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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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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 |

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# House of Lords

*Thursday 20 July 2023*

*11 am*

*Prayers—read by the Lord Bishop of Bristol.*

## Introduction: Lord Kempsell

*11.08 am*

*Ross John Kempsell, having been created Baron Kempsell, of Letchworth in the County of Hertfordshire, was introduced and took the oath, supported by Lord Lancaster of Kimbolton and Lord Mott, and signed an undertaking to abide by the Code of Conduct.*

## Introduction: Lord Ranger of Northwood

*11.13 am*

*Kulveer Singh Ranger, having been created Baron Ranger of Northwood, of Pimlico in the City of Westminster, was introduced and took the oath, supported by Baroness Verma and Lord Howard of Lympne, and signed an undertaking to abide by the Code of Conduct.*

## Oaths and Affirmations

*11.17 am*

*Lord Clarke of Hampstead took the oath.*

## Schools: Absenteeism

*Question*

*11.18 am*

*Asked by* ***Lord Young of Cookham***

To ask His Majesty's Government what steps they are taking to reduce absenteeism in schools.

**The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con):** My Lords, the latest data show improvements in attendance across all phases, with 350,000 fewer pupils being persistently absent in spring 2023 compared with summer 2022. Our new expectations ask schools to appoint a senior attendance champion and meet termly with local authorities to agree individual plans for at-risk children, as well as using our attendance data to identify where to intervene early. We have launched the attendance action alliance for system leaders and have expanded attendance hubs and mentoring support.

**Lord Young of Cookham (Con):** My Lords, I am delighted that my noble friend's voice has recovered.

Last autumn, two years after the lockdown ended, a quarter of children were persistently absent from school—double the rate before lockdown. That means that 2 million children are persistently absent from school, falling behind on education, missing out on social education with their friends and running the risk of falling prey to drugs and criminal gangs. There is something seriously wrong here. What research has my noble friend's department done to find out the reasons for this worrying increase, which shows little signs of diminishing?

**Baroness Barran (Con):** As ever, my noble friend asks a very important question. If we look at the reasons underpinning persistent absence, the majority of persistent absence is authorised, with higher than normal levels of sickness particularly in the last autumn term. We are also aware of suggestions that parental attitudes towards sickness have changed, with parents keeping children home when previously they might have sent them into school and, of course, high levels of reported anxiety. However, we are also actively exploring the matter of those children who perhaps missed so much education during the pandemic that their level of reading, for example, is not sufficient to engage properly with the curriculum. That is also something that we are keen to address as quickly as possible.

**Lord Blunkett (Lab):** My Lords, it is always a pleasure to follow the noble Lord, Lord Young, and to support his Question. I think the answer just given by the Minister is very insightful. I want to ask her a question that might be from the side. Could we get a message across to parents, particularly those who have started to believe that working from home is the norm, that when they get up, they have to get their children to school?

**Baroness Barran (Con):** I know that the noble Lord will know that the relationship with parents is incredibly important. He is right: it seems clearer, now more than ever, that there needs to be great communication with parents and a high level of trust. We have prepared materials to support parents getting their children into school. The Secretary of State has just written to all responsible bodies, local authorities and trusts about this importance, including highlighting really good, clear communication with parents.

**Lord Addington (LD):** My Lords, can the Minister give us some guidance on what progress has been made in making sure that mainstream schools are identifying reasons why children are failing? Often this is because of neurodiversity and special educational needs. What are we doing to improve the awareness of these? I remind the House of my interest in this area.

**Baroness Barran (Con):** The noble Lord knows we are working extremely hard, and in our latest publications—both in relation to the commissioning of schools and our description of what a really strong trust looks like—there was a very big emphasis on inclusivity and making sure children with special educational needs are well supported in mainstream education. To give the noble Lord a specific example, we are aware that in some areas children with education, health and care plans have high attendance as a specific objective on that plan. That is not the case in all, and many schools have suggested to me that it should be.

**Baroness Bull (CB):** My Lords, children with some form of special educational needs and disabilities accounted for 24.9% of all persistently absent children in the year to 2022. Having 100% attendance may not

[Baroness Bull]
be possible for them, yet some schools offer awards and prizes to children who have a full attendance record. Does the Minister agree this is discriminatory? It not only impacts their well-being but perhaps impacts their longer-term view of how they will be valued in the workplace. What are Government doing to ensure schools tailor their approach to take into account the needs of young people who cannot be there all the time?

**Baroness Barran (Con):** I understand where the noble Baroness's concern comes from. Obviously, the children I meet tend to be hand-picked for perfection, but when I talk to children and suggest to them that not all their friends are in every day, they tell me they need incentives to come in, whether that is fun at the end of the day such as extracurricular enrichment activities or reward schemes. Some of the best reward schemes I have seen are run on a weekly basis, which addresses the point the noble Baroness raises: no child feels they have fallen behind so far they can never catch up.

**Lord Sewell of Sanderstead (Con):** My Lords, I declare an interest here as somebody who, as a schoolboy, regularly bunked off school. Noble Lords will be happy to know that I went straight to the library and studied medieval poetry—so that was helpful. I would like to ask my noble friend the Minister if she could give us some good practice examples and models of schools or academy trusts that have brought children back to school.

**Baroness Barran (Con):** I find it hard to believe that my noble friend bunked off school—although, obviously, medieval poetry was the first thing that came to mind. In terms of examples of good practice, there is a lot going on around the country. One of the trusts we work particularly closely with is the Northern Education Trust, which runs schools in places such as Middlesbrough, Hartlepool and Stockton. I went to visit its North Shore Academy in Stockton, where they are identifying children for whom reading is a particular barrier to engagement. They then communicate when children start to catch up with their reading to the parents, so parents are getting a good news story about their child at school and encouraging the child to go back to school. That, in turn, helps behaviour in the classroom because those children are no longer bored and potentially disruptive. That is the kind of thing on which we are encouraging schools to get together and share best practice.

**The Lord Bishop of Durham:** My Lords, I declare my interest as chair of the National Society and thank the Minister for visiting the north-east recently. The Church of England has just published a flourishing schools document, which I know she has. Absenteeism appears to also be connected to mental health and well-being; there are particular issues around special educational needs. Could the Minister comment on the work that is being done to note the connection with mental health and well-being and improve that to help with absenteeism?

**Baroness Barran (Con):** The right reverend Prelate will be aware that we are rolling out senior mental health leads in schools. I think it is really important—and this potentially relates to my noble friend Lord Sewell's question as well—that we are clear where mental health is a genuine barrier for a child to be in school, and where a child's mental health would improve if they were in school. When I talk to school leaders, they say it is absolutely the exception that a child would not be better off in school, even if they are experiencing anxiety or depression.

**Baroness Twycross (Lab):** My Lords, three times as many children receiving free school meals are severely absent from school compared to those who are not eligible. This puts the UK's poorest children at yet another disadvantage compared to their peers. What steps are the Government taking to support these pupils? The Government outlined plans to tackle absence rates two months ago. How long will these take to fully implement? When will we get the first feedback from these programmes?

**Baroness Barran (Con):** The noble Baroness is right, and it is an area of real concern for us. She may also be aware that there is quite a lot of variation, including between schools in very deprived areas. That is why bringing schools together in attendance hubs, so that those with a very similar demographic can share their good practice with those who are finding it harder to turn this, is something we are keen to do.

## Ukraine

*Question*

*11.29 am*

*Asked by* ***Lord Campbell-Savours [V]***

To ask His Majesty's Government what consideration they have given to a multilateral approach involving a coalition of both Eastern and Western powers in resolving the crisis in the Ukraine.

**The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con):** My Lords, in February, at the UN General Assembly, 141 countries called on President Putin to withdraw Russian troops from Ukraine. This is the quickest way to end the war and deliver a just and lasting peace. The United Kingdom welcomes President Zelensky's peace formula, which reflects principles of the UN charter. On Monday, my right honourable friend the Foreign Secretary chaired a UN Security Council briefing on Ukraine, and we will work with the Ukrainian Government to follow up on June's discussions in Copenhagen between the G7 and several G20 countries on the principles for sustainable peace in Ukraine.

**Lord Campbell-Savours (Lab) [V]:** My Lords, notwithstanding any difficulties we have with China, but recognising that China, like us, needs a peace process that stabilises its world markets while safeguarding as much as possible the sovereignty of Ukraine, could we not initiate a dialogue with China, drawing on its special relationship with Russia, that seeks an end to the conflict—a dialogue that promotes international protectorate status for Donetsk and Luhansk, and

limited restoration of Russian oil supplies, substantially top-sliced to fund the cost of Ukraine's reconstruction? Someone, somewhere, from a position of strength, must make the first move, as a policy of "last man standing" suits nobody. Can China open that door?

**Lord Ahmad of Wimbledon (Con):** My Lords, the first thing I would say is that there is someone who can stop this war. That is Mr Putin, and he can stop it right now. We welcome the role China has played in engagement with President Zelensky, but these discussions about Ukraine must be led by Ukraine. As I said in my original Answer, we are working with key partners, including an extended engagement with the G20, including the likes of Turkey, Saudi Arabia and India. This war can stop today: if President Putin withdraws from the occupied territories then peace can prevail. Let us not forget what he did yesterday: he bombed the very grain depots where he stopped that grain from leaving Ukraine. This is not a sign of peace; it is a sign of furthering war.

**Lord Bellingham (Con):** My Lords, I agree with the Minister 100%, but there is no case for the West telling Ukraine what to do in a settlement. It must be up to Ukraine's elected Government, because after all it is their country that has been desecrated by this evil force that has invaded and committed war crimes. Surely we should reject the suggestions of the noble Lord, Lord Campbell-Savours.

**Lord Ahmad of Wimbledon (Con):** My Lords, I agree with my noble friend. That is why my right honourable friend convened a meeting of the UN Security Council. The UN, as an organisation, is set up for exactly these purposes. It negotiated the Black Sea grain initiative. It is Russia that stopped the Black Sea grain initiative. It is Russia that not only stopped it but then went and bombed the very same grain supplies. When we talk about food insecurity in the world, it is not Ukraine's fault—it is Russia's.

**Lord Collins of Highbury (Lab):** My Lords, I intervene early to completely associate the Opposition with the words of the Minister. We are at one with the Government on this: any peace process must be initiated and led by the Ukrainians. We fully support that. I also associate myself with the Minister's comments on the outrageous bombing of the grain stores. I hope the noble Lord will convey to the African Union just what impact that will have on African nations and food security. On the International Fund for Ukraine, is the Minister satisfied that the £770 million is delivering what it set out to do? Ukraine needs arms and it needs them now.

**Lord Ahmad of Wimbledon (Con):** My Lords, I thank the noble Lord and reiterate what I said in the Moses Room yesterday in thanking the lead shadow spokesmen on foreign affairs for both the Labour Party and the Liberal Democrats. We are very much at one on this. The noble Lord will know that the United Kingdom has stood firm in its humanitarian, military and economic support. That is why we convened the Ukraine Recovery Conference. On the wider point that the noble Lord raised about peace, we are again very much on the same page. We are working very closely with Ukraine to ensure that all avenues can be explored, but any decision on the peace process must be led by Ukraine.

**Lord Purvis of Tweed (LD):** My Lords, these Benches also agree with the Minister in that regard. He referred to the egregious war crime of attacking the grain supplies; the hungriest and the poorest people on earth will be the victims of Putin's aggression on this. Does the Minister agree that this provides an opportunity to say to those countries in Africa that are currently neutral that we can do two things with them? First, we can proscribe the Wagner Group, active in Africa, as I have called for since February last year; and, secondly, we can immediately restore humanitarian assistance for those suffering from acute hunger and malnutrition in the Horn of Africa. Restoring that, plus an active view on Wagner, will send very strong signals to the Horn of Africa and the African continent.

**Lord Ahmad of Wimbledon (Con):** My Lords, both the noble Lords, Lord Purvis and Lord Collins, referred to the important role of Africa. I will be travelling to Kenya at the start of next week, and that will be an opportunity once again to emphasise the importance of the Black Sea grain initiative—unfortunately and tragically these humanitarian supply lines have been brought to an end. Tragically, this is not the only action Russia has taken. We have also seen it reject humanitarian corridors to Syria; we sought to restore the current pathways, as well as those at al-Rai and Bab al-Salam. Russia rejected these. It is very clear that it is not Ukraine, western support for Ukraine or the 141 countries that have backed Ukraine that have blocked this and caused food insecurity; it is Russia, supported by a small number of countries. Of course I will take that back. On the issue of the Wagner Group, the noble Lord knows that I cannot go further. We have proscribed a number of key individuals, through sanctions, but on proscription overall I cannot comment any further.

**Lord Singh of Wimbledon (CB):** My Lords, Mr Putin likes to depict himself as a strongman defending Mother Russia against perceived threats from the NATO alliance. Does the Minister agree that it would totally destroy Putin's credibility, help end the suffering of the Ukrainian people and further the cause of world peace if the West were to openly offer Russia the bait of membership of NATO in return for its total withdrawal from Ukraine?

**Lord Ahmad of Wimbledon (Con):** I am sure that the noble Lord is well-intentioned but I cannot agree with this proposition.

**Lord West of Spithead (Lab):** My Lords, I refer to Indian supply and the breaking of sanctions. There is no doubt that a large amount of oil is going to India, and is then being mixed up and sold on the open market as oil not from Russia. Are we doing anything to focus on this, not least because there is something like 40 or 50 tankers, which are actually very dangerous—they are not well fanned—being used to supply this oil around the world?

**Lord Ahmad of Wimbledon (Con):** My Lords, I assure the noble Lord that we are working bilaterally with other partners and directly with India in raising the bar on the importance of sanctions to be sustained. Of course, the deals that have been done—what has been referred to as the "rouble-rupee" deal—have not actually leveraged anything beyond one particular deal that was done in December last year. I take on board what the noble Lord has said, but that is why we are engaging through the Copenhagen process, where we opened up to other G20 countries.

