before the assessment start day, the time for carrying out that assessment is extended as set out in paragraph 12A."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

106: Schedule 3, page 196, line 44, leave out "and 12" and insert "to 12A"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

107: Schedule 3, page 197, line 14, at end insert—

"12A (1) If section 12(2) guidance is available on the assessment start day, the first section 12(2) assessment of the service must be completed within the period of three months beginning with that day.

(2) If, on the assessment start day, the first section 12(2) guidance has not yet been published, the first section 12(2) assessment of the service must be completed within the period of three months beginning with the day on which the first section 12(2) guidance is published."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

108: Schedule 3, page 197, line 24, after "1" insert "or paragraph 5A"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

109: Schedule 3, page 197, line 25, leave out "or CAA" and insert ", CAA or section 12(2) assessment"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

110: Schedule 3, page 197, line 28, leave out "or 15" and insert ", 15 or 15A"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

111: Schedule 3, page 197, line 30, leave out "applies" and insert "and paragraph 5A apply"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

112: Schedule 3, page 198, line 8, at end insert—

"15A (1) If section 12(2) guidance is available on the assessment start day, a section 12(2) assessment of the Part 4B part must be completed within the period of three months beginning with that day.

(2) If, on the assessment start day, the first section 12(2) guidance has not yet been published, a section 12(2) assessment of the Part 4B part must be completed within the period of three months beginning with the day on which the first section 12(2) guidance is published."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

113: Schedule 3, page 198, line 13, at end insert—

"(b) a section 12(2) assessment of the regulated service if a section 12(2) assessment is due to be carried out in relation to the Part 4B part of the service in accordance with paragraph 15A."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

114: Schedule 3, page 198, line 15, leave out "or a CAA" and insert ", a CAA or a section 12(2) assessment"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

115: Schedule 3, page 198, line 25, leave out "or a CAA" and insert ", a CAA or a section 12(2) assessment"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

116: Schedule 3, page 198, line 26, after "1" insert "or paragraph 5A"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

117: Schedule 3, page 198, line 37, at end insert—

"(c) a section 12(2) assessment is not required to be carried out at the time provided for by paragraph 5A."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

118: Schedule 3, page 198, line 38, leave out "or CAA" and insert ", CAA or section 12(2) assessment"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

119: Schedule 3, page 198, line 39, at end insert "or paragraph 5A."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

120: Schedule 3, page 199, line 18, at end insert—

"section 12(2) assessment" means OFCOM's assessment under section (Assessment duties: user empowerment) (assessments related to the adult user empowerment duty set out in section 12(2));

"section 12(2) guidance" means OFCOM's guidance under section 47(A1)."

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

121: Schedule 3, page 200, line 6, after "CAA" insert ", a section 12(2) assessment"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

122: Schedule 3, page 200, line 12, after "CAAs" insert ", section 12(2) assessments"

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

Amendments 103 to 122 agreed.

Amendment 123 not moved.

Schedule 4: Codes of practice under section 36: principles, objectives, content

Amendment 124

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

124: Schedule 4, page 203, line 23, at end insert—

"Content of codes of practice: age assurance

11A (1) This paragraph is about the inclusion of age assurance in a code of practice as a measure recommended for the purpose of compliance with any of the duties set out in section 11(2) or (3) or 25(2) or (3), and sub- paragraph (2) sets out some further principles, in addition to those in paragraphs 1 and 2 (general principles) and 10(2) (freedom of expression and privacy), which are particularly relevant.

(2) In deciding whether to recommend the use of age assurance, or which kinds of age assurance to recommend, OFCOM must have regard to the following—

(a) the principle that age assurance should be effective at correctly identifying the age or age-range of users;

(b) relevant standards set out in the latest version of the code of practice under section 123 of the Data Protection Act 2018 (age- appropriate design code);

(c) the need to strike the right balance between—

(i) the levels of risk and the nature, and severity, of potential harm to children which the age assurance is designed to guard against, and

(ii) protecting the right of users and (in the case of search services or the search engine of combined services) interested persons to freedom of expression within the law;

(d) the principle that more effective kinds of age assurance should be used to deal with higher levels of risk of harm to children;

(e) the principle that age assurance should be easy to use, including by children of different ages and with different needs;

(f) the principle that age assurance should work effectively for all users regardless of their characteristics or whether they are members of a certain group;

(g) the principle of interoperability between different kinds of age assurance.

(3) In a code of practice that describes measures for the purpose of compliance with the duty set out in section 11(3)(a), OFCOM must recommend (among other things) age verification or age estimation which is such of a kind, and which is to be used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child (see section 11(3C)).

(4) In deciding which kinds and uses of age verification or age estimation to recommend for the purpose of compliance with the duty set out in section 11(3)(a), OFCOM must have regard to their guidance under section 73 that gives examples of kinds and uses of age verification and age estimation that are, or are not, highly effective at correctly determining whether or not a particular user is a child.

(5) Nothing in sub-paragraph (2) is to be read as allowing OFCOM to recommend, for the purpose of compliance with the duty set out in section 11(3)(a) by providers subject to the requirement in section 11(3A), a kind or use of age verification or age estimation which does not meet the requirement to be highly effective as mentioned in section 11(3C).

(6) A code of practice that recommends the use of age assurance for the purpose of compliance with the duties set out in section 11(2) or (3) must also describe measures recommended for the purpose of compliance with the duties set out in—

(a) section 11(6), (8) and (10) (inclusion of clear information in terms of service), and

(b) section 17(2) and (3)(see, in particular, section 17(5)(e) (complaints about age assurance)).

(7) A code of practice that recommends the use of age assurance for the purpose of compliance with the duties set out in section 25(2) or (3) must also describe measures recommended for the purpose of compliance with the duties set out in—

(a) section 25(5) and (8) (inclusion of clear information in publicly available statement), and

(b) section 27(2) and (3)(see, in particular, section 27(5)(d) (complaints about age assurance)).

(8) A code of practice may—

(a) refer to industry or technical standards for age assurance (where they exist);

(b) elaborate on the principles mentioned in paragraphs (a) and (c) to (g) of sub-paragraph (2).

(9) In this paragraph "age assurance" means age verification or age estimation, and see in particular section ("Age verification" and "age estimation") (4) (self-declaration of age not to be regarded as age verification or age estimation)."

Member's explanatory statement

This amendment contains provisions which relate to OFCOM's recommendation of age assurance in codes of practice for the purposes of Part 3 of the Bill. It includes some relevant principles and makes it clear that OFCOM must recommend highly effective age assurance in connection with the duty in Clause 11(3)(a) (preventing children from encountering primary priority content that is harmful to children).

Amendment 125 (to Amendment 124) not moved.

Amendment 124 agreed.

Amendments 126 and 127

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

126: Schedule 4, page 204, line 10, leave out "existing"

Member's explanatory statement

This amendment is a minor drafting change to omit a superfluous word.

127: Schedule 4, page 204, line 14, at end insert—

"(7) Sub-paragraph (6) does not apply in relation to proactive technology which is a kind of age verification or age estimation technology."

Member's explanatory statement

This amendment carves out age assurance technologies from the paragraph of Schedule 4 which is about proactive technology, because age assurance principles etc are covered by new paragraph 11A proposed to be inserted by the amendment in my name above.

Amendments 126 and 127 agreed.

Clause 38: Procedure for issuing codes of practice

Amendment 128 not moved.

Consideration on Report adjourned.

House adjourned at 9.51 pm.

Grand Committee

Monday 10 July 2023

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Ashton of Hyde) (Con): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Lifelong Learning (Higher Education Fee Limits) Bill

Committee

3.45 pm

Clause 1: New method for determining fee limit

Amendment 1

Moved by ***Baroness Twycross***

1: Clause 1, page 2, line 5, at end insert "in consultation with relevant higher education sector stakeholders."

Member's explanatory statement

This amendment ensures that, before determining which method is used, the Secretary of State will consult relevant higher education sector stakeholders.

Baroness Twycross (Lab): My Lords, I shall speak to Amendment 1 in my name and the names of my noble friends Lady Thornton and Lady Wilcox and the noble Baroness, Lady Garden of Frognal, and to Amendment 4 in my name and those of my noble friends Lady Thornton and Lady Wilcox.

As Labour made clear at Second Reading, we support the intention of the Bill. It is no longer the case that someone's career can be predictable from the time they leave school, college or university. It is unlikely that someone starting their career will not have further educational needs during their lifetime and it is right that that is reflected in the funding available. However, it is Labour's view that this is a good Bill that could be even better. As I said at Second Reading, it is a short Bill, and arguably too short. On the surface it does what it says on the tin, but with a bit more detail it would be more likely to succeed in the lifetime guarantee offers and a lifetime entitlement that it would bring about.

The further and higher education sectors also support the Bill. However, having such a limited Bill with little concrete information in it is of concern to those in higher education. We think that further consultation should therefore be built in to safeguard the success of the legislation. As the Open University said in its commentary, the Bill could be transformative, but the OU makes clear that its detailed design will be key to determining how it works in practice and whether it will be able to achieve the Government's ambitions to deliver a fundamental and seismic shift towards flexible lifelong learning.

Amendment 1 would insert sectoral consultation into the decision about whether the fee limit for a course should be fixed or module based. Currently the Secretary of State has huge scope to decide that. It is likely that not all courses would lend themselves to being module based. We think that the extent to which a course is suited to being module based is likely to be something that the sector would be well-placed to have a view on.

Amendment 4 would include a similar requirement with credit-differentiated activity—for example, in relation to placements. The current wording gives the Secretary of State huge scope to decide the worth of placements in terms of credits. The amendment would insert a requirement for the Secretary of State to consult higher education and placement providers.

Without wanting to put words in the Minister's mouth, I am confident that she may say that it is self-evident that the Secretary of State would consult on these matters. However, if that is the case, why not simply put the requirement to consult into legislation? I hope that the Minister will see the common sense in doing so and I look forward to her response on this matter.

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for her willingness to discuss issues in the Bill with all interested noble Lords. I have added my name to Amendment 1, for all the reasons set out by the noble Baroness, Lady Twycross. For these provisions to succeed, close co-operation and consultation with higher education and indeed other awarding organisations are crucial.

This is a small Bill with considerable limits. We had hoped to table amendments to ensure that careers information, advice and guidance were available to any of those wishing to take advantage of the provisions of the Bill, but we were told that that was out of scope. I fear that other of our concerns may also turn out to be categorised in that way.

There are a great many unknowns in the Bill. It is a matter of great concern that the number of adults over 21 accessing higher-level skills has fallen dramatically over a number of years. One reason is the lack of maintenance support—also, I fear, out of scope. The majority of part-time students do not have access to maintenance support and that can be a serious disincentive for them, so can the Minister say whether any thought has been given to maintenance loans—or, better still, grants—to enable the provisions of the Bill to succeed? I guess that this, again, will be out of scope.

As the Minister is aware, the Liberal Democrats are not convinced that large cohorts of adult learners will be keen to take on debt, and the lifelong learning entitlement is indeed a debt. We propose a skills wallet, putting money into learners' pockets to enhance their skills learning and competence at three stages of their careers. We argue that that money would be rapidly recouped by the enhanced earning capacity of those who took advantage of it. We know that many adults are loath to take on additional debt, particularly in these times of economic difficulties. We will support any amendments calling for reviews to see how successful the offer of loans and debt is to adults.

[Baroness Garden of Frognal]

I am not sure whether the Minister answered those concerns at Second Reading but obviously now we have to concentrate on the amendments tabled, which largely centre on clarification of what is or is not included in the Bill. We can only hope that the Bill has the desired effect. The country is woefully short of people with the skills that the economy needs and, if more adults can be encouraged to acquire those skills, we shall all benefit. However, it is a very little Bill.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I shall speak to Amendment 1, tabled by the noble Baroness, Lady Twycross, also in the names of the noble Baronesses, Lady Garden of Frognal, Lady Wilcox of Newport and Lady Thornton, and Amendment 4, tabled by the noble Baroness, Lady Twycross, and in the names of the noble Baronesses, Lady Wilcox of Newport and Lady Thornton, which would require the Government to consult relevant stakeholders and others before, first, setting out which method should be used to calculate fee limits and, secondly, determining the nature and extent of credit-differentiated activity and the number of credits associated with it.

The Government intend for all courses offered under the lifelong loan entitlement, the LLE, to use the new credit-based method for calculating fee limits in order to create a consistent and unified fee limit system. That policy has been designed in consultation with relevant higher education sector stakeholders. I agree with the noble Baroness opposite that it is extremely important to take account of their views. That is exactly what the Government have done in designing this policy.

The Government intend to retain the ability to set fee limits using the current yearly system, as well as the new credit-based system, but would use this ability only by exception. The Government do not currently anticipate any courses to use the fixed method from 2025 and are confident that all courses can use the credit-based method. The Government concluded their consultation on the LLE on 6 May last year. The consultation included a question on whether any courses should continue to be funded per academic year under the LLE rather than according to the number of credits.

Through the consultation, the Government understand that some courses, such as postgraduate certificates in education or nursing degrees, may not be suited to having fee limits set using provider-assigned credit values. This is due to variations in how different providers assign credits to these courses, which could lead to variable fee limit outcomes. For those courses, the intention is to set fee limits using a consistent rate of 120 credits per year for full-time courses, with other values for other intensities. That will enable those courses to use the new credit-based method while retaining parity with the current per-year system.

In relation to credit-differentiated activity, the Government want to ensure that periods of sandwich placement and study abroad continue to be subject to lower fee limits. In the current system, these lower limits are applied to full academic years, which makes them incompatible with the per-credit system. To enable those lower limits within the credit-based method, the Bill introduces the term "credit-differentiated activity". This will mean that substantial periods of sandwich placement and study abroad can have their lower fee limits applied accurately even when they do not conform to full academic years. Regulations will set out details on how this system will work, including a mechanism to enable credit-differentiated activities to work for non-credit-bearing placements.

I can also announce that, in the autumn of this year, the Government will publish further detail of the fee limits regulations. This will give the sector and the public an opportunity to scrutinise the detail and plan accordingly for the introduction of the LLE in 2025, as well as ensuring that the Government can receive feedback on their proposals prior to the laying of regulations. This will include detail on the maximum and default credit values for different course types.

In conclusion, given that consultation has already taken place and that further engagements with the sector will take place as part of the pathway to the LLE's delivery, the Government cannot support these amendments.

Baroness Twycross (Lab): My Lords, I thank the Minister for her response. I also thank the noble Baroness, Lady Garden of Frognal, for adding her name to Amendment 1 and for her contribution to this discussion; as she said, we desperately need more skills, so we need this Bill to succeed.

We welcome the Minister's announcement that further detail and consultation will come in the autumn. The Labour Party is keen to work with the Government to make sure that this Bill is the game-changer that it could be. I hope that, once we get the detail of the consultation, we will look at whether additional consultation will need to be built into the Bill. At the moment, we think that there is merit in building something into the legislation. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Garden of Frognal***

2: Clause 1, page 2, line 10, at end insert—

"(1A) For the purposes of this Schedule, one credit corresponds to 10 notional learning hours."

Member's explanatory statement

This amendment puts the number of hours that constitute a credit on the face of the Bill.

Baroness Garden of Frognal (LD): My Lords, I have also added my name to Amendment 5 in this group.

Currently, the definition of a credit is outlined in Ofqual's conditions of registration, the Office for Students' sector-recognised standards and the QAA's higher education credit framework. It is outlined in the Bill's Explanatory Notes but not on the face of the Bill. It is important to put it in the Bill to ensure that the Government do not amend the value of a credit without any proper scrutiny. Even though the current Minister committed to the affirmative resolution procedure, there is no ongoing commitment for future

Governments. Evidence given to the Bill Committee also set out reasons why a definition should be in the Bill.

It is really important to communicate to a student what a credit means. In essence, a student wants to know a number of things: how much this is going to cost them; what they will have to expend in effort and energy to complete the module; and what they will get for that module and those credits from the institution that they choose to go to. Transparency around the relationship between credits and fees and between credits and module content, including what is expected within that, is very important. Would it not also help anyone whom we want to use the lifelong learning entitlement to understand what their fees translate to in practice?

For a similar reason, I have added my name to Amendment 5, which the noble Baroness, Lady Twycross, will address more fully. It is a probing amendment on credit structure. Other institutions have told us that they are on a 20-credit system and so increasing the structure to 30 credits would cause significant disruption, inhibit a quick rollout and be a great disincentive to many learners. There is the argument that short courses are valuable to employers and that putting in a higher credit minimum limits the potential for students' choice in short courses.

This group has also acquired Amendment 6A in the name of the noble Lord, Lord Johnson. We certainly support it. Higher education institutions should be allowed to uprate in line with inflation and this measure should be in the Bill; there would be little incentive for them otherwise.

These are three useful amendments. I beg to move Amendment 2.

Baroness Thornton (Lab): My Lords, I will speak to Amendment 5 in the name of my noble friend Lady Twycross, to which my noble friend Lady Wilcox and I, and the noble Baroness, Lady Garden, have added our names. It is a probing amendment intended to ensure that modules worth 20 credits or more are included within the lifelong learning entitlement.

We are concerned that there is a series of questions on this that need clarification. The briefing that we have all received from the Association of Colleges also expresses concern about how the credits system will work. It says in its briefing that this is a significant reform and that we need to ensure that credit requirements do not limit access to modular learning, as many providers teach 20-credit modules and a minimum requirement of 30 credits would require learners to bundle together at least two modules to meet the funding requirement.

This issue was discussed in Committee in the Commons, where a similar amendment was tabled to the one that I have put down here to probe this issue further. Since we put our amendment down the noble Lord, Lord Johnson of Marylebone, has tabled his Amendment 6A, which is of great interest. I want to see what the noble Lord has to say about it but, on the face of it, it is the kind of amendment that we would be interested in discussing as we move forward with the Bill.

4 pm

Lord Johnson of Marylebone (Con): My Lords, I will speak to Amendment 6A in my name. I declare my interests in the register as a visiting professor at King's College London and as chairman of FutureLearn. As other noble Lords have indicated, this amendment attempts to address what is an elephant in the room in our debates. This is obviously a controversial issue, which is very much present but has largely been avoided as a subject for discussion: the absolute level of fees and tuition fees.

While it is very welcome that we are introducing a more flexible system of student finance, that is not much good on its own unless we address the relentless erosion in the value of tuition fees themselves. I have always found it a little unreal that we have a Bill that refers in its title to "Higher Education Fee Limits" but we have not actually had any discussion whatever of those fee limits.

The legal cap on tuition fees for full-time undergraduate study at most universities is now £9,250—that is barely changed from the £9,000 that it was when the system was introduced a decade ago. By May this year, inflation had eroded the value of these fees to £6,020 in 2012 money. If inflation remains elevated, it will be materially below £6,000 in 2012 money by September and teaching UK students at this level will be loss-making for many, if not most, institutions. Carry on like this and we will have stretched the unit of resource to such a point that a crisis is inevitable. The LLE certainly will not be offered, nor will much else. My view is that we are really not doing our job unless we do something in this Committee, and during the passage of the Bill, about the fact that the system as a whole is becoming unsustainable.

The current impasse is creating a situation in which we are systematically defunding our universities, depriving the engines of our knowledge economy of the fuel they need to offer great teaching and world-class research. If we want to retain our position as one of the world's most highly regarded higher education systems, and to have a fighting chance of attracting researchers to support our goal of becoming a science superpower, this clearly cannot go on. We all know that this needs to be fixed, yet we seem to lack the political courage to do what needs to be done.