**Lord Pickles (Con):** My Lords, can my noble friend bring the House up to date on the latest figures on the number of Ukrainian children kidnapped by the Russian authorities and resettled in Russia? Is he in touch with our allies, Saudi Arabia and Turkey, which are reported to be trying to broker a deal to return these children to their parents? Regardless of the success that our allies may have, does he agree that President Putin, and his many crimes against humanity, must be brought to justice for the dreadful business of tearing children away from their parents?

**Lord Ahmad of Wimbledon (Con):** My Lords, I assure my noble friend we are doing just that. We are working with key partners in this respect, including the International Criminal Court and Karim Khan. The numbers run into hundreds, but I will update my noble friend when I have exact numbers that I can share with him.

**Lord Alton of Liverpool (CB):** My Lords, has the noble Lord seen reports this week that children are also being sent to Belarus? Will he ensure that the International Criminal Court investigates that, along with the previous reports of abductions to Russia? In answering the substantive Question that was asked this afternoon, will he also refer to those countries that have aided and abetted Putin, including China and including Iran, which has provided weapons to the Russians?

**Lord Ahmad of Wimbledon (Con):** My Lords, I assure the noble Lord that we are working with the International Criminal Court on all elements. The taking of children from Ukraine, be it to Russian territory or Belarus, is abhorrent, and we are very focused on and seized of this. This is part of the conversations we are having with the chief prosecutor at the ICC. On the wider question of the malign influence of Iran, we are well-versed in that. It supplies drones. The issue of China I have covered. We have seen China at least not block action at the UN Security Council, and that action is welcome.

## Reducing Parental Conflict

*Question*

*11.40 am*

*Asked by* ***Baroness Stedman-Scott***

To ask His Majesty's Government what progress they have made with the Reducing Parental Conflict programme, and what plans they have for the future of that programme.

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con):** My Lords, since its announcement, we have allocated £77 million to the reducing parental conflict programme, 151 local authorities have been directly supported, and the programme has developed evidence and approaches to relationship support that benefit families. We are committed to a cross-government approach to provide a strong, early help offer to families, and we continue integration into local services and alignment with other key government programmes, including family hubs and Supporting Families.

**Baroness Stedman-Scott (Con):** My Lords, I thank my noble friend for that Answer. I am very encouraged about the encouragement of cross-government department working. If I have understood it correctly, Supporting Families is being more aligned to DfE work and family hubs. Does my noble friend agree that there is much to be gained by aligning the reducing parental conflict programme in this way?

**Viscount Younger of Leckie (Con):** I believe the work achieved and continuing to be done within the RPC is invaluable. The programme has had three interim reports published that give strong evidence for that. As announced yesterday, three reports to be published in due course further demonstrate the impact of the programme with more granular detail. We are working to integrate RPC outcomes into other key government programmes, including family hubs and the Supporting Families programme, but for the moment the RPC programme remains firmly within DWP.

**Baroness Thornton (Lab):** My Lords, for this programme, the DWP developed a national offer of parental relationship support. In 2015 it piloted a local family offer in local areas, in 2019 it invited top-tier authorities to apply for strategic leadership support funding and developed a practitioner training offer, in 2021 the DWP offered workforce development grants, and last month it announced £2.8 million funding for eight projects to reduce parental conflict. The Government have just now committed £33 million to be spent on this programme between 2022 and 2025. Will the Minister tell the House where the £33 million is going and the outcome of all these activities?

**Viscount Younger of Leckie (Con):** It certainly remains work in progress. As the noble Baroness said, the reducing parental conflict programme was initiated in 2017 in response to two key pieces of evidence, one of which was the number of children who live in coupled families reporting conflict, which in 2020 was as much as 12%. We have three further evaluation reports coming out. They are enormous—I have seen them. This granular detail will be coming out shortly. It shows, for example, that 90% of those parents who have gone through it have a satisfaction rate, meaning that there is already some valuable information about its success.

**Lord Palmer of Childs Hill (LD):** My Lords, I am not reassured by what the Minister said about how this is being rolled out. Is there adequate support for people without easy access to digital services? We

seem to have an academic exercise. The Minister said it is being rolled out through local authorities. He will know that most local authorities have straitened financial circumstances at the moment. Does the Minister have evidence that they are actually doing something to give face-to-face support to families with these problems?

**Viscount Younger of Leckie (Con):** Very much so. The noble Lord may know that we had a first challenge fund, and we now have a second challenge fund with eight interesting initiatives as part of RPC. For example, one of the challenge funds is looking at the digital side. This has a particular focus on ensuring that those who are not particularly digitally aware can be. The results of that will come out in due course, but I hope that answers directly the noble Lord's question.

**Baroness Altmann (Con):** My Lords, I am delighted to hear about all the work that my noble friend and the department are doing and that they have recognised how important the role of stability and the family unit is in creating family cohesion. Does my noble friend agree that it is also important to include the role of grandparents and intergenerational aspects? What are the Government doing in this respect on policy and actions?

**Viscount Younger of Leckie (Con):** My noble friend makes an excellent point about the role of grandparents because I think, and I am sure that the Government think, that for stability within families—which now come in all shapes and sizes, and we must recognise that—the role of grandparents is incredibly important to feed down to their grandchildren certain lessons in life. The family test, which the House will know about, was introduced by the Government in 2014. It aims to bring a family perspective into policy-making, and various tests are used. This is something for which we are responsible in my department, particularly looking at the guidance and the raising of awareness about this initiative.

**Lord Foulkes of Cumnock (Lab Co-op):** My Lords, can the Minister assure the House that his civil servants are briefing Opposition spokesmen on this and other DWP programmes to ensure that there is a smooth transition to the next Labour Government?

**Viscount Younger of Leckie (Con):** I am not going to be tempted into giving an answer to that. I have to tell the noble Lord, as he will expect me to say, that we are fully focused on a major programme of change, including in my particular area. Our aim is to focus on children, and that is the most important thing that we are doing.

**Lord Farmer (Con):** My Lords, it is heartening to hear that there is integration going on between departments of government, which has always been a bugbear for us to contend with. I just mention family courts, which post-separation conflict clogs up very expensively, leaving families in destructive limbo. Is my noble friend the Minister taking this area into account to integrate into the policy?

**Viscount Younger of Leckie (Con):** Yes, and my noble friend makes an important point about the link with the MoJ, particularly its work in the family courts. We are watching with interest the progress of work on mediation between parents who are separating. I also endorse my noble friend's point on wider integration. I would like to reassure the House that the Government are working closely with a focus on relationship dynamics. That is what it is all about. Evidence shows that conflict, which can be intense, frequent and poorly resolved, as we know, can really damage children's mental health and their longer-term outcomes, including attainment and employment.

**Baroness Butler-Sloss (CB):** My Lords, as a former family judge, I saw a great deal of this. To what extent are the Government able to help with the traumatic effect on so many of these children?

**Viscount Younger of Leckie (Con):** I think I have already alluded to a number of points of help because, first of all, the reducing parental conflict programme sits within my department. We have the Supporting Families programme, which is moving into the DfE quite shortly, and we have the family hubs. On the noble and learned Baroness's question, we are working across government on family-focused policies, and it is very important that we continue to do that to provide cohesive answers to these very challenging matters.

**Baroness McIntosh of Pickering (Con):** My Lords, will my noble friend pay tribute to the work of volunteers who man child contact centres, which permit access to warring parents often in a very tense situation? They do a fantastic job. Will he ensure, through the MoJ, that they are properly funded, whether they are in the public or the private sector?

**Viscount Younger of Leckie (Con):** Yes. My noble friend makes a very good point about those who are outside the main programmes but set aside their own time to help, often with some extremely challenging matters. That is often within families themselves. The role of grandparents was mentioned. If there are some issues regarding the parents, the grandparents often have a most important role to step in and help in linking in with those who are skilled and trained in these matters.

**Lord Polak (Con):** My Lords, has the Minister seen the report by Domestic Abuse Commissioner Nicole Jacobs, *The Family Court and Domestic Abuse: Achieving Cultural Change*, produced this week? I refer the Minister to it in this discussion. It is a very simple but important report that I hope he will take account of.

**Viscount Younger of Leckie (Con):** I have not seen that report. I want to provide clarification for my noble friend that reducing parental conflict and domestic abuse are not exactly linked. It is easy to make a link, but the RPC programme seeks to address conflict, not domestic abuse. Having said all that, as my noble friend will know, domestic abuse is incredibly important and this Government are very much committed to preventing it and to ensuring that victims get the support they need.

# MMR Vaccine

*Question*

*11.50 am*

*Asked by* ***Baroness Twycross***

To ask His Majesty's Government what further steps they will take to work with schools to encourage greater take up of the MMR vaccine among pupils.

**The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con):** The UK Health Security Agency is closely engaging with the Department for Education to boost uptake of the MMR vaccine, especially in areas with lower uptake. Earlier this month a messaging campaign to the education sector encouraged uptake among pupils, and an NHS England national MMR call/recall campaign between September 2022 and February 2023 reached approximately 940,000 parents and guardians and resulted in the delivery of over 160,000 vaccinations.

**Baroness Twycross (Lab):** My Lords, I declare an interest as chair of the London Resilience Forum and as someone who contracted viral encephalitis as a child, albeit from mumps, not measles. Measles in children can cause death or serious disability. The increase in measles breakouts comes as research finds that the number of nurses in schools has dropped by 35%, with some local authorities scrapping the role altogether. Does the Minister believe that the decline in school nurses has contributed to falling MMR take-up in schools? Have the Department for Education and the Department of Health and Social Care set a joint target to achieve an uplift in the take-up of MMR, and what is it?

**Lord Markham (Con):** I do not necessarily believe that that is the reason for the reduction. What we saw during Covid, as with so many things, was a couple of years when people were not attending school so much and were not attending GP surgeries for their vaccinations. That is why we have had a series of catch-up campaigns, which are working. We are getting there, but clearly there is a long way to go.

**Baroness Blackwood of North Oxford (Con):** My Lords, we learned from Covid that high-uptake vaccine programmes can be effectively delivered only with a firm foundation of high-quality data and surveillance. The UK measles and rubella elimination strategy set out by UKHSA commits to a target of rigorous case investigation and the testing of over 80% of suspected cases with an oral fluid test. Can the Minister update the House on our performance on surveillance so that we can get on top of falling vaccination rates?

**Lord Markham (Con):** I thank my noble friend. I was speaking to the senior epidemiologist at UKHSA just this morning about this. My noble friend is right to point out the concerns in this area. On exactly where we are on oral fluid testing, I will need to write to her.

**The Lord Speaker (Lord McFall of Alcluith):** My Lords, the noble Baroness, Lady Brinton, is participating remotely.

**Baroness Brinton (LD) [V]:** My Lords, the NHS says that susceptibility is not just among the under-twos; it is particularly high among 19 to 25 year-olds whose parents were affected by the unfounded Wakefield stories two decades ago, and many may still not be vaccinated. What is the NHS doing to reach this cohort, including at further education colleges and universities, to ensure that they are fully vaccinated before they start their own families? Catching measles when pregnant can cause miscarriage, stillbirth, premature birth and low birth weight.

**Lord Markham (Con):** The noble Baroness is correct. The unfortunate Wakefield effect had quite an impact on that cohort of people, so the campaigns have been targeted particularly at specific communities in particular areas. Outreach campaigns are being done as part of that, looking at every area where it can be done. Sometimes that involves looking at colleges and sometimes it involves going specifically to community centres themselves.

**Baroness Ritchie of Downpatrick (Lab):** My Lords, the Minister referred to outreach campaigns in relation to the take-up of MMR. Will that extend to children who are disabled and who are forced to be off school for certain periods of time to ensure that they are able to access their MMR vaccines?

**Lord Markham (Con):** Yes. This whole campaign is looking particularly at hard-to-reach communities. The concern is particularly in London. Whereas we have about 85% take-up across England as a whole, in London it is around 75%, so that is where the particular outreach is. That also involves looking at children who are not able to go to school or who are home-schooled.

**Baroness Manzoor (Con):** My Lords, I welcome the catch-up campaigns that the Government are running. They are very welcome. I particularly note the campaign in London. As the Minister will know, there is variation across the country. The WHO stipulates that 95% is the target reach, yet we are at 89%. So how are those hard-to-reach communities, particularly the ethnic-minority communities, being targeted? The uptake is slightly lower in those particular areas.

**Lord Markham (Con):** There are two main approaches. If a child is under 11, we would prefer to have a parent present, for obvious reasons—because it involves a vaccination—so that is normally done through the primary care system, through nurses. Post 11, because you do not need the parent there, that is where schools really come into effect. In particular, there is a school-age assisted immunisation providers programme that goes into every school in a particular area, targets it and speaks to every child to see whether they have had their vaccination—and they can give it on the spot if they have not.

**Lord Allan of Hallam (LD):** My Lords, does the Minister agree that the experience of both the MMR and Covid vaccination programmes shows that vaccine hesitancy is actually a very complex problem with multiple factors? Given the importance of high vaccination rates for public health, are the Government commissioning any research from academic experts in misinformation

and disinformation so that we can understand what kinds of government campaigns will work and which ones will not and will only reinforce vaccine hesitancy?

**Lord Markham (Con):** The noble Lord is correct about trying to make sure that we learn the lessons from all these areas. The approach that they have been responding to so far is very much "horses for courses". In the last six months alone, they have had four different types of campaign. We do not have the results from those campaigns yet, but the point is a very good one and I will make sure that we get those results from the research and share them.