As far as I can tell, a lot of effort is going on across all parties to work out how to say as little as possible about higher education funding ahead of the next general election. I am very grateful for the support from my colleagues opposite and hope that, were this amendment to find favour, they would continue to support it as we make progress with the Bill. The amendment seeks to force the debate into the open and to flush out the extent to which the Government—and Opposition parties—are seriously engaging with this issue before the crisis in funding takes a further turn for the worse.

The amendment itself is very simple. It would automatically allow higher education institutions that deliver great teaching and student outcomes, as assessed by the teaching excellence framework, to raise fees in line with inflation. There is nothing novel about this. A mechanism to link funding to quality in exactly this

[Lord Johnson of Marylebone]
way exists already in law in the Higher Education and Research Act 2017. Schedule 2 to that Act allows fee caps to be set at differing levels based on a provider's teaching excellence framework award, subject to overall limits prescribed by regulations that are scrutinised by Parliament. This amendment would ensure that the mechanism is used automatically each year, ensuring that high-quality providers can continue to deliver great teaching and student outcomes without their tuition income being relentlessly eroded by inflation. There is nothing new in it.

As noble Lords may recall, the Cameron Government used this exact method to enable fees to rise with inflation from £9,000 to £9,250, some five years ago. In my view, we should have continued with that approach, as it would have maintained university funding on a more sustainable footing than it is at present and entirely avoided the current crisis. Gold-rated and silver-rated providers would today have been able to charge fees of approaching £12,000. The University of East Anglia, for example, would have had an extra £38 million, which would wipe out the black hole in its finances. Such a system, linking funding to quality, aligns the interests of students, taxpayers and providers, and is an immediately deliverable solution which can be implemented as soon as the next TEF results come out this September.

We do not need a big review. We should not wait for our universities to start falling over one by one. We need to get on and use the mechanism that already exists.

Baroness Barran (Con): My Lords, I will respond to Amendment 2, tabled by the noble Baroness, Lady Garden of Frognal, and Amendment 5, tabled by the noble Baroness, Lady Twycross, and also in the names of the noble Baronesses, Lady Garden, Lady Wilcox of Newport and Lady Thornton. I will speak also to Amendment 6A, tabled by my noble friend Lord Johnson of Marylebone. These amendments seek to put the number of notional learning hours that constitute one credit in the Bill, to limit the default credit value to a maximum of 20 credits, and to allow certain higher education providers to increase their tuition fees automatically each year in line with inflation if they have a teaching excellence framework rating.

Amendment 2 would define in the Bill a credit as equivalent to 10 notional learning hours. As has been set out in the other place, while it is crucial that the definition of credits in the fee limit calculation aligns to standard practice in the sector, the Government plan to set this out in detail in secondary regulations, rather than in primary legislation. The power to do so is provided for in new paragraph 1B of Schedule 2 to the Higher Education and Research Act 2017, introduced through Clause 1 of this Bill.

Specifying the learning hours in secondary legislation, rather than primary, means that providers which might choose to use a different number of learning hours per credit will simply have those courses treated as non-credit-bearing for fee limit purposes. If we took the approach of this amendment, those same providers could instead be considered in breach of the fee limit rules as a whole, with all the regulatory consequences that that might bring. The Government do not intend to change the number of learning hours in a credit unless standards in the sector change: learning hours are, and should continue to be, based on sector-led standards. Regulations on learning hours will follow the affirmative resolution procedure, so Parliament will always get the opportunity to debate and formally approve any changes to those regulations.

Amendment 5 queries the extent to which the Government are prepared to fund modules of fewer than 30 credits through the LLE. As I referred to in my response made at Second Reading, and as set out in the Government's consultation response, modules must have a minimum size of 30 credits for funding purposes. This is in line with the recommendation in the Augar review. None the less, as the noble Baroness, Lady Thornton, pointed out, it will be possible to bundle two or more modules from the same parent course to meet the 30-credit funding requirement.

This amendment also refers to the default credit value. If your Lordships will permit, it may be helpful to provide the Committee with some further detail on the purpose of this value. The default credit value is intended to allow fee limits to be set on full courses that do not bear credits or on full courses that are more suited to annual fee limits than credit-based fee limits. For example, this could include some degree programmes at Oxford and Cambridge or sandwich years where the provider has not assigned credits. It could also include courses such as postgraduate certificates in education or first degrees in nursing. For these types of study, a default number of credits will be used in the fee-limit calculation, instead of any provider-assigned number of credits. These default values will be set at 120 credits per year for full-time courses, with other amounts for other intensities, all of which will align with sector-recognised standards. The default credit values will not apply to modules undertaken separately from their full course. As all modules funded through the LLE will be required to bear credit, they will always have the fee limit calculated using the provider-assigned number of credits, not a default number of credits.

To be clear, the default credit value applies only to full courses, not to modules. If default values are all set at 20 credits, that would mean that, for example, Oxford and Cambridge would be allowed to charge for only 20 credits a year for their degrees, instead of 120 credits, which I am sure is not the noble Baroness's intention. We would not want providers to be limited to being able to charge for this number of credits per year.

I now turn to speak to Amendment 6A, tabled by my noble friend Lord Johnson of Marylebone. It is clearly vital that our higher education sector remains on a sustainable financial footing. It is an important contributor to our national economy, and it is something that we excel at as a nation. That is why the Government keep all elements of student finance and higher education funding, including fee limits, under constant review. We have said that fees will remain frozen until the start of the 2025 academic year. This ensures that students and taxpayers continue to receive value for money. However, we are also investing an extra £750 million in higher education teaching and students over three years

to 2024-25 through the strategic priorities grant. This will help providers to fund their provision of high-cost subjects, such as medicine, science and engineering, and help students to succeed.

We provide support for the sector through subsidised fee loans. This is our investment in the skills, people and economy of this country, and one that is even more important in current circumstances. A continuous automatic increase in fees in line with inflation would undermine the incentive for providers to find efficiencies in their business models or to develop other sources of revenue to diversify their income and achieve sustainability in ways that benefit British students and British taxpayers. Despite current pressures, the Office for Students found in its latest report that the overall aggregate financial position of the sector remains sound, though there is variation between individual providers.

I remind the Committee that overall tuition fee income in English higher education providers has increased in cash terms from £13.7 billion in 2014-15 to £21.6 billion in 2021-22, an increase of around 58%, but there are significant differences in income and student number growth between providers. Some providers have increased their student numbers significantly in recent years, in particular in business and management courses, which have grown rapidly. With the public outlay to support students to go to university having increased so much in recent years in cash terms, the rapid, localised growth that we have seen in some courses and at some providers emphasises the need for us to ensure that the quality of provision remains high, so that students can achieve the employment outcomes that they are looking for and the economy benefits from our considerable investment in higher education.

As my noble friend understands very well indeed, fee income from domestic students is just one element of the income mix of higher education institutions. Obviously, there is income from international students, research fees and funding institutes, as well as commercial income. There are questions that the Government would be keen to work with universities on, and, if helpful, I would be happy to meet my noble friend or providers to think about the scale and breadth of courses offered by individual institutions and groups of institutions within an area, as well as about how the cost base of institutions will develop in future.

4.15 pm

I thank my noble friend for raising a valuable discussion on this topic. The Government absolutely agree with him that a sustainably funded higher education sector is vital to our national economy and to the prospects of the many thousands of people it educates every year. However, the Government do not believe that it is fair to students to increase tuition fees at this time. Therefore, I ask him not to press his amendment. For the reasons set out earlier, the Government cannot support the other amendments in this group.

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for her response. I am sorry that my arguments for putting the 10 notional hours in the Bill did not meet with her approval. Of course, secondary legislation can be amended much more readily than things that are in the Bill. I will have to read her answer on the credit structure as I was getting slightly confused about that—if Oxford would get only 20 credits, oh dear, what has happened to my old university? I will have to read that carefully and see where the argument was going.

On Amendment 6A in the name of the noble Lord, Lord Johnson, again, I am not quite sure why fees should not increase with inflation. I realise that, at the moment, nobody wants anything to increase at all because we are in a difficult time when money is scarce for a lot of people, but the noble Lord gave figures about how the disparity has grown. I speak from a party that did not want university fees at all—by golly, were we punished for that—but we costed it and worked out that an awful lot of students would not pay fees anyway. The cost of setting up the Student Loans Company and chasing down students all had to be put in the negative. It was a fully costed programme, but obviously it did not serve us well at all.

I hope the Minister will look again at the noble Lord's amendment. One reads about the UEA getting into all these troubles and probably having to forego its creative writing course, which would be a lamentable outcome, given the incredible people who have come out of that course over the years. Anyway, I thank her for the reply. We shall consider everything she said, but I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by Lord Watson of Invergowrie

3: Clause 1, page 2, line 34, at end insert—

"(3A) Regulations may not provide for credits to be differentiated according solely to whether the learning time is spent on in-person learning or on distance learning for the purposes of this Schedule."

Lord Watson of Invergowrie (Lab): My Lords, I shall speak briefly to Amendments 3 and 6 in my name and those of my noble friend Lady Twycross and the noble Lords, Lord Addington and Lord Storey, whom I thank for adding their names. I shall then speak a little more widely on a closely related matter, after I have given some attention to the per-credit limits issue in the amendments.

On the wording of these amendments, I do not doubt that either part-time or distance learners—in some cases they will be the same person—will be treated less favourably in terms of credits than those engaged in full-time face-to-face teaching. It would be helpful to have from the Minister confirmation that there will be a single per-credit fee limit that applies to the whole system and will not vary depending on the mode, subject or method of study.

The main reason for submitting these amendments, apart from that issue, was to facilitate a debate on maintenance support for distance learners. Given the narrow nature of the Bill, an amendment referring directly to maintenance support was ruled out of scope by the Public Bill Office; none the less, its staff then assisted me in putting this wording together. Currently, part-time students studying face to face are

[Lord Watson of Invergowrie]
entitled to receive maintenance support. However, with the exception of those with a disability, the vast majority of part-time distance learning students are not entitled to maintenance support. The introduction of the lifelong learning entitlement offers an opportunity to make this important change—one that would facilitate greater access to and flexibility around lifelong learning, which is surely something that the Government want.

However, the Government's response to the lifelong learning entitlement consultation made it clear that, while maintenance support will be extended to all designated courses and modules that are studied face to face, distance learning courses will continue to be denied maintenance support. There is no further detail to explain the reasoning for such a decision. I very much hope that the Minister will provide that information to noble Lords today. As I said at Second Reading, this decision flies in the face of the DfE's own policy impact assessment for the Bill showing the extent to which financial concerns are a key reason for part-time learners—in particular mature learners, who are naturally more debt-averse—not accessing higher education study. When I asked the Minister at Second Reading why that assessment appears to have been ignored, she declined to provide an answer; I hope that she will do so today, because it is essential that the lifelong learning entitlement extends maintenance support to all learners.

Together with my noble friends Lady Thornton and Lady Wilcox, I raised this issue at Second Reading. Unfortunately, in her reply, the Minister danced around the question, linking it with the status of online learning, which is of course part of distance learning, and making sure that these courses work for those leaving school or those who are already in employment and have this flexibility. Yes, the fact that the maintenance offer will now be available for face-to-face part-time study below level 6 is a welcome step forward for many learners at levels 4 and 5 but it still stops short of including distance part-time learners. My question for the Minister is this: why should distance learners be discriminated against in this way?

The Tory Government have previously signified their support for the introduction of maintenance loans for part-time distance learners. That was in 2017, but, unfortunately, the measure has never been introduced. At that time, it was stated that, subject to satisfactory controls, part-time maintenance loans would be extended to distance learners with effect from the 2019-20 academic year. However, this commitment was abandoned in March 2019 on the basis that demand would not be high enough to make the distance learning loans viable. No evidence was offered to support that claim; again, I hope that the Minister will be able to fill that information void today.

The question needs to be asked: how could it have been known that there would be insufficient demand if that demand had never been tested? Ah, but it has been tested—just not in England. There is solid evidence that introducing maintenance support for part-time and distance learning students makes a difference; its introduction in Wales in 2018-19 illustrates the significant impact on demand for part-time learning. Surely the time has come to learn from Wales—not something that comes easily to DfE Ministers or officials, I suspect. At the very least, this Government owe it to distance learners in England to offer them the opportunity and then assess the results. Extending maintenance loans to distance learning students would help mitigate the current cost of living pressures facing distance learners, which, as I said, are beginning also to have an impact on mature students and discourage them from entering study.

I believe that it is vital to promote lifelong learning by providing greater access to financial support to meet existing financial commitments for distance learners, such as caring responsibilities. I know that the Minister genuinely wants to see the reach of the lifelong loan entitlement extend as far as possible and to secure the best learner outcomes. Extending maintenance loans to distance learners would enhance those aims. I look forward to hearing assurances from the Minister as regards the per-credit fee limit being applied equitably, irrespective of the mode of study. I beg to move.

Lord Addington (LD): My Lords, I do not think I have to add much to what the noble Lord, Lord Watson, said as he is a man who never leaves you in any doubt that he has done his research. However, distance learning should be part of the network and structure of how you acquire qualifications and carry on doing so, updating them as you go through your working life. There cannot be much doubt that it is a good idea, so making sure that alternative forms of study, including distance learning, are covered in the Bill is—well, blindingly obvious comes to mind. We need to have this structure to make sure we are reaching the people we need to get at to improve their lives and, indeed, GDP—that wonderful thing—and productivity. You name it, training is a key component. Making sure it is more easily accessible in a way that is convenient to people, even if it messes up the paperwork a little, has got to be an advantage. I hope that the Minister will say "Yes, we are going to deal with this in another way", but unless we have something that gives us some assurance here, the Government are missing an obvious trick. I hope that I and the noble Lord, Lord Watson, will go away suitably chastised that of course the Government are going to do this; they just have not told us how yet.

Baroness Wilcox of Newport (Lab): My Lords, I declare my interests as noted in the register. As my noble friend Lady Twycross has already stated, the Labour Party supports the financial funding for students as evidenced in this legislation. However, as we have already seen in this debate, we have grounds for exploring further clarity and to probe the details so that we can put the best possible version on the statute book. That is what is behind these amendments from my noble friend Lord Watson and other noble Lords.

It is essential that the decline in higher education is reversed. It requires a funding and regulatory system that supports and encourages lifelong learning. The LLE could be transformative in revitalising flexible higher education and reversing the sharp decline in adult learners. It could also incentivise alternative, flexible pathways that support people to access learning throughout life. However, its detailed design will be key in determining how it will work in practice.

My noble friend Lord Watson's amendment recognises that the regulations do not currently provide for credits to be differentiated according to whether the learning time is in person or distance learning, and Amendment 6 highlights that different per credit limits may not be prescribed according solely to whether the learning time is spent on in-person learning or distance learning. Flexible and distance learning is the key to lifelong learning and to making courses accessible to people who may not otherwise be able to take them.

As my noble friend Lord Watson has already noted, the current progressive system of student finance we have in Wales means that Welsh undergraduate students have on average less to repay than their English peers, as we continue to provide non-repayable grants and students receive a guaranteed level of maintenance support. In England, currently, part-time students studying face-to-face are entitled to receive maintenance support, but the vast majority of part-time distance learning students are not entitled to maintenance support.

The introduction of the LLE could be a real opportunity to make this important change. It would bring greater access and flexibility to lifelong learning. It is a worthwhile goal that would make all the difference. Maintenance support is crucial to learners from disadvantaged backgrounds to prevent further hurdles to them taking up study. Many adults will otherwise be unable to take up these opportunities. These people would be prevented from transforming their life chances and being part of the skilled workforce that employers, the economy and the GDP need. Many people have existing debts, financial commitments or caring needs. If lifelong learning is to succeed, the system must recognise these differences. Furthermore, an extension to distance learning students would help mitigate the current cost of living pressures facing them, which are beginning to impact on mature students, discouraging them from entering study and threatening continuation rates. This would help to widen participation and support by allowing students to take unpaid study leave or to reduce their hours of work to focus on studying.

4.30 pm

I therefore pose the following questions to the Government. Why have distance learners been excluded from receiving maintenance support? What would need to happen to persuade the Government to extend maintenance support to distance learners? Will excluding distance learners from maintenance support distort student choice and force students who want to study via distance learning and require maintenance support to either choose less suitable modes of study or not to study at all? By not allowing maintenance support for distance learning, a significant barrier will be created for participation in lifelong learning. I urge the Government to look again and support these amendments from my noble friend Lord Watson and other noble Lords.

Lord Storey (LD): My Lords, I added my name to this amendment. I apologise for not being present at Second Reading. I echo the comments made by the noble Baroness, Lady Wilcox, that it is really important that everybody is able to take up these opportunities. The Minister should think carefully about those people who live in rural areas. Last year, I went to Northumberland where I met a group of students who have to travel scores of miles to get to the local college. There is no financial support for their travel, but one way round that would be distance learning. By not providing that opportunity, the Government are denying the opportunities they want to achieve in this very welcome and important Bill.

Baroness Barran (Con): I will speak to Amendments 3 and 6, tabled by the noble Lord, Lord Watson of Invergowrie, and also in the names of the noble Lords, Lord Addington and Lord Storey, and the noble Baroness, Lady Twycross. These amendments would require that per-credit limits and credit-differentiated activity may not be prescribed solely according to whether the learning is in person or distanced.

Fee limits are not different for distance learning currently, and there is nothing in this Bill that would change this. I hope that reassures the noble Lord, Lord Watson, on one of his questions. I can assure your Lordships that the Government have no intention of differentiating fee limits between distance and in-person learning under the LLE. The per-credit fee limits will be the same for full-time, part-time, face-to-face and distance learning.

Distance learning courses will remain in scope for tuition fee loan support under the LLE. As your Lordships have pointed out, these courses will also continue to be out of scope of maintenance support, which is in line with the current system. However, the Government are committed to encouraging flexibility, and I was grateful to the Committee for acknowledging the important expansion in the use of maintenance loans for living costs and targeted grants. This will make maintenance support available for all designated courses and modules under the LLE, including those currently funded by advanced learner loans and those studied part time. It will also include—a point raised by the noble Baroness, Lady Wilcox—targeted support grants such as the disabled students' allowance and the childcare grant.

Your Lordships expressed real concern that the absence of maintenance loans might impact on demand for distance learning. The noble Lord, Lord Watson, referred to the impact assessment. I will need to check, but my understanding is that distance learning was not specifically covered in the Bill's impact assessment. Rather, as the noble Lord knows, the impact assessment was very positive overall, particularly when referring to learners who might be debt averse.

The ratio of distance learners to campus learners has been constant, at around 10%, despite the rapid growth in campus learners over that period, so I do not think there is compelling evidence that the absence of maintenance loans is impacting on demand for distance learning, relative to campus learning.

The noble Baroness, Lady Wilcox, stressed that distance learning was the key to unlocking lifelong learning. I only partly agree with her: I think the key is choice. We need to offer learners choice, whether that be campus learning for those who would benefit from and prefer that approach, and distance learning for those for whom campus learning is not their ideal situation.

[Baroness Barran]

On the maintenance loan and distance learners, the Government will roll over the existing exemption that enables distance learners with a disability to qualify for maintenance loans and disabled students' allowance. The disabled students' allowance will be extended to all designated courses and modules. The Government intend to review attendance validation more widely, and we will consider any necessary policy changes following the outcome of that review. We believe this amendment to be unnecessary, and therefore the Government will not support it.

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for her response, and I also thank those who spoke on this group of amendments. I am happy to welcome what the Minister said about fee limits not being different and the Government having no intention to change that, and that per-credit fee limits will be the same for all modes of study. It is useful to have that on the record. I know that the Open University was concerned about the lack of specificity on that, and that has been laid to rest this afternoon.