**Lord Kirkhope of Harrogate (Con):** My Lords, as my noble friend has referred to, it is very important that young people, children, get vaccinations when they are due, but the current government campaign to encourage adults to have a shingles jab, and indeed other areas, seems to point out—I have heard this from GPs—that the fact that adults are not now taking boosters for things such as tetanus, and other areas where vaccination is so important, means that there is a gap. Does my noble friend not think that we ought to do more to encourage adults to take up vaccinations, renewals and boosters where appropriate to safeguard their health?

**Lord Markham (Con):** Yes. That is where we really see UKHSA coming into its own in terms of taking an intelligence-led approach. The concern came from its modelling: its epidemiologists brought this up as a concern, which led to the alert going out on 14 July. Likewise, it is looking into other categories and, where there are those concerns, it will come out and suggest such outreach programmes.

**Lord Brooke of Alverthorpe (Lab):** My Lords, I refer to the question asked earlier by the noble Lord, Lord Young, about the high level of absence of children from school at the moment; I believe the present figure is in the order of 24%. What special steps are being taken there, where the appeal to the school will not make any difference yet we have to try to get to the homes of the individual parents?

**Lord Markham (Con):** As mentioned, there are outreach programmes, particularly for home-schooled children or children who are not there. There are also programmes in community centres, with the idea of trying to pick them up in as many places as possible. Obviously, there is concern about certain communities that are harder to reach than others. That is particularly the case in London, as I mentioned earlier. That is where we are trying to specifically target those community centres with outreach work.

**Baroness Bennett of Manor Castle (GP):** My Lords, in April the UK Health Security Agency's director of public health told the Health and Social Care Committee in the other place that the workload for delivering vaccines now falls disproportionately on general practices—particularly after the 2012 NHS reforms—and that this is one of the weaknesses we are trying to put back together.

In that context, the Minister may be aware of the issue around the quality and outcomes framework payment to GPs. GP practices in deprived areas are missing out on payments for delivering vaccines that could help them deliver more vaccines because it is extremely difficult for them to register the patients whom they have tried to contact multiple times when those patients do not respond. So, the GPs are missing out on payments they need to be able to reach those difficult-to-reach patients.

**Lord Markham (Con):** I am sorry, I am not quite sure what the question was there. Clearly, we need to make sure that the system is working in terms of making sure that the payments are there so the doctors can follow up. If the noble Baroness would like to follow up with me, so that I can fully understand it, I will get her a response.

## Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations

*Motion to Approve*

*12.01 pm*

*Moved by* ***Baroness Penn***

That the Regulations laid before the House on 26 June be approved. *Considered in Grand Committee on 19 July.*

*Motion agreed.*

## Postal Packets (Miscellaneous Amendments) Regulations 2023

*Motion to Approve*

*12.01 pm*

*Moved by* ***Baroness Penn***

That the draft Regulations laid before the House on 29 June be approved.

*Relevant document: 46th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument). Debated in Grand Committee on 19 July.*

*Motion agreed.*

## Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023

*Motion to Approve*

*12.02 pm*

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

That the Regulations laid before the House on 29 June be approved.

*Relevant document: 46th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument). Considered in Grand Committee on 19 July.*

*Motion agreed.*

## Non-Domestic Rating Bill

*Order of Consideration Motion*

*12.02 pm*

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

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 17, Schedule, Clauses 18 to 20, Title.

*Motion agreed.*

## Comprehensive and Progressive Agreement for Trans-Pacific Partnership

*Commons Urgent Question*

*The following Answer to an Urgent Question was given in the House of Commons on Tuesday 18 July.*

"The Secretary of State for Business and Trade signed the accession protocol to the comprehensive and progressive agreement for trans-Pacific partnership on Sunday 16 July in Auckland. The UK will be the first new member since CPTPP was created. With the UK as a member, CPTPP will have a combined GDP of £12 trillion and will account for 15% of global GDP. Accession to the agreement sends a powerful signal that the UK is using our post-Brexit freedoms to boost our economy. It will secure our place as the second largest economy in a trade grouping dedicated to free and rules-based trade. It gives us a seat at the table in setting standards for the global economy.

The agreement is a gateway to the wider Indo-Pacific, which is set to account for the majority of global growth and around half of the world's middle-class consumers in the decades to come. That will bring new opportunities for British businesses abroad and will support jobs at home. More than 99% of current UK goods exports to CPTPP countries will be eligible for zero tariffs. The UK's world-leading services firms will benefit from modern rules, ensuring non-discriminatory treatment and greater transparency. That will make it easier for them to provide services to consumers in other CPTPP countries.

In an historic first, joining CPTPP will mean that the UK and Malaysia are in a free trade agreement together for the first time. That will give businesses better access to a market worth £330 billion. Manufacturers of key UK exports will be able to make the most of tariff reductions to that thriving market. Tariffs of around 80% on whisky will be eliminated within 10 years, and tariffs of 30% on cars will be eliminated within seven years. Joining CPTPP marks a key step in the development of the UK's independent trade policy. Our status as an independent trading nation is putting the UK in an enviable position. Membership of that agreement will be a welcome addition to our bilateral free-trade agreements with more than 70 countries. I pay tribute to the many officials and Ministers who have worked on this deal over the past two years, some of whom are in the Chamber today."

*12.03 pm*

**Lord Leong (Lab):** My Lords, while we will always welcome improved trade relationships, the political capital invested by the Government in this announcement seems disproportionate to the potential economic impact. The deal will increase the UK's GDP by 0.08% after 15 years. Since the Government were not able to negotiate the terms of the UK's membership, I will ask the Minister two questions. Will it lead to the lowering of food standards or of our intellectual property protection standards? China applied to join CPTPP in September 2021—what assurances on economics and security have Ministers asked for from existing CPTPP members in relation to China's membership?

**The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con):** Noble Lords, it is a momentous occasion to be able to talk in this House about the signing of the CPTPP. This is a tongue twister, but we are all going to have to get our mouths around it because we are going to hear a lot more about this in the future. This is a massive region of 11 countries in the Indo-Pacific, which account, together with the UK, for 15% of world trade GDP.

We know that this trade deal originally had the US in it, and Donald Trump took the US out. That created a gap. For those of us who play the game of rugby football, you always go for the gap. The UK has taken that gap and got into this deal, which, to come to the specifics of the question, will in no way impact on our food standards and regulatory standards.

On the matter of China, China is not a member of this group. China has expressed some interest, but there are other interested countries such as Costa Rica, Ecuador, Uruguay, the Philippines and Korea that are in line before China. So, as far as we are concerned, at the moment we are not commenting on China's accession. China has expressed an interest but, on the exact question, there will be no reduction of food standards and general regulation through this deal.

**Lord Purvis of Tweed (LD):** My Lords, I very warmly welcome the 0.08% estimated growth over 15 years of this momentous agreement. But, with regard to China, it is more than simply expressing an interest; it is seeking to commence the accession process. If that happens, we will be bound to share data with China under part of the CPTPP common data provisions. That will mean that we will no longer have data adequacy with the European Union. We currently have a trade deficit in goods with China of £43 billion. Would it not make more sense to have eased trade with Europe rather than more trade deficit with China?

**Lord Offord of Garvel (Con):** Some 45% of our trade in the world is with the EU. In fact, if you take Europe as now being 34 countries—if you take the likes of Norway, Switzerland, Israel et cetera—it is pushing 50% of our trade, whereas China is £100 billion, which is more like 10%. So we are very clear that our primary market is with Europe and the first deal we did on Brexit was a free trade agreement with Europe. So we have free trade with Europe, as we stand, and that will continue to be our dominant market. This is the bonus that we get from going to international markets that we could not get access to before. If we

were inside the EU, we could not have signed this deal, just as we could not have signed a deal with India. When you have 28 people wanting 28 different things, it is difficult to negotiate, is it not? Here we have a deal with the CPTPP which we would not have access to otherwise and I think we should celebrate.

As to the number on GDP, we are talking about a £2 billion impact on trade, which is a big, big number. It will go all around the UK, not just to London and the south-east. I can give you a breakdown of the numbers in every region, if the noble Lord needs it. The fact is that it will be a dynamic deal. This is going to be the fastest-growing consumer sector in the world. It is going to have a big increase in GDP. As the Secretary of State said at the press conference, it is up to us now. It is up to the UK now to maximise the benefits of this deal and I am very convinced that we will get great trading opportunities out of it.

**Lord Swire (Con):** My Lords, the slightly negative terms introduced by some noble Lords on this is regrettable. Some of the countries within this grouping have very fast-growing economies and represent huge potential for British exporters, so I really do believe that we should welcome this move. We want to see many more trade deals of this sort. I think it is the largest trade deal since we have come out of the EU, but certainly there will be many British exporters up and down this country who would perhaps express warmer feelings towards this than some noble Lords have so far done today.

**Lord Offord of Garvel (Con):** I thank the noble Lord for that. In fact, the Department for Business and Trade, being ahead of the game as always, is already thinking about how to get utilisation of this trade deal done, to get through to all the regions and nations of the United Kingdom, to make sure in particular that all of our SME community has access to this deal—for example, Malaysia is a country we have never had a trade deal with before, and we now have tariff-free trade with Malaysia. A particular focus of mine, as the export Minister, will be to increase the level of access to our SMEs, because these are real companies, employing real people in real places,

**Lord West of Spithead (Lab):** My Lords, does the Minister not agree that there is a geostrategic aspect to this agreement? By almost every measure—investment and everything—the UK has more involvement in that region than any other EU country. We also run global shipping from the UK. In that sense, there is a geostrategic aspect, which is to be welcomed. Does the Minister agree?

**Lord Offord of Garvel (Con):** The noble Lord will be able to comment much more on the geopolitical aspect than I can, because I come to this looking at it very much as a trade deal. When I was introduced to the deal, I looked at the map and could see that we were nowhere near the Indo-Pacific. The fact that we have come into that deal must surely be because we have such extensive reach in the region, and therefore in addition to trade there will be a knock-on effect for our geopolitical security, I am sure.

**Lord Fox (LD):** My Lords, the nature of the CPTPP is that the countries that are trading with each other have to police the new trade that results from that agreement. Can the Minister tell your Lordships how the Government will set up the process of monitoring and ensuring that the trade we have with this new group is truly free?

**Lord Offord of Garvel (Con):** The whole idea of the CPTPP deal is precisely to do with free trade and fair trade. That will be very closely monitored within the group. The benefit to our importers and exporters will be considerable, particularly around some of the rules of origin. We will now be in a position to accept goods coming in from these 11 countries, bring them into our supply chains and then export thereafter. The benefits are significant and, in the meantime, fair trade will be monitored, as it always would be.

**Lord Lansley (Con):** My Lords, does my noble friend agree that the impact assessment may significantly understate the potential economic benefits, for two good reasons? First, there is increasingly a worldwide digital economy and CPTPP has world-leading digital provisions within the agreement. Secondly, we are predominantly a services economy and those services are likely to grow more rapidly in the member countries. Can he further confirm that we will be full members of CPTPP and therefore able to exercise a view, with others, on the membership of any other country, including China?

**Lord Offord of Garvel (Con):** I thank my noble friend and will take his last point first. Yes, we have just joined the club and the first thing you do when you join a club is not necessarily to comment on its existing or incoming members. We will get to that in due course, I am sure, but when we are fully ratified we will absolutely have a fair voice at the table on the membership. I thank him for raising digital and services because in my new job I am looking carefully at where and how our trade is conducted. There is an obsession with manufactured goods to the EU, but the fastest-growing part of our economy is digital services to non-EU countries. Our economy is moving rapidly to be two-thirds services versus one-third goods. Having a deal in this region, which has a very young and well-educated middle class, all fully digital, will provide a great opportunity to access this market, particularly for our SMEs.

**Lord Grantchester (Lab):** My Lords, on the point of membership of this partnership, has the Minister considered the effect of trade with Taiwan in relation to this and relationships with China? What is the percentage of trade currently undertaken with Taiwan, and will the Government protect the future of that trade?

**Lord Offord of Garvel (Con):** Taiwan is an important trading partner of the United Kingdom. Taiwan has expressed some interest in the CPTPP but, again, it is not currently in the queue. As I said before, we will take our membership; we will then have a fair voice at the table and consider those matters when they arise.

# Strikes (Minimum Service Levels) Bill

*Commons Reason*

*12.13 pm*

*Motion A*

*Moved by* ***Lord Callanan***

That this House do not insist on its Amendment 2D to which the Commons have disagreed for their Reason 2E.

**2E:** Because the Bill already contains adequate provision for consultation and parliamentary control of regulations made under it.

**The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con):** My Lords, the House will be pleased to know that I can again be brief, as we have debated this Bill and the remaining issue at length on a number of occasions. The other place has again considered the Bill, as requested by this House. The House will be unsurprised to hear that it has come to the same conclusion as previously, again with a significant majority. This is now the third time that the other place has made its will clear, and I therefore hope that noble Lords will take that into account today.

Noble Lords last sent the Bill back to the other place with the justification that the International Labour Organization had issued new information. As my colleague, the Minister for Enterprise, Markets and Small Business, noted in the debate there earlier this week, this is ground which has already been well covered by both Houses. I therefore hope that knowing that the other place has considered the issue again, and voted with that in mind, will give noble Lords the confidence that this issue has now been extensively scrutinised.

The Minister in the other place also explained that the Government will provide clarity in respect of the reasonable steps which a union must take to be compliant with the legislation. I know that this has been a concern for the noble Lord, Lord Collins, in our previous debates. I am therefore pleased to confirm that the Government will bring forward a statutory code of practice on the reasonable steps which a union must take. We will do that using existing powers under Section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992. That code will be subject to statutory consultation, including with ACAS, and will of course need to be approved by both Houses of Parliament. This consultation will provide an opportunity for trade unions, employers and any other interested parties to contribute to providing practical guidance on the steps that a union must take to make the code as practicable, durable and effective as possible.

I hope these steps go some way to reassuring the House that the Government's plans for minimum service levels are within our international obligations and that we will provide clarity where that is required. I hope therefore that this House will now feel able to allow this legislation to pass to Royal Assent. I beg to move.

**Lord Hendy (Lab):** My Lords, in form, this skeleton legislation with its Henry VIII powers defies every legislative principle, as the Delegated Powers and Regulatory Reform Committee, the Secondary Legislation Scrutiny Committee and the Select Committee on the Constitution have reported. As to content, the less said the better. Although the Government's impact assessment was held by the Regulatory Policy Committee to be not fit for purpose, it contains the revealing analysis that, far from obviating the disruption that strikes inevitably cause, the Bill

"could mean a general increase in tension between unions and employers. This may result in more adverse impacts in the long term, such as an increased frequency of strikes for each dispute".

No doubt that is part of the reason why employers, as well as trade unions, have opposed the Bill.

This House tried to redeem the Bill with amendments to protect workers from unfair dismissal and unions from damages and injunctions, as required by international law, but the Government's majority in the other place rejected them. This House, in its latest modest amendment, sought to mitigate the Bill's excesses by requiring consultation before regulations were made, but even this was rejected by the other place on Monday.

The fact is that the Bill abridges the right to strike, a right established by many international treaties to which the UK adheres. A letter written by the general secretary of the European Trade Union Confederation to the Secretary of State the day before yesterday sums it up. She said:

"It is clear that the Bill introduces provisions which weaken or reduce existing law in relation to the protection of the fundamental right to strike and which do not respect or implement ILO Convention 87".

The Joint Committee on Human Rights said the same thing. The letter points out the specific respects in which the Bill fails to meet ILO conditions for permissible MSL legislation. Among its list of non-compliances, the letter points to the absence in the Bill of: any requirement for trade union and employer dialogue in the setting of MSLs; any obligation on the employer to negotiate an agreement with the trade union about service levels; and any independent adjudication mechanism in the event of a failure to agree.

Your Lordships' amendment would have gone a long way to rectify these non-compliances without such remedial action. As ETUC points out, the UK will not only be in breach of ILO Convention 87 and paragraph 4 of Article 6 of the European Social Charter, but it will also violate Articles 387 and 399 of the trade and co-operation agreement. However, the Government have a problem with consultation with the social partners. Just a week ago, the High Court held that the purpose of the statutory obligation to consult before making regulations under the Employment Agencies Act was that:

"Parliament can then proceed on the basis that the case for the measure has been tested with interested parties in the sector and that their views and interests have been taken into consideration in fashioning the draft regulations which are laid before it".

The Government's failure to consult was, the court held,

"so unfair as to be unlawful and, indeed, irrational".

Less than a month ago, the relevant ILO committee told

"the Government to provide information to and facilitate the dialogue between and with the social partners with a view to … improve consultation of the social partners on legislation of relevance to them".

Of course I accept that the undertaking by the noble Lord to introduce a code of practice imports a duty to consult, but such consultation is apparently limited solely to the issue of reasonable steps. It does not require the social dialogue that compliance with international law does. In truth, as was said by Mick Whitley MP in the other place,

"no number of amendments could ever salvage this Bill".—[*Official Report*, Commons, 17/7/23; col. 721.]

That is why the Labour Party is committed to repealing it.

**Lord Collins of Highbury (Lab):** My Lords, I thank the Minister for his comments. I appreciate his ability to be brief, but sadly I do not think I will be able to be as brief as him on this occasion because there are, as my noble friend Lord Hendy has just raised, a number of issues outstanding.

This House acknowledged, I think from all sides, that this is a skeletal Bill. It is an example of legislating and then determining policy and procedure. It is really the wrong way around. There is not a proper process of consultation, as my noble friend has just outlined. I repeat the intention of a future Labour Government to repeal the Act because it does not have the support of workers' representatives or employers. It is impracticable and will simply result in not achieving the objectives of the Bill the Government set out, while worsening the situation in industrial relations. Even the Government's own impact assessments have said it could possibly increase strikes.

The position on the Bill has been one, in this House, of principled objections to the methodology used and the practical application. I stress the importance, when Parliament is starved of the ability to properly scrutinise legislation that impacts on fundamental human rights, as in this case, of the fact that we have a duty in this House to keep reminding Parliament of that situation. My noble friend highlighted that the International Labour Organization's Conference Committee on the Application of Standards called on the Government to ensure that existing and prospective legislation conforms to the article he mentioned. The Minister has said in the past, "That's all right because we will ensure that this legislation will conform". I am not sure, and I do not think employers or union representatives have any confidence, that that will be the case.

What this House asked the Commons to consider was precisely what the ILO is asking the Government to do anyway: to undertake genuine consultation before implementing minimum service regulations. That means that, when regulations are published, they include an impact assessment and there should be genuine consultation, including on the protection for workers named in work notices and the reasonable steps that trade unions need to take to ensure compliance. The consultation on the selected sectors has taken place, which we have not seen the results of. We will not see those results before the Bill is enacted. Again, that is outrageous in my opinion.

On the reasonable steps the noble Lord has referred to, we have, rather late in the day, heard a Minister saying that a new code of practice will be brought forward. This is certainly an improvement on the Government's previous position that it was for courts to decide what reasonable steps are—so unions would not even know until challenged in the courts what they may be required to do. However, we are told that the code will be subject, using existing powers, to statutory consultation, including consultation with ACAS, and the approval of Parliament. The Minister in the other place said:

"The consultation will give trade unions, employers and any other interested parties an opportunity to contribute to practical guidance on the steps that a union must take".—[*Official Report*, Commons, 17/7/23; col. 713.]

What is the timetable for this? I take that Minister's words as not simply meaning the obligation to consult ACAS without a timeframe. I hope that we will not see a rushed consultation over the August holiday period. If that is the plan, it will make a mockery of that process and people will fully understand the true intent of this Government.

I seek assurance from the Government that there will be a proper timetable. I remind the noble Lord the Minister that, on 23 January the Government announced strong action against unscrupulous employers which use the controversial practice of fire and rehire through a planned statutory code of practice. That announcement followed ACAS guidance to employers a year before. The consultation announced on 23 January ran for a period of 12 weeks, with views sought from not only interested groups but from the public. Parliament has the right to be satisfied that union workers and the public will be given the same consultation rights and period for the statutory code under the Bill as given for the fire and rehire one. We are entitled to know today that this is what the Government will do.

As my noble friend highlighted, last week the High Court said, in relation to the consultation process for the regulations that allowed agency workers to break strikes, that

"this is not a case in which the evidence is that the proposal had obvious and undisputed merit based on cogent evidence, and enjoyed strong support from representative bodies in the sector".

It could have been talking about the Bill—and no doubt in time it will be. I hope the Minister fully understands the position of these Benches. I hope he also fully understands that the concern I have expressed, and my noble friends have expressed, is not just restricted to this side. All sides of the House fully understand the importance of protecting fundamental freedoms and Parliament having the proper opportunity to scrutinise legislation, which we have not had in the case of the Bill. I will not repeat all the objections made by the committees my noble friend referred to; they are on the record. But I hope the Minister, in his response, will be able to give us a full explanation of what he intends to do in terms of the consultation on the code of practice.

*12.30 pm*

**Lord Fox (LD):** My Lords, it is a great pleasure to follow the noble Lords, Lord Hendy and Lord Collins, and I completely associate myself with their critical process and legal analysis of this Bill. From the outset, this was a political Bill and I make no apology at the end of this process for making a political comment.

It may have escaped your Lordships' notice, but there are three by-elections going on today across different parts of the country. In knocking on those

[Lord Fox]
doors, the number one or number two concern of the people in those houses in those communities is the delivery of the health service in this country. I refer to this Bill and the challenge that this Government have in dealing with the industrial disputes going on within the health service. It is quite clear that this Bill will do nothing to bring those disputes to an end and, if it is deployed, it would exacerbate them. Those people answering their doors and talking to politicians as they are being canvassed would love to have a minimum service level every day of the week. The Government need to solve this industrial issue as well as the service delivery within the health service, and this Bill when it becomes an Act will do nothing towards doing that.

**Lord Callanan (Con):** My Lords, I thank all three noble Lords who have contributed to today's debate. The Government always listen carefully to the views of this House.

In response to the noble Lord, Lord Hendy, I have seen the letter from the European TUC, which I read with interest. I am sure the noble Lord will accept that it is hardly an impartial referee on these matters. It is also fair to say that it had nothing new to say. We have been over all this ground many times before and have provided explanations of the type it has sought.

It is also fair to point out that, in our view, this legislation is compatible with the ILO convention, and I am sure the noble Lord will accept that there are many other ILO states that already have minimum service levels as part of their domestic legislation. We will, of course, ensure that any secondary legislation is also in compliance with all our international obligations.

I can also confirm in response to the noble Lord, Lord Collins, that the Government will launch a consultation on the draft code this summer, following consultation with ACAS. The code will be put to both Houses for approval in line with the procedure set out in Section 204 of the Trade Union and Labour Relations (Consolidation) Act, and we will consult for an appropriate period.

**Lord Collins of Highbury (Lab):** Can the noble Lord be more explicit? We are just about to go into the Summer Recess. August is a month when many people take holidays. I hope that he will be able to confirm, as with the previous statutory codes, that the public consultation will start in September and run for 12 weeks at least.

**Lord Callanan (Con):** I am afraid I cannot confirm that for the noble Lord. No final decisions have been taken yet, but it is our intention to get on with this as quickly as possible, so we will consult over the summer. We will leave an adequate period for responses to that consultation and then, as I said, the code will have to be approved by both Houses.

I understand the Opposition's principled objection to this Bill. Taking on board the point made by the noble Lord, Lord Fox, I suppose all legislation is political. We are a political House at the end of the day. We are all party politicians, so it should not be a great surprise to find that legislation is also political.

We have thoroughly debated this matter now on many different occasions. The House has asked the Commons to think again on a number of occasions; they have done so and have responded. I appreciate that noble Lords opposite do not like the outcome, but it is what it is. In our view, this is a vital piece of legislation that will give the public confidence that, when workers strike—which they are fully entitled to do—lives and livelihoods are not put at undue risk.

I hope the House, despite the reservations of noble Lords opposite, will now let this legislation pass to Royal Assent.

*Motion A agreed.*

## Levelling-up and Regeneration Bill

*Report (4th Day)*

*12.35 pm*

*Relevant documents: 24th and 39th Reports from the Delegated Powers Committee. Scottish, Welsh and Northern Ireland Legislative Consent sought.*

### *Clause 161: Locally-led urban development corporations*

*Amendment 146*

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

**146:** Clause 161, page 195, line 25, after "may" insert ", by order made by statutory instrument,"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name at page 195, line 35.

**The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con):** My Lords, we have reflected on the debate in Committee and the report from the Delegated Powers and Regulatory Reform Committee, and I reiterate my thanks to the committee for its work in relation to this Bill. We want to ensure that the designation of locally led development corporations by local authorities is appropriately scrutinised, and therefore these amendments, in line with the DPRRC's recommendation, apply the affirmative procedure to the orders establishing locally led urban and new town development corporations. I beg to move.

**Lord Stunell (LD):** My Lords, I welcome the government amendments which, as the Minister has said, bring decisions made by the Secretary of State on urban development areas back to Parliament in the form of affirmative resolutions rather than negative resolutions. In my view, which I have expressed frequently, far too much in this enormous Bill is set out in the form of decisions left entirely to the Secretary of State to fill in by way of statutory instruments. Far too often, the only restraint is the wholly inadequate procedure of negative resolutions. I am pleased that the Minister has recognised the overreach in the original drafting and has brought forward amendments to correct that.

In Committee, I expressed general support for the proposition of locally led development corporations, and that was helped on by the Minister's reassuring words to the effect that the wide discretion given to the

Secretary of State in Clause 162 to designate a development corporation is, in practice, entirely conditional on there first being a positive initiative from that locality. That is all the more important in view of the strange reluctance to include town and parish councils in the formal consultation process.

In responding to this debate, I would be very grateful if the Minister could make assurance doubly sure on that point of local initiation and leadership of the new generation of development corporations. I look forward to hearing her reassurance on that point.

**Lord Lansley (Con):** My Lords, my intervention on this subject will be brief. I did not speak on development corporations in Committee, but I have been following the subject very carefully. In response to this very short debate, or perhaps more appropriately in a subsequent letter, might my noble friend explain to us a little more about how the various forms of development corporations are intended to be deployed?

As far as I can see, in addition to the mayoral development corporations—which are not much affected by this Bill—we will continue to have scope for urban development corporations initiated by the Secretary of State, we will continue to have scope for new town development corporations initiated by the Secretary and we will have locally led urban development corporations and locally led new town development corporations that may be established at the initiative of local authorities under this Bill. By my count, we have five different forms of development corporations.

There is a certain amount of speculation about under what circumstances, in what areas and for what purposes these development corporations may be deployed, and about the Government's intentions. It would be reassuring to many to hear from the Government about that, and in particular about their presumption that they would proceed, particularly for new towns and new development corporations, by reference to those that are locally led and arise from local authority proposals, as distinct from continuing to use the powers for the Secretary of State to designate an area and introduce a development corporation at his or her own initiative. It would be jolly helpful to have more flesh on the bones of what these various development corporations look like and how they will be deployed by government.

**Baroness Taylor of Stevenage (Lab):** My Lords, those who have heard me speak in this Chamber will know that I am a great fan of development corporations, having grown up in a town that, apart from our historic old town, was created and, for the most part, built by Stevenage Development Corporation. At that time, the innovation of development corporations took a great deal of debate in Parliament to initiate, and we have hopefully moved on a bit towards devolution since the middle of the last century.