Some issues remain on the question of distance learners' maintenance. If I understood the Minister correctly, she said that distance learners account for about 10% of all learners taking undergraduate courses and that that figure has remained stable while the overall number has increased. I am not sure that suggests that there is not an issue. How many more would have come forward and participated had they had the support needed—the sort of support to which the noble Lord, Lord Addington, and my noble friend Lady Wilcox referred? These needs will still be there.

It is slightly disingenuous to suggest that the disabled students' allowance is available. That is basically saying that, if you want to study and are disabled, you can do so from home, but if you choose not to study, you need to make bit more of an effort and could get to classes if you really wanted to. As we have said, this impacts often older learners—those with family or caring responsibilities or a full-time job that stops them doing that. It is in no way a defence of the current situation.

I do not have the figures to cite to the Minister on the impact assessment, but, as I said earlier, when the plan to provide this support to distance learners was abandoned four years ago, it was on the basis that the demand would not be high enough to make it viable. I do not quite know what "viable" is—has it got something to do with repayments? I do not know. We need some more information on this, and it may be possible to get it at Report.

The Government cannot use this Bill to change that because it is so narrow, but this issue will not go away and it will impact on the Bill's effect, which we very much support, of getting more people to make use of lifelong learning. With those remarks, I again thank everyone who has contributed on this group of amendments and I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 to 6A not moved.

Clause 1 agreed.

Clause 2 agreed.

Amendment 7

Moved by ***Baroness Twycross***

7: After Clause 2, insert the following Clause—

"Review

(1) The Secretary of State must conduct an annual review of the operation of the provisions of this Act.

(2) These reviews must consider the impact of the provisions of this Act on—

(a) learner uptake of modular study,

(b) learner uptake of non-modular part-time study,

(c) uptake of modular study amongst learners aged 30-60 years old,

(d) employer spending on lifelong learning, re-training and upskilling opportunities for their employees,

(e) the provision of courses offered by higher education and further education providers,

(f) the financial sustainability of the tertiary education sector,

(g) the Student Loans Company, and

(h) the Office for Students.

(3) The Secretary of State must lay the report on the findings of the first review before Parliament before the end of 2026."

Member's explanatory statement

This new Clause would require the Secretary of State to annually review the impact of the Act on various aspects of higher education, starting in 2026.

Baroness Twycross (Lab): My Lords, in moving Amendment 7, in my name and those of my noble friends Lady Thornton and Lady Wilcox, I also lend my support to the other amendments in this group: Amendment 8 in the name of the noble Lord, Lord Addington, and Amendment 11 in the name of my noble friend Lord Watson. I declare an interest as a former student of Birkbeck College, to which I will refer during my remarks.

I will speak primarily to Amendment 7, under which the Government would have to publish regular updates on the important potential impacts of the Bill. The Second Reading debate raised a lot of questions, not least the almost total lack of detail in what is—as has already been highlighted—a very short Bill. This amendment would ensure that those questions do not remain unanswered or unconsidered in future. The timing of the proposed first review, by the end of 2026, would also identify any issues with how the rollout is affecting particular groups for whom the lifelong loan entitlement must work in order for it to fulfil its promised transformation.

Labour will be particularly interested in the extent to which the Bill helps to get people back into education. The amendment would allow us to establish whether this is working in practice for those who have already undertaken an undergraduate degree, for example. We are not at day zero, and this is intended to cover a wide range of people, many of whom may view their involvement in formal education as a distant memory.

How would a residual entitlement be worked out? I declare an interest as a former languages student. Would someone who, 10 or 20 years ago, had chosen a four-year course, including a year abroad or work

placement, be entirely excluded from future educational opportunities with funding? Will these definitely be subject to a lower fee limit, as suggested by the Minister in her earlier remarks? I am concerned that an unintended consequence would be lower take-up of longer undergraduate courses. The Minister will be aware that there is also concern from stakeholders that, if the structure around fee limits is not right or it has unintended consequences, this could limit the amount and type of courses offered, which would also limit student choice. Although we support the Bill, we want to ensure that any issues are dealt with swiftly, which a review would allow.

During the Second Reading debate, a number of noble Lords raised concerns about the potential impact of this legislation on the take-up and provision of part-time study. Indeed, this was discussed previously today. Birkbeck College has raised concerns about whether the Government appreciate the risk to part-time study inherent in the Bill. I ask the Minister whether the Government intend to see the end of part-time study in favour of modular study and, if not, will she commit to the Government accepting the need to review the implementation of the Bill to provide a safeguard against this happening?

During the Second Reading debate, it was highlighted that, despite the fact that the UK needs the most adaptable and flexible approach to learning and skills, employers are failing to invest in the skills system. There has been a 28% drop in spending by employers in real terms since 2005. We know that employer investment in skills is less than half the average in EU countries. We on the Labour Benches think that the Government need to ensure that this does not fall further.

We already know that the apprenticeship levy is used poorly by employers. We do not want—and I do not believe that the Minister wants—the lifelong loan entitlement to put the onus for paying for learning to develop skills within roles on to employees without employers having to pay their fair share. This amendment would allow the Government to review whether this pretty dire situation is getting worse. The Labour Party thinks that it would help to guard against a situation in which employers use the system to push their employees and potential hires into further debt to fulfil internal skills gaps. We need both this lifelong loan entitlement and more investment from employers.

Finally, the biggest unintended consequence that this Bill might have would be in effect to undermine the financial viability of institutions that are in some cases already struggling financially. I spent Saturday afternoon playing Jenga with two of my nieces. It strikes me that an unintended consequence of not building in a review of the operation of the legislation while changing the fundamental approach to funding through fees is a bit like playing Jenga blindfolded. Including the financial sustainability of the sector, the Student Loans Company and the Office for Students would allow the Secretary of State to consider this issue formally as part of the overall assessment of how the approach is working. I think that it makes total common sense to build in a review.

I look forward to hearing from the Minister both responses to my questions and whether the Government will incorporate a review into the Bill going forward. I beg to move.

4.45 pm

Lord Addington (LD): My Lords, I have added my name to the noble Baroness's amendment. I have my own amendment in a similar vein in this group. It is probably about time that I reminded the Committee of my declared interests. I am chairman of Microlink PC Ltd, which supports those with disabilities, and president of the British Dyslexia Association.

The idea of reviewing legislation is sound, particularly so with this Bill because we all basically agree that it is the basis of a good idea; it is useful. It is fundamentally the fact that we are going to address skills in a more flexible manner. More importantly, the real revolution here is going down to level 4. This means that we are looking at a new structure for supporting people to get skills and make themselves more productive, blah blah blah. We have a structure going forward.

My amendment would add two big changes. One is on sharia law. We have spent a great deal of time talking about getting loans that conform to sharia law. We have a spent a great deal of time talking about it in Committee. A great many ideas have come up. There are people who have invested far more in it than me. I do not think that any of them are in the Room now; they are possibly sitting in a corner, quietly crying when it is brought up again. The fact of the matter is that we should have done something by now. It is not beyond the wit of man to do it, apparently, so why has it not happened?

On the second change, I have to apologise to the Committee because it has become one of the little bees in my bonnet: special educational needs. The Minister may have sneakily put in her previous response an answer to some of my concerns around whether the disabled students' allowance will cover everything in the Bill. I take it that this Bill will expand the DSA down to cover all level 4 courses; if so, we will need a review to look at how it is helping and what it is covering. However, there are odd things about the DSA. A few years back, higher education institutions took over what had been the first tranche of it; that was providing information capture within all the institutions in which there was teaching.

I raised this issue at Second Reading. I understand that I did not get a response due to the scope of the Bill and the limits of time, but we will need to look at how that whole picture of support is worked in or, indeed, whether it does not need to go in. That would come as a surprise. Is it better to have individual support packages for those who have disabilities, for example, to capture what is said in lectures and transfer it to something that can be either read later on or played back? That is a pretty basic function of assistive tech. You get the information presented to you in a form in which you can absorb it.

I hope that the Minister will be able to confirm the comments that she made in her earlier answer and build on them here, as well as confirm that the structure—the institution itself—will bring this in. We are talking

[Lord Addington]
about a few microphones, digital recording and going back to platforms that are readily available now. They already exist. Half of these institutions, if they provide higher education, should be doing this anyway. The big difference is in whether they switch the machine on or off, depending on the course level. I cannot see why they would ever switch it off but, hey, I am here and they are there.

Could we have a few clarifications from the Minister about what we are doing and how we are going to observe information, store it and act upon it in the future? We need to do that in order to be sure of the areas that we are talking about. I do not think it would do any harm at all to take both lists and put them together. Please could we have answers?

With regard to both the amendments, mine and that of the noble Baroness, Lady Twycross, I would particularly like to know what we are going to do about sharia law, something to which we should have had an answer a long time ago. The cock-up school of history has probably been active here, but we can do something about it. Making sure that all the provisions of the DSA get in would put my mind at rest on this.

Having a very good system only for those at the top of the education tree by definition excludes quite a few. By bringing it slightly further down, you will expand the number of people who acquire qualifications, which means they will be financially independent and have a good standard of living. Surely that is not too much to ask of a piece of government legislation.

Lord Aberdare (CB): My Lords, I support Amendment 7, looking to review how the Act is working. I regret that I was not able to speak at Second Reading.

I shall mention some specific issues that I hope such a review would include, reflecting some of the briefings that I and, no doubt, other noble Lords have received. The list of items to be covered mentions the provision of courses offered by higher education and further education providers, but nowhere in the amendment or indeed in the Bill is there any reference to independent training providers, one of my hot buttons. Yet ITPs are likely to play an important part in delivering LLE-funded courses and indeed modules.

There are two specific issues relating to ITPs. The first is that the process for applying for and gaining recognition as a provider in this field needs to be straightforward and efficient. It is good to see the idea of the third recognition route for providers via the Office for Students.

The second, which I suspect the Minister will have less flexibility in responding to, is that, for many of the courses they offer, independent providers have to charge VAT, even though FE colleges providing very similar courses do not, so there is a fundamental issue of fairness there. I know that VAT is largely untouchable, but the advantage of a review such as this is that it might highlight some of the impact of that competitive disadvantage.