If there is to be parliamentary scrutiny of the establishment of development corporations, it is absolutely right that it should be done by the affirmative procedure, so we welcome the movement on that in Amendments 146 and 147, to ensure that the establishment of locally led urban and new town development corporations is drawn to the attention of both Houses, in the same way as those that are not locally led.

We hope that it will be the intention of government to scrutinise only the technical aspects of governance, for example, as it would be entirely against the principles of devolution that the Bill sets out to promote for any Government to effectively have a veto on whether proposals for a development corporation go ahead. During the passage of the Bill, we have talked about a new relationship of mutual trust between local and central government, and we hope that such parliamentary scrutiny will not be used to undermine that.

I absolutely agree with the noble Lord, Lord Lansley, about the importance of determining the nature of parliamentary involvement in different types of development corporation. Of course, we would have concern about Parliament intending to have a veto on the locally led ones. The other amendments in this group are consequential on the Minister's previous amendment on page 195. We look forward to her comments about the points raised.

**Baroness Scott of Bybrook (Con):** My Lords, I assure the noble Lord, Lord Stunell, that, yes, locally led development corporations will come from local authorities—they will put them forward.

My noble friend Lord Lansley brought up the different forms of development corporations. Rather than standing here and taking time, I would prefer to write to him and copy everybody in. I suggest that we might have a small group meeting about this when we come back in September so that any questions can be asked. I thank the noble Baroness, Lady Taylor of Stevenage, for her support for these amendments.

*Amendment 146 agreed.*

*Amendments 147 to 149*

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

**147:** Clause 161, page 195, line 35, leave out subsection (3)

Member's explanatory statement

This amendment is the first of a number that remove provision applying negative procedure to orders establishing locally-led urban and new town development corporations, and instead bring those orders within the existing procedures for such corporations that are not locally-led. The result is that affirmative procedure will apply (without hybrid procedure).

**148:** Clause 161, page 197, line 42, leave out "to (10)" and insert "and (7)"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name at page 198, line 19.

**149:** Clause 161, page 198, line 19, leave out subsections (8) to (10)

Member's explanatory statement

See the explanatory statement for the amendment in the Minister's name at page 195, line 35.

*Amendments 147 to 149 agreed.*

***Clause 162: Development corporations for locally-led new towns***

*Amendment 150*

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

**150:** Clause 162, page 202, line 1, leave out paragraphs (a) to (d) and insert "in each of subsections (3), (3B) and (3C), after "1," insert "1ZB,"."

Member's explanatory statement

See the explanatory statement for the amendment in the Minister's name at page 195, line 35.

*Amendment 150 agreed.*

***Schedule 14: Locally-led development corporations: minor and consequential amendments***

*Amendment 151*

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

**151:** Schedule 14, page 442, line 17, at end insert—

"(5A) In subsection (4), after "(1)" insert "or (1B)".

(5B) In subsection (4A), after "(1)" insert "or (1B)"."

Member's explanatory statement

See the explanatory statement for the amendment in the Minister's name at page 195, line 35.

*Amendment 151 agreed.*

***Schedule 16: Conditional confirmation and making of compulsory purchase orders: consequential amendments***

*Amendment 152*

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

**152:** Schedule 16, page 451, line 15, leave out sub-paragraphs (2) and (3)

Member's explanatory statement

This amendment removes a power that is no longer needed in the light of the conclusion of proceedings in Senedd Cymru on the Historic Environment (Wales) Bill.

**Baroness Scott of Bybrook (Con):** My Lords, government Amendment 152 relates to a consequential amendment on compulsory purchase. In light of the successful passage of the Historic Environment (Wales) Act through the Senedd Cymru, there is no longer a requirement to include a regulation-making power and associated provision under paragraphs 7(2) and (3) of Schedule 16. As such, these provisions are not required and should not form part of the Bill.

Government Amendment 153 seeks to add Part 7 of the Housing and Planning Act 2016 and Section 9 of the Tribunals and Inquiries Act 1992 to the definition of "Relevant compulsory purchase legislation" under Clause 177(6). The amendment is required because both Acts, or regulations relating to compulsory purchase made under them, make provision requiring the preparation of compulsory purchase documentation to which approved data standards published under Clause 177(3) should be applicable. I hope that the House will support government Amendments 152 and 153.

*12.45 pm*

Government Amendments 154 to 160 relate to compulsory purchase land compensation. They seek to ensure that the compulsory purchase compensation hope value direction measure already included in the Bill applies comparably and consistently in Wales. The amendments are being made at the request of the Welsh Government, who asked for the hope value direction measure to apply to the Welsh Ministers' CPO powers under the Welsh Development Agency Act 1975 for housing provision and to Welsh NHS trusts' CPO powers. The amendments will allow the Welsh Ministers and Welsh NHS trusts to include in their CPOs a direction for the non-payment of hope value, providing they can demonstrate that there is a compelling justification in the public interest to secure the direction. I therefore beg to move Amendment 152 in my name.

**Baroness Pinnock (LD):** My Lords, I thank the Minister for this group of amendments, which largely—not entirely—relate to the rights and responsibilities of Senedd Cymru. Throughout the Bill the Government have had to bring back, as amendments, changes to it to reflect the devolution rights and responsibilities of both the Scottish Government and the Senedd Cymru.

It strikes me as unfortunate that, even 10 years or more after devolution has become fully developed, the Government are still unable to understand that different nations of the UK have particular rights and responsibilities. They are unable to appreciate that or to understand the extent of those rights and responsibilities. It would be good to know that the lesson has reached the distant parts of the Government and that we will have no more of these hasty amendments to put right government legislation impinging on the rights of the devolved nations. Would it not be great if the Minister could give us that assurance?

**Baroness Taylor of Stevenage (Lab):** My Lords, this group brings up to date the provisions in the Bill so that they are appropriately applied to Wales. It also updates the list of types of compulsory purchase that can be made, subject to common data standards—we accept that this is important. We have had much discussion about the issues of hope value during the passage of the Bill, and it is therefore absolutely right that the Minister responded to Senedd Cymru's request to make that apply in Wales as well.

I associate this side of the House with the comments by the noble Baroness, Lady Pinnock. It would be helpful if these types of provisions could be consulted on with the Welsh, Scottish and Northern Irish Administrations before they come before this House. But I am grateful to the Minister for listening to the Welsh Senedd's request, and we are pleased to see these amendments coming forward today.

**Baroness Scott of Bybrook (Con):** I thank the noble Baronesses for their input. I say to the noble Baroness, Lady Pinnock, that we understand the devolved authorities' rights and responsibilities, but, as always, there is negotiation on any legislation that we put through which may affect them. The Government and the Welsh Government did not reach a settled position on the CPO powers until after the Lords Committee stage had concluded. As these things are complex, our devolved authorities also need time to discuss and make decisions. I can assure the noble Baroness that we are working closely with them all the time.

*Amendment 152 agreed.*

### *Clause 177: Common standards for compulsory purchase data*

*Amendment 153*

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

**153:** Clause 177, page 219, line 22, leave out "or" and insert—

"(fa) section 9 of the Tribunals and Inquiries Act 1992,

(fb) Part 7 of the Housing and Planning Act 2016, or"

Member's explanatory statement

This amendment adds further legislation to the list governing the types of compulsory purchase documentation which can be made subject to common data standards.

*Amendment 153 agreed.*

### *Clause 180: Power to require prospects of planning permission to be ignored*

*Amendments 154 to 160*

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

**154:** Clause 180, page 225, line 19, leave out from "is" to end of line 27 and insert "constructed or adapted for use as a separate dwelling and—

(a) in the case of a building in England, is to be used as—

(i) social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, or

(ii) housing of any other description that is prescribed, or

(b) in the case of a building in Wales, is to be used as housing of a description that is prescribed.";"

Member's explanatory statement

This amendment and the amendments in the Minister's name at page 234, line 23 and page 235, line 43 adjust the definition of affordable housing used in Clause 180 so that an existing definition relevant only to England is not made to apply in Wales.

**155:** Clause 180, page 225, line 32, at end insert—

"A1 Section 21A(1)(c) and (2)(c) of the Welsh Development Agency Act 1975 (acquisition by Welsh Ministers of land in England for Welsh development purposes)."

Member's explanatory statement

This amendment extends the power to direct that compensation be assessed without regard to potential planning permission so that it applies to acquisitions of land in England by the Welsh Ministers under the Welsh Development Agency Act 1975.

**156:** Clause 180, page 226, leave out lines 14 and 15 and insert—

"9 In the National Health Service (Wales) Act 2006—

(a) paragraph 20 of Schedule 2 (acquisition by local health board);

(b) paragraph 27 of Schedule 3 (acquisition by NHS trust)."

Member's explanatory statement

This amendment extends the power to direct that compensation be assessed without regard to potential planning permission so that it applies to acquisitions of land by NHS trusts in Wales.

**157:** Clause 180, page 232, line 41, at end insert—

"(3A) In the case of a compulsory purchase order made under section 21A(1)(b) or (2)(b) of the Welsh Development Agency Act 1975 (compulsory acquisition by Welsh Ministers of land in Wales for Welsh development purposes)—

(a) the reference in paragraph 1(4) to submission under section 15A(3) of the Acquisition of Land Act 1981 is to be read as a reference to preparation under paragraph 3B(2) of Schedule 4 to the Welsh Development Agency Act 1975, and

(b) the references in paragraph 1(4) and sub-paragraph (1)(a) to the confirmation of the order are to be read as references to the making of the order."

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name at page 236, line 8.

**158:** Clause 180, page 234, line 23, leave out from "is" to end of line 31 and insert "constructed or adapted for use as a separate dwelling and—

(a) in the case of a building in England, is to be used as—

(i) social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, or

(ii) housing of any other description that is set out in regulations made by the Secretary of State, or

(b) in the case of a building in Wales, is to be used as housing of a description that is set out in regulations made by the Welsh Ministers.";"

Member's explanatory statement

See the explanatory statement for the amendment in the Minister's name at page 225, line 19.

**159:** Clause 180, page 235, line 43, leave out from "is" to end of line 8 on page 236 and insert "constructed or adapted for use as a separate dwelling and—

(a) in the case of a building in England, is to be used as—

(i) social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, or

(ii) housing of any other description that is set out in regulations made by the Secretary of State, or

(b) in the case of a building in Wales, is to be used as housing of a description that is set out in regulations made by the Welsh Ministers.""

Member's explanatory statement

See the explanatory statement for the amendment in the Minister's name at page 225, line 19.

**160:** Clause 180, page 236, line 8, at end insert—

"(3A) In Part 1 of Schedule 4 to the Welsh Development Agency Act 1975 (procedure for compulsory acquisition under that Act), after paragraph 3A insert—

"(1) Where the Welsh Ministers prepare a compulsory purchase order in draft under section 21A(1)(b) or (2)(b), they may include in the draft order a direction that compensation is to be assessed in accordance with section 14A of the Land Compensation Act 1961 (cases where prospect of planning permission to be ignored); and if they do so the following provisions of this paragraph apply.

(2) The Welsh Ministers must prepare a statement of commitments together with the draft order.

(3) A "statement of commitments" is a statement of the Welsh Ministers' intentions as to what will be done with the project land should the acquisition proceed, so far as they rely on those intentions in contending that the direction is justified in the public interest.

(4) Those intentions must include the provision of a certain number of units of affordable housing.

(5) The statement under paragraph 3(1)(a) of Schedule 1 to the 1981 Act must include a statement of the effect of the direction; and paragraphs (ba) and (bb) of the same sub-paragraph apply in respect of the statement of commitments as they apply in respect of the draft order.

(6) The Welsh Ministers may amend the statement of commitments before the compulsory purchase order is made.

(7) But they may do so—

(a) only if satisfied that the amendment would not be unfair to any person who made or could have made a relevant objection for the purposes of paragraph 4 of Schedule 1 to the 1981 Act, and

(b) only if the statement of commitments as amended will still comply with sub-paragraph (4).

(8) If the Welsh Ministers decide to make the compulsory purchase order in accordance with the applicable provisions of Schedule 1 to the 1981 Act—

(a) they may make the order with the direction included if satisfied that the direction is justified in the public interest;

(b) otherwise, they must modify the draft of the order so as to remove the direction.

(9) If the order is made with the direction included, a making notice under paragraph 6 of Schedule 1 to the 1981 Act must (in addition to the matters set out in sub-paragraph (4) of that paragraph)—

(a) state the effect of the direction,

(b) explain how the statement of commitments may be viewed, and

(c) explain that additional compensation may become payable if the statement of commitments is not fulfilled.

(10) In this paragraph—

"the project land" means—

(a) the land proposed to be acquired further to the compulsory purchase order, and

(b) any other land that the Welsh Ministers intend to be used in connection with that land;

"unit of affordable housing" means a building or part of a building that is constructed or adapted for use as a separate dwelling and—

(a) in the case of a building in Wales, is to be used as housing of a description that is set out in regulations made by the Welsh Ministers, or

(b) in the case of a building in England, is to be used as—

(i) social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, or

(ii) housing of any other description that is set out in regulations made by the Secretary of State.

(11) A statutory instrument containing regulations under sub-paragraph (10) is subject to annulment in pursuance of a resolution of—

(a) Senedd Cymru, in the case of regulations made by the Welsh Ministers, or

(b) either House of Parliament, in the case of regulations made by the Secretary of State.""

Member's explanatory statement

This amendment duplicates the new power to direct that compensation be assessed without regard to potential planning permission for acquisitions of land in Wales by the Welsh Ministers under the Welsh Development Agency Act 1975.

*Amendments 154 to 160 agreed.*

### *Clause 183: Vacancy condition*

*Amendment 161*

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

**161:** Clause 183, page 238, line 15, leave out paragraph (a)

Member's explanatory statement

This amendment removes the provision requiring premises to be considered as vacant for the purposes of Part 10 when occupied by a trespasser (other than in cases caught by paragraph (b) of the same subsection, i.e. squatting in commercial premises).

**Baroness Scott of Bybrook (Con):** My Lords, I shall speak also to Amendment 161A. Together, the amendments bring us back to an issue raised in Committee relating to premises that are counted as vacant. I thank the noble and learned Lord, Lord Etherton, and others for bringing this issue to our attention and for meeting me and my noble friend Lord Howe to discuss it. We have proposed amended wording to clarify what is meant by the clause in question.

Amendment 161 will clarify that occupation by true "squatters"—for example, persons who have broken into commercial high street premises and are using them as their residence—will not count as occupation for the purpose of assessing the vacancy condition for a high street rental auction, but occupation by other types of trespassers, such as commercial tenants who have remained in occupation following the expiry of their lease, may do so. This will be achieved by removing the reference to trespassers in Clause 183(4), while retaining reference to people living at premises not designed or adapted for residential use.

Amendment 161A adds words to the clause to clarify that "count" in this context means counting as occupation. I beg to move.

*Amendment 161 agreed.*

*Amendment 161A*

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

**161A:** Clause 183, page 238, line 18, after "count" insert "as occupation"

Member's explanatory statement

This amendment makes a drafting clarification.

*Amendment 161A agreed.*

*Amendment 162 had been withdrawn from the Marshalled List.*

*Amendment 163*

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

**163:** After Clause 202, insert the following new Clause—

**"Support for pubs**

Within 120 days of the day on which this Act is passed, a Minister of the Crown must publish a strategy to support the pub industry and reduce the number of pubs closing."

Member's explanatory statement

This amendment is intended to help support the pub industry.

**Baroness Taylor of Stevenage (Lab):** My Lords, I might take a little longer over this set of amendments. Our Amendment 163 addresses the severe impact that the cost of living crisis has had on the pub industry in

the UK and asks that Ministers address it with a strategy to support this trade, which has such a unique and special place in the culture of our country.

The number of pubs in England and Wales continues to fall, hitting its lowest level on record. According to new research by the Altus Group, there were 39,970 pubs in June, down by more than 7,000 since 2012. After struggling through Covid, when it received welcome support from the Government, the industry is now facing soaring prices and higher energy costs. Over the past decade, thousands of pubs have closed as younger people tend to drink less—they do not all drink less; they tend to—supermarkets sell cheaper alcohol and the industry complains of being too heavily taxed. According to Altus, 400 pubs in England and Wales closed in 2021 and some 200 shut in the first half of 2022 as inflation started to eat into their profits. That brought the total number of pubs down to its lowest since its records began in 2005.

My noble friend Lady Hayman, who, sadly, cannot be in her place today, drew to the attention of the Minister during debates on the Non-Domestic Rating Bill concerns from the British Beer & Pub Association about the proposals for improvement relief. That is because pubs that are not directly owned and managed by the ratepayer—namely, those in tied or leased arrangements, which are apparently around 30% of UK pubs—become a much less attractive proposition for investment, as improvement relief can be guaranteed only on directly managed pubs. We urge Ministers to take this seriously and consider working with the pub industry to develop a strategy to support it in the medium and long term.

All the amendments in this group draw attention to some of the serious issues facing our high streets and, importantly, to the negative contribution that the current business rates system makes to those problems. I am very aware of proposals in the Non-Domestic Rating Bill currently making its way through the Lordships' House, but while we welcome many of them, they do not go far enough. We see that Bill as merely tinkering at the edges of an outmoded and outdated system. During my many years on the Local Government Association's resources board, successive attempts have been made to encourage government to get to grips with both a fair funding review and a comprehensive review of the non-domestic rating system. Unfortunately, the Non-Domestic Rating Bill does not do that, and even the measures it does contain bring concerns about the capacity of the VOA to enact them. It is a huge missed opportunity.

I was very grateful to the Minister for providing me and the noble and learned Lord, Lord Etherton, with an extensive briefing on the Non-Domestic Rating Bill. During it, she pointed out that consultation had not resulted in a call for major reform of the business rates system. I looked at the detail of the consultation and it was, as government consultations often are, a technical consultation framed around government's questions relating to the existing system, on matters such as transparency of the VOA, penalties for non-compliance, transition to online services, changes of circumstance, improvement reliefs, valuations, the multiplier, local discretionary relief, et cetera. What it absolutely did not do was encourage wider comment on whether the business rates system was fit for purpose in the first place.

The Local Government Association published its response to government proposals. It welcomed some of them, but it said:

> "The LGA will continue to argue for a sustainable local government finance system which conforms to the principles we submitted in our submission to the Business Rates Review; sufficiency, buoyancy, fairness, efficiency of collection, predictability, transparency and incentive. We published commissioned work examining alternatives for reform in January 2022. Only with adequate long-term resources, certainty and freedoms, can councils deliver world-class local services for our communities, tackle the climate emergency, and level up all parts of the country".

We firmly believe that there is a case for further reform of the business rates system. Our Amendment 273A and that in the name of the noble Baroness, Lady Pinnock, Amendment 282D, ask that the Secretary of State consider again the issue of non-domestic rates and the contribution they can make to levelling up and regeneration.

The major example I would give is that the Non-Domestic Rating Bill does nothing to address the very unfair advantage currently enjoyed by online businesses as compared to our high street businesses. The Centre for Retail Research found that 17,000 shops closed last year—that is 47 shops a day, the highest annual total in five years. More than 5% of retail staff lost their jobs last year and hospitality suffered a similar fate. Not all those failures are because of business rates, of course, but I am sure they are a contributing factor.

High streets have been hit hard and are increasingly run down, with hard-working business owners having to accept defeat in the face of impossible financial difficulties. While crisis relief was made available during the pandemic, there does not seem to be a long-term strategy to address the issues that businesses are facing, which will be critical to ensuring that every town or neighbourhood centre in the UK has the opportunities it needs to regenerate and level up.

Labour has a clear plan to scrap business rates and bring in wide-reaching reforms to even out the playing field, but we are still not clear about what the Government's long-term plan for business taxation will be. The threshold for rates relief for small businesses is still too low, and online giants are still not paying their fair share of taxes, with a digital service tax not high on the agenda—as far as we can see, it still sits in the "too difficult" box. How can we say to our communities that high street shops such as Marks & Spencer—known, valued local businesses—are paying more in tax than online giants such as Amazon? That is not levelling the playing field. Each loss of a much-loved store, pub, bank, post office or leisure facility is felt by our communities like a kick in the teeth, and worse than that is the feeling of helplessness that the Government are standing by and watching this happen.

*1 pm*

Many local authorities are engaged in the Herculean endeavour of trying to regenerate and bring to life their town centres and high streets. Some have benefitted from the bidding pots dished out by the Government. However, even these are not necessarily going to where they are most needed but simply to areas which have

[Baroness Taylor of Stevenage]
the resources to put together good bids. A comprehensive reform of the business rates system would ensure that those who benefit the most would pay more, and that would fund the support needed by those who struggle. That would be a real step towards levelling up.

On these Benches, we strongly support the amendment submitted in the name of the noble Lords, Lord Holmes and Lord Scriven, and my noble friend Baroness Hayman, on the development of regional mutual banks in the UK. I have seen at first hand how effectively these operate in Germany to support the SME sector, and in his excellent article for *City A.M.*, the noble Lord, Lord Holmes, sets out that in 2021 SME funding was £600 billion in Germany, whereas in the UK it was only £57 billion. I am not going to steal any of the noble Lord's lines, but he is right in his aim to increase financial inclusion for SMEs. I hope our amendments will be accepted by the Minister. I beg to move.

**Baroness Pinnock (LD):** My Lords, Amendment 282D in my name would require the Chancellor of the Exchequer to undertake a review of the business rates system. The Government know that the current system is flawed and fails to reflect modern business practices. There have been several Bills in the last few years that have tweaked the non-domestic rating system—as the Minister knows, we have one currently before the House—but these are just tweaks to a complex set of business taxation that is in desperate need of fundamental reform.

The system is basically flawed, as illustrated by the fact that the Treasury pays out billions of pounds in support of small businesses every year, via the small business rates relief. This demonstrates that there has to be a more effective way to levy businesses to support the local services on which they depend.

It is not only me saying that business rates need fundamental reform. Many business commentators have urged for a fundamental review. The Centre for Cities published a report in 2020 which proposed 11 changes to the business rates system. The IFS has published a report pointing to spatial inequalities that are "profound and persistent".

A fundamental review is long overdue, and the amendment in my name simply asks that a review considers the effects of business rates on high streets and rural areas, and compares that information with an alternative business taxation system—for instance, land value taxation, which was referred to in the IFS report. The spatial inequalities explored in the report are at the heart of the levelling-up agenda. Any detailed review of business rates should gather relevant data on the impact of business rates on different parts of the country.

The Government have recognised what they have called "bricks vs clicks", and in the Financial Statement earlier this year raised rates for warehousing. However, that steers clear of the major issue facing our high streets, which is the competitive advantage that online retailers have over high street retailers when it comes to the rates applied for business rates.

I have mentioned several times in this Chamber the glaring difference between warehousing for a very large online retailer, which may be at the rate of £45 per square metre, compared with the rate for a small shop in a small town of £250 per square metre. The change to raise the rates for warehousing does nothing to address that vast gap. For instance, it was reported that the change introduced this year by the Government cost Amazon £29 million. That might sound a considerable sum to some people, but it is pennies in the pot for a big online retailer such as Amazon. It really needs to start paying its fair share towards local services. Its little vans whizz round our streets, and Amazon needs to pay for the upkeep of them. The rate of its contribution is small in comparison to the services it uses. That is the argument for a huge, fundamental review of the system as is stands.

We also have to take into account the impact of any changes on local government. A large portion of a council's income now derives from business rates, and any changes to the system by the Government to reduce the burden on businesses—which they did in the Statement by freezing the multiplier—results in compensation to local government for those changes. This again demonstrates that the system is not fit for purpose.

We currently have a system that says that these are the rates, but oh dear, they are too big for charities, small businesses and so on, and then provides relief which costs the Treasury billions of pounds a year. When any further changes are made, that has an impact on desperately needed income for local councils. Therefore, there will have to be compensation in that regard also. This demonstrates that the business rates system, as currently set up, is really not doing the job it needs to do. I repeat that a fundamental review is essential.

It is important to add that the way in which business rates income is demonstrated, via the tariffs and top-ups arrangements, creates further unfairness This becomes more noticeable as councils struggle to balance their budgets.

A business rates system that encourages business development and growth must be at the heart of any strategy to bring more prosperity and jobs to those areas defined in the White Paper as being the focus for levelling up. I do not need to spell out what that might mean, but it could perhaps be reduced rates for some areas, to encourage development and the movement of businesses to those areas.

The noble Baroness, Lady Taylor of Stevenage, raised similar issues in moving her amendment to support the pub industry, which we support. My noble friend Lord Scriven has signed the amendment in the name of the noble Lord, Lord Holmes of Richmond, who I do not think is in his place, regarding the establishment of regional mutual banks. We support this approach as another way of empowering regional businesses and entrepreneurs to take financial decisions which meet local ambitions, rather than the more risk-averse national banks. The noble Baroness, Lady Taylor of Stevenage, used the comparator of Germany. She is right that the mutual banks in Germany have done much to support their regionally-based industries, which does not happen in this country because of the way our banking system is set up.

I really hope the Minister will be able to say in her reply that the Government accept that the business rates system as currently devised is not fit for purpose and that they are looking to have fundamental review to reform it to the benefit of those places—because this is the levelling-up Bill, and I shall keep saying it: anything we do in the Bill should be in support of the levelling-up agenda. This does not do it, and that is why we need a reform of the business rates system.

**Baroness Scott of Bybrook (Con):** My Lords, Amendment 163 in the name of the noble Baroness, Lady Taylor of Stevenage, concerns the support for our pubs. We are all aware of the importance of our local pubs; they provide space for people to come together, they provide jobs and they support local economies. But we also know that the past few years have been a challenging time for our pubs, with the Covid-19 pandemic and the current high prices, caused by Russia's invasion of Ukraine, conspiring to put pressure on already tight operating margins.

Through the pandemic, we recognised that the hospitality sector needed to be more resilient against economic shocks. That is why, in July 2021, we published our first hospitality strategy, *Reopening, Recovery and Resilience*, which covers cafés, restaurants, bars, nightclubs and pubs.

In 2021—this is important for the issue raised by the noble Baroness, Lady Taylor, of listening to the sector—we also established a Hospitality Sector Council to help deliver the commitments set out in the strategy. The council includes representatives from across the sector, including UKHospitality, the British Beer & Pub Association and the British Institute of Innkeeping, as well as some of our best-known pub businesses. While we fully agree with the aim behind the noble Baroness's amendment, the strategy she asks for already exists.

Moving on to Amendment 279, I notice that my noble friend Lord Holmes of Richmond is not in his place, but the noble Baroness, Lady Taylor of Stevenage, brought it up on behalf of the noble Baroness, Lady Hayman of Ullock, as did the noble Baroness, Lady Pinnock, on behalf of the noble Lord, Lord Scriven, so I will respond. The amendment would require the Secretary of State to report to Parliament within three months of Royal Assent on the existing barriers to establishing regional mutual banks in the United Kingdom and instruct the Competition and Markets Authority to consult on barriers within competition law for this establishment and identify possible solutions.

I make it clear that the Government are supportive of the choice provided by mutual institutions in financial services. We recognise the contribution that these member-owned, democratically controlled institutions make to the local communities they serve and to the wider economy. However, regional mutual banks are still in the process of establishing themselves here in the United Kingdom, with some now in the process of obtaining their banking licences. It is therefore too early to report on the current regime and any possible limitations of it for regional mutual banks.