The second concern that has been raised is the possible impact on creative subjects. They can be expensive to deliver, requiring extra resources and facilities, and are often seen as less valuable in the world of employment and work, although that is something I would strongly dispute. It would be welcome if the Minister could reassure us, or if the review could help to demonstrate, whether creative subjects are playing their fair part in terms of the courses being offered and taken up.

The third issue is a robust system of information, advice and guidance to support the LLE in general, both to ensure that young people—indeed, all people—considering taking up courses by using the LLE should be clear about what the opportunities, impact, risks and costs are, and to provide good information to potential providers. I am thinking specifically of SMEs, which, again, have an important role to play but may need lots of support and information in order to know how to play it.

That would all feed into the various uptake headings—the first three all relate to uptake by learners—so a review as proposed by the amendment would be really helpful in making sure that the aims of the Bill, and indeed of the lifelong learning entitlement as a whole, are being met. I hope the Minister will be able to tell us something about how the Government are planning to review these issues anyway with or without the amendment, but the amendment is a jolly good idea.

Lord Willetts (Con): My Lords, I shall indeed ask some further questions of the Minister arising from the proposal in this amendment, because I think that it is aimed at learning as much as possible about this very bold initiative. First, following on from some of the points made by the noble Baroness, Lady Twycross, how will this scheme interact with employer spending? Clearly there are upsides and downsides. It is possible that the ability to spend some money from this loan alongside spending from an employer will make vocational courses and provision viable when they otherwise would not have been, and that is a good thing. On the other hand, there is the risk of some employers shedding their responsibilities and expecting an employee to use this loan scheme to finance training that they would otherwise have funded. It would help a lot of us if in her answers—they are always very helpful and informative—the Minister could explain exactly how the Government envisage they are going to monitor and manage that process so we know how we get the best possible outcome of the extra total spend on training and not the worst outcome, which would be the taxpayer simply picking up more of the bill with no increase in the total. Any indications on how employer spending might react would be very helpful.

Secondly, on the provision of courses offered by higher and further education providers, the Minister will know that I am interested in one possible use of this scheme being that at last we have a clear indication of public finance through loans for four years of higher education. Of course, that could be taken at different points over someone's life in lots of different engagements with higher education, but equally, it could be four years in one go. If she could offer an indication of the Government's support for that way in which students could benefit, it would be helpful.

I hesitate to add any suggestions of uncertainty when there is quite a lot of cross-party consensus on this issue, but it would be understandable if some people young thought "I don't know how long this lifelong loan scheme is going to be around; if I'm currently eligible for it, I am going to take my chance now and get on with it rather than necessarily being confident it's going to be around in 20 years' time when I'm at a different stage of my career". Being clear on the opportunity for people to take a four-year loan now would be helpful, and I hope the Minister can inform the Committee further on that.

Lord Storey (LD): I rise to support my noble friend Lord Addington's amendment. I want to tease out of the Minister some answers on sharia law and its effect on accessing education opportunities for all. I was with a group of about a dozen Somali women on Sunday. They have that conflict between faith and education. The Minister will remember that in 2014—nine years ago—the Government published a report on Islamic finance in the UK that acknowledged the lack of an alternative financial product to conventional student loans. It was a matter of concern. The report also identified a solution: a frequently used non-interest-bearing Muslim financial product. The Government explicitly supported the introduction of such a product. However, since then no sharia law-compliant student finance scheme has been made available. Why not, Minister, and what we are going to do about it?

Lord Watson of Invergowrie (Lab): My Lords, I will speak to Amendment 11. Before doing so, however, I want to touch on a point that the noble Lords, Lord Addington and Lord Storey, made about sharia-compliant loans. I can remember a time so far back it was before the Minister was even in your Lordships' House, during the debate on the Higher Education and Research Act. The noble Lord, Lord Willetts, will remember, because he was very active in that. At that time, the issue of sharia loans came up. That finished immediately prior to the 2017 general election, six years ago. Why on earth has it taken so long? I suspect the Minister will not have the answers now, but someone in the Department for Education—or maybe the Treasury—should have. The answers must be found, it cannot be that difficult. Basically, I echo what other noble Lords have said: get a move on because it is a problem that surely cannot be insuperable.

5 pm

I shall say a bit about my amendment now. Amendment 11 would mandate the Secretary of State to undertake a review on the impact of defunding level 3 courses. The need for this relates to the Government's defunding of many of them, changes which many people believe will result in a drastic reduction in 16 to 18 year-old students being able to learn and achieve at level 3, because many will see no option that is attractive to them in the sector, trade or profession they want to pursue.

I mentioned the Higher Education and Research Act, and I now invoke the Skills and Post-16 Education Act. Just over a year ago, many noble Lords will recall a series of amendments to that then Bill on the question of defunding BTECs and AGQs. They were successful in your Lordships' House, but ultimately overturned in another place. This led to the then Secretary of State for Education issuing a series of commitments to ensure that the Bill was passed, the most important of which was that only

"a small proportion of the total level 3 BTEC and other applied general style qualification offer—significantly less than half"

would be removed. These commitments were echoed by the Minister in your Lordships' House.

In January this year, however, the Government finally published a guide to their qualification approval process, which included a much more limited than anticipated list of subjects that they will fund from 2025. When that list is mapped against 134 applied general qualifications that are currently available to young people, 74 will not be funded in the future. However you characterise that, it is not a small proportion. This change of approach is described in the DfE's own guide—also published in January—as

"a conscious choice by Ministers to further streamline the qualifications landscape and to ensure that wherever A levels and T Levels exist, students are channelled to these highest quality options".

This "conscious choice" will have a hugely damaging effect on student choice, because 69% of students currently enrolled in an AGQ—about 350,000—are studying qualifications that will be scrapped before the approval process begins. This figure is certain to rise even higher by the time this process concludes. While the Government would like T-levels to replace BTECs, just 15,000 students are enrolled on T-levels, despite more than £1 billion of public investment in them since 2017.

I stress that this amendment is not anti T-levels. I am not anti T-levels; I genuinely want them to succeed. However, colleges across the country are extremely concerned about the impact of the Government's plans to defund these qualifications, both for the effect on reduced opportunities for young people to which I referred, and even for the future financial viability of some colleges. Additionally, if fewer learners achieve level 3 qualifications, this could lead to decreasing participation at levels 4 and 5. This would negatively impact the number of people able to take advantage of the lifelong loan entitlement, which would surely frustrate the Government's intention in its introduction.

Noble Lords may be aware that the shadow Secretary of State, Bridget Phillipson, has said that a future Labour Government would pause the cull of BTECs and review the process. Unfortunately, we are not quite there yet, but that point should be noted.

If the Minister and her officials are so confident—as they have been in our previous discussions on this matter—that the damage the sector warns of will not happen, then she should not have any hesitation in accepting this amendment, because a review would surely vindicate her optimism.

To finish—it has become a cliché but like many clichés, there is an element of truth in it—I believe we should be defending BTECs, not defunding them.

Baroness Barran (Con): My Lords, Amendment 7, tabled by the noble Baroness, Lady Twycross, and in the names of the noble Lord, Lord Addington, and the noble Baronesses, Lady Wilcox of Newport and Lady Thornton, Amendment 8, tabled by the noble Lord, Lord Addington, and Amendment 11, tabled by the noble Lord, Lord Watson of Invergowrie, would place requirements on the Government to review the impact of the Act. I take this opportunity to confirm that the Government agree with the sentiment behind these amendments and are fully committed to monitoring the impacts of this transformation of student finance.

As your Lordships will be aware, the Government have published an impact assessment for the Bill which includes a consideration of impacts on learners, providers and employers. A full impact assessment and an equality assessment were also published alongside the Government's response to the LLE consultation. In addition, parliamentary accountability mechanisms are already in place to review Acts of Parliament, including post-legislative scrutiny reviews, and I take this opportunity to acknowledge the Education Select Committee in scrutinising the work of the department.

Amendments 7 and 8 would require the Government to review the impact of the Act in relation to multiple different areas. However, vehicles through which these areas can be monitored already exist. For example, I take this opportunity to refer your Lordships to the publications produced by the Higher Education Statistics Agency, which will continue to publish data on learner uptake, personal characteristics of learners, including disabilities, and student course enrolments. Similarly, data on the take-up of level 3 courses, as referenced in Amendment 11, is available on the government web pages. I also refer your Lordships to publications from the Office for Students, including its annual report and accounts, as well as publications on the financial sustainability of the sector. Furthermore, information on student loan borrowers is publicly available from the Student Loans Company.

The Government are working jointly with the Student Loans Company and the Office for Students throughout the development and implementation of the LLE. I refer your Lordships to the framework document between the DfE and the OfS, which was updated in January 2023. It sets out the governance framework within which the OfS and the DfE operate, including in relation to financial matters. The department and the OfS will continue to work together to monitor expenses, funding, resources and efficiency via business planning.

I note that Amendment 8 references the impact of the credit-based method on students with disabilities and those with a need for a sharia-compliant loan system, among other criteria. I clarify that the fee limits are set on courses, not students. Therefore, the credit-based method, like the current fee-limit system, will not depend on any characteristics of individual students. All students on a course will have their fees determined in line with the same fee-limit rules, regardless of whether they have a disability, self-fund or use alternative loan arrangements.

I take this opportunity to assure your Lordships that the Government remain committed to delivering an alternative student finance product compatible with Islamic finance principles alongside the LLE. We were grateful for the support and contributions of noble Lords on this issue during the passage of the Financial Services and Markets Act. I can confirm that, in April, I met the noble Lord, Lord Sharkey, and representatives from the Islamic community, including the Islamic Finance Council UK, to discuss the steps the Government are taking to deliver alternative student finance as swiftly as possible. I look forward to meeting them again—later this week, I believe.

Lord Watson of Invergowrie (Lab): They may have been confidential discussions, but is the Minister able to tell the Committee what the stumbling block is to introducing suitable loans?