I know that my noble friend Lord Holmes was interested in how regional mutual banks have performed in other jurisdictions and how we could use these examples to consider the UK's own capital adequacy requirements. In this instance, international comparisons may not be the most helpful to make. The UK is inherently a different jurisdiction, with different legislation and regulatory frameworks from those in the US, Europe and elsewhere. Abroad, some regional mutual banks have been in existence for centuries and have been able to build up their capital base through retained earnings. In the UK, regional mutual banks are not yet established and are continuing to progress within the UK's legislative framework.

Additionally, the Competition and Markets Authority plays a key role in making sure that UK markets remain competitive, driving growth and innovation while also protecting consumers from higher prices or less choice. It is very important to note that the CMA is independently responsible for enforcing UK competition and consumer law. The Government cannot instruct the CMA to undertake a consultation. The Treasury is continuing to engage with the mutuals sector and other industry members to assess how the Government can best support the growth of mutuals going forward. I hope that this provides sufficient reassurance to my noble friend on this issue.

*1.15 pm*

Finally, I thank the noble Baronesses, Lady Hayman of Ullock, Lady Taylor of Stevenage and Lady Pinnock for tabling their Amendments 273A and 282D, which I will take together. Both amendments would require the Chancellor to undertake a review of the business rates system. I understand the noble Baronesses' concerns here, but, as noble Lords are no doubt aware, the Government have only recently concluded a comprehensive review of the business rates system, supported by an extensive public consultation exercise, with the final report on that review having been published in the Autumn Budget 2021.

The Government of course recognise that the conditions for business are a concern for many noble Lords and have taken action to help ratepayers up and down the country through a significant package of rates support. The review recognised the importance of the rates system in raising funds for critical local services in England, worth around £22.5 billion in 2022-23 and concluded that there was no consensus on an alternative model of taxation that would be able to replace business rates revenue.

The review did, however, identify several significant improvements to be made to the business rates system, and noble Lords will of course also be aware that the Non-Domestic Rating Bill, which was considered in this place only earlier this month, delivers on the major rates reforms called for by stakeholders. That Bill will bring into law the conclusions of the business rates review, most notably a move to more frequent revaluations. This will ensure that the system is fairer and more responsive to changes in the market and will mean that bills are more accurate and reflect current economic circumstances and trends.

In addition to modernising the tax by moving to more frequent revaluations, the Non-Domestic Rating Bill also brings forward changes to make the valuation process more transparent, to deliver new reliefs to support investment in property improvements and to

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give local authorities greater flexibility to provide relief to local businesses. I trust that noble Lords will continue to support the safe passage of that legislation through this House.

This, of course, is on top of other changes emanating from the Government's rates review that have already been delivered, including the exemption of renewable plant and machinery from rates. Together, these changes have reduced the burden on businesses in England through support for businesses worth £7 billion. But the Government are not resting on their laurels. In the Autumn Statement 2022, the Government went further and announced additional business rates measures, effective from 1 April 2023, worth an estimated £13.6 billion over the next five years. As part of that package, the Government announced that the tax rate would be frozen for 2023-24. This real-terms cut to the tax rate is worth around £9.3 billion over five years.

In addition, the retail, hospitality and leisure relief will be extended for a further year and made more generous. The retail, hospitality and leisure relief is, in 2023-24, providing eligible businesses with 75% off their bills, up to a maximum of £110,000 per business. This is worth an estimated £2.4 billion to ratepayers, many of whom are on our high streets.

In response to the concerns of businesses in England, the Government have delivered a transitional relief scheme for the 2023 revaluation, which, subject to the passage of the Non-Domestic Rating Bill, will be funded by the Government, not by the ratepayer. This is expected to save businesses £1.6 billion. This has meant that 300,000 ratepayers have seen reductions in their rateable value at the rate of revaluation and an immediate fall in their bills effective from 1 April 2023, rather than seeing reductions phased in over the life of the list. This makes the rates system fairer and more responsive, and it ensures that ratepayers can benefit from the revaluation as soon as possible.

The Government have also delivered a supporting small business relief scheme, which ensures that ratepayers losing some or all of their small business or rural rate relief as a result of the revaluation will see their increases capped at a maximum of £600 in 2023-24. This is worth over £0.5 billion over the next three years and will protect an estimated 80,000 small businesses. That is on top of the generous existing package of statutory support provided to small businesses through the small business rates relief, which ensures that over 700,000 of our small businesses can continue to pay no rates at all, with an additional 76,000 benefitting from reduced rates.

I reassure noble Lords that the amendment is entirely unnecessary. A review has only recently concluded, and the Government remain committed to delivering on the conclusions of that review. We have already taken the first steps towards that and are delivering on our further commitments through the Non-Domestic Rating Bill. I understand why noble Lords have raised their amendments, but I hope that I have provided assurance that the concerns underpinning the two amendments are already being addressed through the changes the Government are delivering to the business rates system, through both legislation and the generous and wide-ranging support that we have made available to ratepayers. I therefore ask the noble Baronesses not to press their amendments.

**Baroness Taylor of Stevenage (Lab):** My Lords, I am grateful for the very detailed and thorough response from the Minister, as ever. I thank her for her comments on the Hospitality Sector Council. I have a question for her, to which I am happy to receive a response in writing: were the views of the Hospitality Sector Council on the non-domestic rates taken into account in the drafting of both this Bill and the Non-Domestic Rating Bill before your Lordships' House?

I turn to the issue of regional mutual banks. I am sorry that the noble Lord, Lord Holmes, is not in his place, because he has been a very good champion of this sector. It would be a big step forward for levelling up and regeneration to have those banks, which would work with local government and local communities on the economy of local areas.

I point out that, through the work I have been doing with both the Co-operative Party and the Co-operative Councils' Innovation Network, I know that regional mutual banks are already being delivered in Wales with the support of the Welsh Government, but in England there are still considerable barriers and hurdles to overcome. My colleagues in Preston have been engaging with this process, but it is highly complex.

We appreciate that financial security is paramount in the development of a regional banking sector, and we are very pleased to hear that that sector has the Government's support, but we need to work as quickly as we can to overcome the barriers to that. We genuinely believe that, without a switch from the centralised banking system that we have in this country to a much more regional sector, we will not be able to reach the full potential of local areas.

On the issues with the business rates review, I have pointed out the technical nature of that consultation process and the concerns we still have about the resources needed to enact the provisions of the Non-Domestic Rating Bill, particularly in relation to the Valuation Office Agency. There are still concerns around the appeals process, which takes far too long and can leave both businesses and local councils hanging on for years, in some cases, while appeals are settled.

The noble Baroness, Lady Pinnock, was right to raise the issues of tariffs and top-ups, which are not very efficient at making sure that the funding from non-domestic rates gets to where it needs to go. They are not structured enough to ensure that, where you have poorer parts of better-off areas, the funding gets to where it needs to go.

We note that many concessions on business rates are coming forward in the Non-Domestic Rating Bill, which we welcome, but changes to the multiplier are giving cause for concern; it is no good giving businesses concessions with one hand and then taking them away with the other. Our fear is that if there is not a radical and different approach to both fair funding and the business rates system, it will be more difficult to achieve levelling up or regeneration. That said, I am happy to withdraw my amendment at this stage.

**Baroness Scott of Bybrook (Con):** I will quickly respond to the noble Baroness. I will look at what was discussed with the Hospitality Sector Council and will write to the noble Baroness. I am sure that all the other issues will be discussed further in the NDR Bill.

*Amendment 163 withdrawn.*

*Consideration on Report adjourned.*

## Building Safety (Leaseholder Protections etc.) (England) (Amendment) Regulations 2023

*Motion to Approve*

*1.25 pm*

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

That the draft Regulations laid before the House on 12 June be approved.

*Relevant documents: 45th Report from the Secondary Legislation Scrutiny Committee and 44th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)*

**The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con):** My Lords, in moving the draft regulations, I will also set out why the Government oppose the amendment tabled by the noble Earl, Lord Lytton.

The regulations amend the leaseholder protection regulations 2022 to address points raised by the Joint Committee on Statutory Instruments last July, as well as two stayed judicial review applications, and clarify some provisions to ensure the leaseholder protections have the effect originally intended. While many noble Lords will be aware of the background to the leaseholder protections, I will start by providing some context and background to these regulations. Before the Government introduced the leaseholder protections, many leaseholders found themselves liable for unlimited costs for remediating historical safety defects in their buildings—costs that they could not afford for problems that were not their fault. Since the provisions came into force last summer, many leaseholders have either been protected from these costs entirely or had their liability firmly capped.

During the debates on the affirmative regulations last July, the Government committed to bring forward further changes should it become apparent that they were necessary. Contrary to what the noble Earl, Lord Lytton, purports, these regulations do just that: delivering additional detail needed to address a number of operational points that had come to light in the early operation of the leaseholder protections. The regulations also address points raised in two stayed judicial review applications and points raised in the Joint Committee on Statutory Instrument's report of July 2022, and make further changes to clarify and simplify the provisions in the 2022 regulations.

Since the protections came into force last summer, we have engaged extensively with leaseholders, landlords and others affected, including lenders and conveyancers. The Government do not consider that a formal consultation would add to our understanding of the issues specifically covered by these regulations, and I note that there is no requirement under the Building Safety Act 2022 to consult formally on these regulations. We have also engaged in two rounds of pre-laying scrutiny with the Joint Committee. In its 44th report of the 2022-23 Session, it reported the regulations for one case of defective drafting in relation to a lack of consequence for the failure to notify the landlord associated with the developer of their liability.

The Government are grateful to the Joint Committee for its careful scrutiny of these regulations and have considered this issue carefully. As set out in the department's memorandum, published by the committee, the Government are satisfied that there are no issues with the regulations that will prevent the process operating successfully. We believe it is imperative that the regulations come into force before the Summer Recess to alleviate the issues facing named managers and landlords. However, we will, of course, monitor closely the progress of future cases, and if it becomes apparent that further changes are necessary we will come back to Parliament with proposals.

*1.30 pm*

The House will be aware that the Secondary Legislation Scrutiny Committee has stated that the Explanatory Memorandum should provide further information about the judicial review applications. I am grateful to the committee for its recommendations, which the Government have carefully considered. I can confirm that we have replaced the Explanatory Memorandum to include the information provided to the committee and set out in the appendix to its report.

These regulations can be considered in three parts. First, the regulations address points raised in the ninth report of the Joint Committee on Statutory Instruments of July 2022. The regulations we are considering make it clear it that L—the body responsible for managing the building, be that the landlord, resident management company, right-to-manage company or named manager—must issue a notice to the landlord with the liability to pay to recover the remediation amount and set out the information to be included in the notice, which is the amount to be recovered and information on the appeals process.

The regulations clarify the powers of the First-tier Tribunal in determining the outcome of an appeal. If the appeal is unsuccessful, the appellant will have to pay the amount set out in the notice. If the appeal is successful, the appellant will have to pay nothing, or an alternative amount determined by the First-tier Tribunal.

The regulations remove Regulation 6(1) from SI 2022/859, which purports to allow a leaseholder to provide a leaseholder deed of certificate to their landlord. The Joint Committee considered this to be ultra vires, but nothing prevents a leaseholder doing so voluntarily. The regulations clarify that failure to provide a completed leaseholder deed of certificate and the required evidence will result in the lease being treated as if it were not a qualifying lease, and provide that "shared ownership lease" has the same meaning as that used in Schedule 8 to the Act.

Secondly, the regulations address points raised in two stayed judicial review claims. The regulations make provision for "named managers" to recover the cost of relevant measures in relation to relevant defects from

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building owners and landlords in the same way as resident-led management companies. The regulations also provide for L to be able to recover notified amounts as a civil debt, and for them to be able to pursue a remediation contribution order to recover costs, such as from a building owner or a developer. The regulations provide that landlords associated with the developer must be notified of their liability to pay for relevant measures or relevant defects, but nothing in the regulations stops L instead pursuing, for example, a landlord who met the contribution condition.

Thirdly, the regulations deliver additional detail to clarify the intended effect of the leaseholder protections. The regulations also provide for Homes England—the department's delivery partner for remediation work outside London—to apply to the First-tier Tribunal for a remediation order or remediation contribution order. The regulations provide that a landlord may apply for an extension to the appeal process of 30 days with the permission of the First-tier Tribunal, to enable out-of-court engagement. The regulations also provide for an additional point where the landlord must update the landlord certificate: within four weeks of becoming aware that a leaseholder deed of certificate has been submitted.

Finally, the Schedule to these regulations replaces and simplifies the existing landlord certificate, and amendments are made to the information regulations so that the current landlord does not need to provide certain evidence where they accept liability for a relevant defect. This reduces the information-sharing requirement to that essential for the leaseholder and L to determine liability. The regulations also provide that current landlords must provide L with copies of the landlord and leaseholder certificates within a week of completion or receipt, to enable them to apportion costs in line with the 2022 regulations. Where the current landlord fails to comply, the regulations provide that costs cannot be passed on to leaseholders.

The regulations are a key step to improve the implementation of the leaseholder protections set out in the Building Safety Act and regulations. They serve a specific purpose to provide the detail needed to give full effect to the leaseholder protection provisions, and they address concerns raised last summer by the Joint Committee on Statutory Instruments and points raised in the two stayed judicial review applications.

As my honourable friend the Minister of State, Rachel Maclean MP, noted in the debate in the other place on Monday 17 July, there is more to do on leaseholder protections, some of which will require primary legislation, and the Government will come back to the House with further proposals in due course. On the basis of the information I have set out for your Lordships, I hope noble Lords will join me in opposing the regret amendment to the Motion and supporting the draft regulations, which I commend to the House.

*Amendment to the Motion*

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

At end to insert "but this House regrets that they have been laid without provisions to remedy operational defects in the Building Safety (Leaseholder Protections) (England) Regulations 2022 (SI 2022/711) and the Building Safety (Leaseholder Protections) (Information etc) (England) Regulations 2022 (SI 2022/859); and further regrets that His Majesty's Government have not adequately consulted relevant practitioners prior to the laying of these Regulations."