Baroness Barran (Con): I am familiar with what the current issue is and, if I express myself in any way inaccurately, I know that my colleagues will help me to write to the noble Lord and all your Lordships. The issue is that there are obviously very significant changes to the Student Loans Company systems with the establishment of the LLE, and sharia compliance should not be an add-on on the end. It needs to be woven through every single one of them and we are committed to doing that really important job. It is very significant in its complexity, but I am happy to set out more detail in a letter to the noble Lord, if that is helpful. I can stress, knowing what I think is behind his question, that there is no lack of motivation and commitment to doing this. It is a practical barrier rather than any other.

Returning to my recent meeting with representatives on this issue, we will continue to engage with your Lordships, Members of the other place and representatives from the Islamic community. I will be able to provide a further update on alternative student finance later this year.

Delivering the Government's vision for the LLE will require, as I just said in response to the noble Lord's question, extensive changes to the student finance system and the types of course available. Introducing ongoing reviews into primary legislation before policies have been fully implemented or had sufficient time to bed in would, we believe, be of limited value, if any, particularly when the Government want to focus on working with the sector and learners—and indeed with employers, as your Lordships raised—during implementation.

As your Lordships know, we often see initiatives in post-16 education needing time to scale up to reach their full potential. The noble Lord, Lord Watson, referred to the development of T-levels, which have been deliberately phased to ensure high-quality provision. There are now 16 T-levels available, with 164 providers. Over 10,000 new students were recruited to T-levels in 2022; that is more than double the 2021 figure, but there is obviously also tremendous growth potential there.

I turn to some of the specific questions which your Lordships raised. The noble Lord, Lord Aberdare, hoped that there would be a straightforward registration process for independent training providers. Of course we need to make it as straightforward as humanly possible; equally, it needs to be appropriately rigorous so that we uphold quality because, as the noble Lord understands extremely well, there have been issues

with the quality of provision and we really do not want to go there again with these reforms. We are very committed and keen to ensure that we uphold quality at all times, so simplicity of process should not trump the quality of delivery.

In relation to VAT, the noble Lord answered his own question; it is considerably above my pay grade. On creative subjects, I had breakfast last week with a group of tech companies to talk about STEM careers. A number of them really wanted to talk about only the importance of creative subjects within a STEM career, so I agree with much of the sentiment that the noble Lord expressed on that.

5.15 pm

My noble friend Lord Willetts asked about the Government's view on four-year degrees. As he knows, the Government rightly tread a delicate line when it comes to the relationship with providers; they should not, and do not, want to be seen to push providers one way or another. Where I hope we have been really clear is on the importance of flexibility, quality and value for money for students. I know my noble friend has also considered the value of two-year degrees as well as four-year ones. That is something for providers to reflect on seriously when it comes to perhaps using these changes to rethink some of the options that they offer to students.

The noble Baroness opposite raised many points relating to unintended consequences. I shall pick up two of them. First, I understand her concerns that there might be disincentives and that the emphasis on modular learning would be such that one would lose part-time learning. That is not something we expect to happen. If one considers those members of the workforce who are in work and considering upskilling or reskilling, as we heard in earlier debates, one sees that there is a huge value in part-time education. Like the noble Baroness, I spoke to Birkbeck and the OU in preparation for today's debate along with another number of other providers, and they all talk about how a number of their mature students in particular really value part-time provision. That is something that we will track closely, but I think we will see different groups of students preferring different modes of delivery, whether that be distance learning—in relation to our earlier debate—part-time or shorter full-time courses.

On the issue of the risk of employers just using this as a way of—my words are stronger than hers—abdicating responsibility for training their workforce, I think the noble Baroness would agree that this country needs a big cultural shift in the way that employers regard their investment in their workforce. We have heard from employers two things that I think are mutually consistent. The first is a concern that when employees get additional qualifications, they become attractive to other employers too. I have spoken to employer representative organisations that have suggested that some employers are considering—again, these are my words, not theirs—golden handcuffs so that if a member of their staff goes on additional training and stays with the firm for a certain period then the employer might pay off either all or part of their loan. That could work in other ways, but a change in culture is important.

The noble Lord, Lord Aberdare, and other noble Lords talked about the importance of information, advice and guidance. In a way, that goes to the heart of the whole question of culture: how quickly will students and providers feel confident to shift from their current models? Information, advice and guidance is clearly critical to that, and it is important work that we need to put in ahead of the launch of the LLE.

I hope I have set out a number of reasons why the Government do not feel they can support these amendments.

Lord Addington (LD): I think the Minister covered my questions, but just to make sure that bears of little brain have no confusion about this: all the provisions for anyone entitled to the DSA are now available at level 4, and the responsibilities of the colleges and universities providing this are the same as they would be for those on the traditional undergraduate course. So information capture and structuring are required to be there, and if they are not then there are consequences. Is that right?

Baroness Barran (Con): That is the basic principle we are following but I will set it out absolutely accurately in a letter to the noble Lord.

Baroness Twycross (Lab): I thank the Minister for her detailed reply to this debate. I particularly welcome her strong words on the need for employer investment, which is a shared concern. I also welcome others noble Lords' contributions to this debate. In particular, I note the strength of feeling from the noble Lords, Lord Addington and Lord Storey, and my noble friend Lord Watson in relation to ensuring that sharia law-compliant funding is available. I welcome the commitment from the Government and the Minister to ensure that alternative finance is available. As the noble Lord, Lord Addington, said, this can and should happen; everybody on all these Benches agree that it is a priority.

The noble Lord, Lord Aberdare, mentioned the need for independent training providers to be included within the scope of any review and in the Bill, including, in his words, making the process straightforward. We agree with the Government on the need for rigour in this process in order to ensure quality without making it impossible for independent training providers to apply to be within the scope of this provision. I feel passionately about creative subjects, so I am pleased that the noble Lord raised them.

I do not think we heard the point made by the noble Lord, Lord Willetts, on scepticism from learners. It is a valid point and one that was worth raising in terms of the concern that some learners may have that this may be a scheme that is here today, gone tomorrow. One thing that we need to make sure we get clarity on is how learners will get some sort of model; I do not know how we can guarantee it but this debate has, I hope, demonstrated that there is cross-party agreement that this model would work.

I feel—I think that I speak for Labour colleagues, but I do not want to speak for other parties—that there is a view that periodic reviews of the legislation's impact may help to ensure that students do not feel

[Baroness Twycross]
sceptical about this and that learners do not feel that they need to use all the money now or else risk not being able to access it in future. I appreciate that the Minister feels that some of the assurances that we would want from a review are already covered by other mechanisms and other forms of scrutiny, but Labour is not yet convinced that that is sufficient. We would welcome an opportunity to discuss further with the Minister how we can build additional reviews into the Bill and into future scrutiny of the legislation. We feel that periodic reviews of the impact of the legislation will ensure that it is delivering what it promised, including people feeling able to wait 10 or 20 years to take up some of the funding.

I appreciate that the Minister is unable to say today that the Government would support including this measure in the Bill. We would like to discuss it further, but I beg leave to withdraw Amendment 7.

Amendment 7 withdrawn.

Amendment 8 not moved.

Amendment 9

Moved by ***Lord Addington***

9: After Clause 2, insert the following new Clause—

"Guidance in relation to the provisions of this Act

In section 2 of the Higher Education and Research Act 2017 (general duties), after subsection (1)(e) insert—

"(ea) the need to provide information to students about changes made by the Lifelong Learning (Higher Education Fee Limits) Act 2023.""

Member's explanatory statement

This amendment amends the Higher Education and Research Act 2017 to require the Office for Students to provide information to students about the changes made by the provisions of this Act.

Lord Addington (LD): My Lords, this is a fairly straightforward issue. It is about making sure that people are adequately informed about the changes to the way courses are funded. There are two primary targets. One is the institutions themselves; the other is pupils and those providing educational support to get them ready. My primary aim is the school structure, which is dominated by A-levels. Let us face it: we are a group that is probably rather dominated by those who decided that level 6—degree-level traditional learning—was for us. We aspired to it. We all know that what we did was right so expecting teachers to do something other than that will require intervention and periodic reminders.

Let us face it: the figures I have in front of me show that, from 2008-09 to 2019-20, there was a 72% drop in people taking non-degree level courses. In that age group, it has become very unfashionable. We have a skills gap that is decades old. It used to be called technician level but it is where we have always had a skills gap. We know how to push people into degrees but there are dozens of stories—I have been provided with many from the creative industries—about people effectively having to retrain at a lower level of skill on an ad hoc basis to fulfil job roles. People take exams for degrees to get a job. It may well be that everybody would be a damn sight happier—and it would be quicker and cheaper—to make sure they can see levels 4 and 5. Possibly this Bill provides reskilling and skills updating; maybe it is not perfect but it should provide that model. I hope that we will all get behind making sure that we have enough knowledge to get the best out of this change because there is no point in doing it if people do not know it is there.

I have just had it confirmed that one of my little pet hates on this has been removed, which is great. So there is a chance for just about everybody to go through and—I am waving my dyslexia flag here—a lot of that group might be better off taking on something that is not so language-based or report-based. We need a further commitment to making sure that everybody knows about this new option because it addresses a historical problem—I say "well done" to the current Government for grabbing hold of that—and means that people will get what they want from it. If you want the level 6 experience, which we all know is wonderful because we did it, that is great. However, at the moment, people do not know about the other options, especially in terms of the level 3 T-levels and whether they work. I should have said something nice about the amendment tabled by the noble Lord, Lord Watson, in the last group, but I forgot; I apologise. We should make sure that something happens there and that we have reassurance that people are informed about their options because there is not much point in doing it if nobody knows about it. I beg to move.

Baroness Wilcox of Newport (Lab): My Lords, Amendment 9 simply asks for more information and guidance. The Bill has been drafted incredibly narrowly in comparison to the full scope of the LLE. I often told my students when they were performing in their examination pieces that less is more when creating a character on stage but, in terms of the detailed guidance in the Bill, we are left with many questions about how it will work in practice. All we want to do is try to ensure that greater substance and practicality is put into the Bill, thus lessening the need for secondary legislation.

Stakeholders have brought up concerns about not yet knowing the details that, when taken together, will make or break whether the LLE will help more people to enter education for the first time later in life; help them to build on existing skills; or allow them to spread that learning over their lifetime. There are uncertainties around the range of courses, the LLE's role within the wider funding context and its relationship with minimum entry requirements. More detail needs to be included to ensure that it will be effective in boosting lifelong learning. We need greater clarity on the concepts at the centre of the Bill.

There needs to be strong information, advice and guidance campaigns targeted towards both prospective students and employers, which are vital to the success of the LLE. Prospective students of all ages will need help to navigate the widening pool of options and opportunities available to them, and employers will need support to understand and recognise the various qualifications of potential employees.

5.30 pm

Information, advice and guidance for adult learners is generally underresourced and of variable quality. Moving towards modular and less linear progression

routes is welcome as it brings greater flexibility for the learner. However, it adds to the complexity of the learner journey and therefore advice is needed to navigate choices and make the next steps. Learners will need to have the financial implications of their loan fully explained and set out, striking a balance between ensuring that learners fully understand their obligations and making the options accessible, not onerous or off-putting. Marketing and targeted information through various national bodies, community organisations, councils, charities and faith groups will help to ensure that no individual or community is left behind. This information must be sustained over the longer term to ensure its success as it grows across our societies.

The amendment of the noble Lord, Lord Addington, simply asks for guidance in relation to the provisions of the Bill that are to be provided to students by the Office for Students. We on these Benches fully support the amendment and would support an even wider information campaign to make the LLE a success for all learners.

Baroness Barran (Con): My Lords, Amendment 9, tabled by the noble Lord, Lord Addington, would require the Office for Students to have regard to the need to provide information to students about the changes made by the provisions of the Bill. The noble Lord set out clearly the skills gap that the Bill seeks to address and the flexibility it seeks to introduce as an Act, if passed. He is right that this is a significant change that we need to communicate effectively.

I can assure your Lordships that the Government understand the critical importance of ensuring that students are aware of the benefits of the lifelong loan entitlement, including the fee-limit system. Ongoing sector engagement has been, and will continue to be, an integral part of delivering the transformation of student finance that the Government aim to achieve. The Government will work with key organisations and delivery partners, including the Student Loans Company, to support providers in implementing the changes, learners in making informed decisions and employers in recognising the value of the LLE. This information, advice and guidance will be supported by stakeholder engagement, targeted communications and promotion to future learners and others, ensuring that the right information is communicated at the right points to aid delivery of the LLE.

The noble Baroness, Lady Wilcox, stressed the need for clarity. I remind the Committee that prospective learners will have access to an LLE personal account—I think they will be able to get it on their phone—which will support them to make choices on how they spend their entitlement. This will change the way in which they interact with the student finance system and make it simpler, easier and more accessible for those who, previously, never thought that higher education might be possible for them.

The Government will work closely with the regulators to ensure that providers understand how fee limits apply to their courses and modules. As is the case currently, providers will take responsibility for making clear to students what the cost of each course will be. I can assure your Lordships that the Government will keep the available information, advice and guidance under review to ensure that learners have what they need to make informed choices. I stress that, ahead of the introduction of the LLE in two years' time, a great deal of work will go into ensuring that learners have the information they need.

I thank the noble Lord for his amendment and strongly agree with the spirit and intentions behind it, but as the Government are already focused on the range of information, advice and guidance that will contribute to the successful delivery of the LLE, the Government cannot support the amendment.

Lord Addington (LD): A hint of agreement, my Lords, but the main thing here is finding out what so that we can figure out how it is being done. Can the Minister at some point give us some form of guidance about the level of preparation for what is to happen? When it is going to happen would seem to be the next question. If the Minister is in a position to answer now, I shall give way.

Baroness Barran (Con): I shall be delighted to keep the House updated as we progress in whatever form is most useful.

Lord Addington: Mentally, I had about another five minutes on this, but as somebody who did not read the review, it would probably be churlish to say other than that I thank the Minister for her response and hope that everything she said would be provided by the department will come through regularly. I promise that if it does not, we will be back do it. Let us hope we do not have to do that. I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by ***Baroness Twycross***

10: After Clause 2, insert the following new Clause—

"Review of impact on Lifelong Loan Entitlement rollout

Within six months of the day on which this Act is passed, the Secretary of State must make a written ministerial statement updating both Houses of Parliament on the impact of this Act on the rollout of the Lifelong Loan Entitlement."

Member's explanatory statement

This amendment would require the Secretary of State to publish a written ministerial statement updating Parliament on how this Act affects the progress of the Lifelong Loan Entitlement policy.

Baroness Twycross (Lab): My Lords, I rise to move Amendment 10 in my name and those of my noble friends Lady Thornton and Lady Wilcox. The purpose of this amendment is somewhat different to the amendments in group 4. This amendment would introduce an early review of the rollout of the lifelong loan entitlement. We think this is necessary, given the extremely low—indeed, poor—take-up during the pilot stage. We have heard concerns from stakeholders that the pilots were primarily intended to test the IT system at the Office for Students. Although that is an important thing to test, it means that the impact on the wider sector and the level of interest among the general public remain untested.

[Baroness Twycross]

Given that the intent behind this legislation has sector and cross-party support, I find it surprising that the Government are rolling it out without testing it fully. We do not understand why the Government have not had a wider, more thorough pilot stage of this approach. We are also concerned that, given that guidance on adult education has been severely fractured since the end of Connexions, the lifelong loan entitlement means that the Government may need to rethink the framework of adult careers advice completely.

How do the Government intend to ensure that learners and, more importantly, those who are not learners, will be aware of the changes to their entitlement? In my view, this is particularly important for those who do not have a history of further or higher education. What will the Government do to ensure that they know what options are available throughout their careers? How are the Government intending to ensure that individuals are supported in their current career or support them to make a career change?

As I said, the pilot appears to have been entirely about IT systems, not the interaction of people with the education system. This runs counter to what appears to be the intention of the Bill, and the rollout of the lifelong learning entitlement should move us to a situation in which we can treat further and higher education as something that can and should enrich the lives and careers of people throughout their lives. It is right to ensure that the IT system works; it is, however, wrong not to look at how this new funding system works in practice for those it is intended to help. It seems almost reckless not to build a review of the rollout into the legislation, and I hope, although I am not convinced she will, that the Minister agrees. I beg to move.

Baroness Barran (Con): We are so speedy, my Lords. I will speak to Amendment 10, tabled by the noble Baroness, Lady Twycross, and also in the names of the noble Baronesses, Lady Wilcox of Newport and Lady Thornton. This amendment would require a review whereby the Secretary of State would publish a Written Ministerial Statement as to the impact of this Act six months after Royal Assent. As we mentioned in our debates on earlier groupings, the Government are fully committed to monitoring the impacts of this transformation of student finance.

In accordance with the better regulation framework, I can assure your Lordships that full and detailed impact assessments will be published when the Government lay the secondary legislation to implement the LLE fully. In addition, as is standard practice, Explanatory Memoranda will be laid alongside all regulations to detail the scope and purpose of them. The Government will publish them on the dedicated government legislation website to outline fully what the regulations do and why. I can also confirm that the Government will endeavour to publish a Written Ministerial Statement ahead of laying regulations under this Act.

Delivering the Government's vision for the LLE will require extensive changes to the student finance system and the types of courses available. Introducing into primary legislation a requirement to publish a Written Ministerial Statement before policies have been fully implemented or had sufficient time to bed in would not, in our opinion, be appropriate. I also take this opportunity to refer once again to the parliamentary accountability mechanisms that already in place to review Acts of Parliament, including post-legislative scrutiny reviews.

Furthermore, the LLE as a policy is much wider in scope than this Bill. As such, the Written Ministerial Statement sought through this amendment would focus narrowly on fee limits and not on the impact of the LLE as a whole, which is, I think, behind the spirit of the noble Baroness's amendment. The necessary suite of regulations needed to implement the LLE is expected to be laid more than six months after Royal Assent, given that the LLE will be implemented from the 2025-26academic year. Therefore, such a Written Ministerial Statement would neither cover as much detail as the existing plans for further scrutiny nor be able to consider the implementation of the LLE in its entirety.

The noble Baroness referred to the short course pilot. She is absolutely right that part of the point of it was to test the Student Loans Company's systems. We are pleased to have been able to do this. During the trial's launch, 22 providers developed more than 100 courses, which will be delivered at various points during the three-year trial period. We are a bit over a year into the trial; there are still two more years to go. The noble Baroness is right that this is a really important opportunity to test the shape and size of demand for these courses.

With those reservations, I have, I hope, explained why the Government do not support this amendment.

Baroness Twycross (Lab): I thank the Minister for her reply. I am pleased that the Government intend to monitor the impact of the legislation and welcome the Minister's commitment to the Government endeavouring to publish a Ministerial Statement before secondary legislation is laid. "Endeavour" is a slightly unfortunate word; we would welcome a stronger commitment than that.

We could probably do with a bit more detail about what the pilot involves. There is a slight difference in terms of whether it is intended to test computer systems and whether it will be ongoing as we develop the legislation. It feels a little ad hoc in that we are agreeing legislation while the pilot is ongoing; this strengthens the argument for building in a review at an early stage of the rollout of the policy. It does not speak to me against the need for a review that would bring up any adverse impacts of the approach so that they can be dealt with at an early stage. This is another thing on which we would welcome further discission with the Government.

I will not say any more as I do not want to risk us derailing what has been a really positive debate today. I beg leave to withdraw Amendment 10.

Amendment 10 withdrawn.

Amendment 11 not moved.

Clause 3 agreed.

Bill reported without amendment.

Committee adjourned at 5.45 pm.