**The Earl of Lytton (CB):** My Lords, before I proceed, I thank the Minister for reaching out. We did not succeed in getting a meeting together, but I hope that the bullet points I submitted to her office yesterday were of some help.

As the Minister explained, these regulations amend two previous sets of regulations, SI 2022/711 and SI 2022/859. It is true that these new regulations streamline some of the aspects in those regulations. My point is that they fail to deal with the fundamentals of those earlier regulations, which, given where we are now and what is known about their operation, should have been a proper matter for consideration in the application of regulatory power. They represent a theoretical approach at best and, from all that I have heard from practitioners, do not accord with the real world of buying and selling leasehold flats nor the technical or practical issues associated with conveyancing in particular.

It leaves one wondering where to start with all this. There are too many unknown issues: the extent of remediation; the responsibility that would arise under the Building Safety Act for defects; the true legal liability for those defects having arisen; the cost of remediation; and the potential for "known unknowns", to quote Donald Rumsfeld, or indeed currently unknowable remediation requirements and their likely cost.

Professionals tell me that they do not believe that the comments made by the Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments have been properly addressed. Why is that? There are too many variables, exclusions and qualifications in the process of leaseholder certificates of registration, the content and accuracy of requests to the landlord, the landlord certificates themselves, and the extent to which the landlord is, in turn, reliant on information from others not within its control. There is an essentially continuous iterative process of company worth evaluation and liability assessments. The time lag where land registration is an essential part of the information package, which I understand might occur, is governed by the fact that the Land Registry has a backlog it is working through of several months' duration.

There seems to be a disparity between the information prevailing on 14 February 2022, which is the mandatory date when matters have to be assessed—certainly as regards matters of company ownership and so on—and the relevant facts relating to the financial consequences of remediation, which will arise only as a result of the regulations tabled initially last summer and not at some point in February at the whim of the Secretary of State. I am told that the timescales are too tight in many instances, leading to a high risk of default liabilities and perhaps setting in place a liability for something not caused by the person deemed liable. I feel that that is unlikely to procure a beneficial result.

The strict application of four weeks—or seven days, as the case may be—is severely inflexible and, I believe, an impediment.

All of the above will lead to uncertainty, risks and pitfalls, including, as I mentioned, default liability for remediation or for contribution in full, in part or not at all. The latest clarification on whether a leaseholder's certificate of registration is required in an application for a landlord's certificate is that a failure to provide it means that they fall into the non-qualified category; as I understand it, once something is non-qualified, it is non-qualified for ever. I fail to see how that is the advantage that the Minister appears to claim for it. I would be grateful if she could provide better detail about how leaseholders are supposed to check the accuracy of the information provided in that landlord's certificate. Do the Government intend to use their powers under Part 11 of the Bill, which is entitled "Information about Interests and Dealings in Land", to ensure that those certificates are in fact accurate? If not, I do not see how it is possible to verify this.

As for the certificates themselves, paragraph 15.c. of the department's own guidance says that a landlord's certificate must be provided

"within 4 weeks of them becoming aware of a relevant defect which was not covered by a previous landlord's certificate".

How much of a rolling event might that be? The things that affect that certificate were not crystallised on 14 February 2022 but are on an ongoing continuum. I see that as a real question of a practical nature. It means that a fresh certificate can be issued as and when new relevant facts emerge, which is intrinsically inimical to the concept of a reliable landlord's certificate even if it could be deemed accurate at the time of its issue. It simply opens the door to more arguments about who knew what and when and whether the information provided could have objectively been deemed accurate, with all the consequences that flow from that in terms of recovery, accuracy and liability for cost, not to mention potential arguments through litigation.

Going on from that, the reason why 14 February is so important is because paragraph 17.b. says that the landlord's certificate must

"be based on the circumstances of whoever was the relevant landlord on 14 February 2022".

The circumstances of that person may be one thing but the practical and factual basis of what may be germane to that is, as I say, something that happens in real time—today, not 18 months ago. I assume from this that the legal situation is therefore taken at one date but the circumstances that may be germane to making that calculation in fact accrue at another date; I will leave that to one side for the moment. The facts may create a completely moveable feast in terms of whether you take one subsequent piece of information and then feed it back in. How is this loop ever going to be broken?

Does the Minister dispute this assessment? It seems that there is a disparity between the valuation date in question and the facts that are germane to that. It is essential that the financial information about landlords, particularly landlord groups, is provided in the landlord certificate and is accurate. Any inaccuracy could make the difference between a leaseholder paying nothing or up to the £15,000 cap. Concerns have been raised with me that landlords are, for understandable reasons, using the accounting definition of "a group" when it comes to assessing their net worth, rather than the definition of "associated" in the Building Safety Act.

*1.45 pm*

I will give the House a couple of examples where there is, I believe, some ambiguity about which companies should be included in a landlord group. Section 121(8) of the Act states that:

"A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X's wishes".

Rothesay Life plc, an insurer, has provided significant loans to a number of ground rent funds. In return, the landlord company borrowers are believed to have agreed that the ground rent should be paid into the bank accounts controlled by Rothesay rather than to them, assigning the rights to insurance policy then to Rothesay. The company then requires consent from Rothesay in turn before undertaking legal action against any leaseholders in breach of leases. There are also restrictions on further borrowing asset disposals and voting rights. Can the Minister clarify whether these extensive powers over the operation of landlord companies constitute control for the purposes of the Building Safety Act? I am bound to say that practitioners are not at all clear?

Another example is Jetty Finance DAC, one of the Long Harbour fund group of companies. Its shares are held on trust by Sanne Fiduciary Services Ltd. According to its annual report, the original shares entitle holders to receive notice of and vote at any general meeting of the company, to ordinary dividends as may be declared by the directors from time to time, and to participate in the winding up of the company. Can the Minister clarify whether she thinks that Sanne Fiduciary Services should be considered as part of a landlord group under Section 121(6)?

There are numerous other niggles. For instance, a Property Law UK article states that a tribunal can deal with a situation where false claims are made on the certificate but have no jurisdiction to force a landlord to provide a certificate where one has not been provided. Another is measurement of the height of buildings, which has become so mission-critical that it is now being regarded as a fairly high-risk exercise in itself.

There is some gaming of the system going on and suspicion in professional circles that some landlords are offering lease extensions at bargain prices, counting on the Government clarifying in due course that the protections will not apply retrospectively to leaseholders who have extended their leases since 14 February 2022, doubtless hoping that leaseholders see this as a good deal that will make their property more mortgageable but hopefully not with them realising or being advised by their conveyancer that they would lose their leaseholder protections as a result. One professional told me of a client's case where a housing association landlord tried to present height measurements, saying that the building did not meet the requirements for a certificate thereby but then provided a photograph showing clearly that it was five storeys and covered in cladding. You would have thought that the measuring of building

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and setting out whether it was more or less than five storeys would be straightforward, but it seems that even the simplest thing cannot be got right.

Property experts tell me that the complexity of the whole matter has resulted in confusion and a degree of mayhem in transacting leasehold flats, with several significant outcomes. First, UK Finance is the parent of the lenders, if I can call it that. In its handbook, at paragraph 5.14.17, there is an instruction to the effect that landlord certificates are required for all leasehold properties, regardless of height, meaning that everybody gets caught up, not just a few hundred thousand hapless leaseholders.

Secondly, legal and conveyancing professional indemnity insurers are already advising that no work on blocks over 11 metres should be undertaken, whether for sales, purchases or remortgages. That means that practitioners who are affected by that are effectively prevented from participating in that work. The evidence is that mortgage valuers are now starting to get concerned that they are at risk through being unable to ascertain the sort of discount that should be applied for non-qualifying leaseholds, as against qualifying ones that might be identical and in the same block.

I understand that there may be a further, growing issue about the very basis of measurement of the height of buildings. Apparently, the requirement is to use a basis of measurement that is defined by—and, as I understand, produced for—a wholly different purpose. It is not surprising that practitioners and others are withdrawing from this area of work. As a result, leaseholders are unable to sell, remortgage or purchase property and may be caught, regardless of the actual need for remediation. This has a very wide and pernicious effect.

We already know that there are about 1.7 million non-qualified leaseholds. Not all of them will be faced with remediation costs, but a very significant number may, in fact, end up being coloured by the same issues as those that are. How many more are we going to add by the default mechanisms in these regulations? How much detriment do the Government think it reasonable to visit on the wholly innocent home owners in this category? All these regulations assume a theoretical path that is not matched in reality. I think unsaleable property will become a growing issue. It is in a very important market sector. These are not generally flats; we are dealing with relatively high-density development on scarce urban land. It is where people very often have their first home. It is near facilities, jobs and public transport—the things people need when they are first setting up. Is it really the Government's intention to substantially prejudice this sector of the market? I suggest that is a mistake.

I offered the Government a way out of this more than a year ago when we were discussing the Building Safety Bill, as it was then. It was then labelled the "polluter pays" amendment. It is not labelled that any more, because I felt that was a bit tendentious. It is now called the building safety remediation scheme, and I have retabled it in the context of the Levelling-up and Regeneration Bill. It is not true that there is not an opportunity, in terms of legislative time, to deal with this if the Government simply had the will. It seems to me that they prefer to have an approach that is based on a hideous level of complexity and has unspeakably detrimental outcomes for individuals. I continue to offer my solution to the Government for a consumer protection issue that they really need to address. As I say, it is not the case that the Government can do nothing, or nothing without further primary legislation. They have all the tools and the opportunity ready right now.

This is not a static situation. I have seen suggestions that perhaps things will settle down in due course. How many years do noble Lords or the Government think it will take for this matter to settle down? How much grief do noble Lords think it is reasonable to visit on an often quite impecunious but entirely innocent part of the home-owing sector? I apologise for the length of my explanation, but those are the reasons why I think these regulations are a significant missed opportunity, which is why I tabled my amendment. I beg to move.

**Lord Stunell (LD):** My Lords, I remind the House that my noble friend Lady Pinnock moved a regret Motion on 21 March on a previous version of this statutory instrument. She pointed out that the Government's poor drafting had led to scores, perhaps hundreds, of innocent leaseholders having to foot a bill for remediation of fire safety defects that should have been paid by landlords. Your Lordships supported my noble friend, and the regret Motion was passed by 185 to 138. Today, the Government are having their third go at getting this particular set of statutory instruments right. They have been challenged in court, have had stern criticism from the Secondary Legislation Scrutiny Committee, and now have reluctantly come back with some amendments and clarifications, which the noble Baroness set out from the Front Bench very clearly a few minutes ago.

The Government's statutory instrument that we are amending had four cases of defective drafting and one of ultra vires, and generated two judicial review cases, which is quite a hefty charge list. I think the Minister, in presenting to your Lordships in this debate, has been skating over some pretty thin ice, because she did not exactly acknowledge the pedigree, if that is the right word, of the document that the noble Earl, Lord Lytton, has brought to our attention today. She did say that she was leaving the door open to a fourth or fifth iteration of the document, and possibly primary regulation, if it turned out that it was even worse than she thought. That seems not a very satisfactory way to proceed with legislation in this Parliament. Sadly, it is not an unusual circumstance; a very high proportion of statutory instruments have to be corrected after the event—not necessarily corrected twice more, with a promise of more to follow.

In the debate in March, the Minister was not able to tell noble Lords how many innocent leaseholders had fallen foul of the first version of the defective statutory instrument. She did say, by way of mitigation of her offence, so to speak, that the liability of those leaseholders was limited and capped, and that it could not get any worse than them having to pay £15,000, which I am sure they found a great consolation.

The Government will, of course, eventually find out about those who have wrongly been charged more than £15,000 because, the cap having been exceeded, the cost falls back on to the Treasury. Is the Minister in a position to improve on the complete lack of information she had about the impact of the defects in the original version when she spoke last time? How many cases of charges exceeding the leaseholder cap have come to the attention of the department? What help and advice have been given to those who have found themselves in that position? It will be a pity if she says that she is disinclined to help rectify the errors exposed at that time.

I hope that we will get a bit more of an apology than the Minister was able to offer when moving the regulations at the beginning of this debate. I hope she can do a little better than the repetitive circumlocutions in the Explanatory Memorandum. I am pleased to hear that more explanatory notes are being issued, although I note that announcing it from the Front Bench in the debate on whether these are good regulations is rather late in the day for noble Lords to have absorbed what the new information contains. It may be that the Minister would like to say a little more about that.

*2 pm*

I am reminded that when the first version was produced, MPs were assured by the then Minister that it was in good order. By the time we got to the second version, he was still assuring MPs—in fact, I could better say that he was swearing blind—that everything was in order. Now we are back for a third time and I am sure that the Minister, in a very polite way, will assure us all that they are absolutely fine. Except, actually, she did not; she said that there might be further amendments. I wonder, when we consider the detailed and thorough explanation that the noble Earl, Lord Lytton, has given us of the technical problems of a professional industry grappling with this statutory instrument, whether this story is anywhere near over.

For innocent leaseholders watching the Government's halting and error-strewn work in this area, the latest episode confirms their worst assumptions. We all know that errors happen, but when accidents and errors are always in the house's favour, the punters begin to suspect that something worse than a mishap is happening. It seems that due diligence is not being practised. There is a certain carelessness, perhaps even recklessness, in the impact on innocent leaseholders of what has been going on.

This reminds me of some elements of the Windrush scandal, where a department completely failed to grasp what it needed to do, and the spirit in which it needed to do it, in order to achieve the policy outcome that it said it wanted to achieve. It seems to me, on the third time round, with the promise of a fourth time round, that this is rapidly escalating into one of those circumstances. I hope the Minister can give us some reassurance on that very important matter.

**Baroness Taylor of Stevenage (Lab):** My Lords, while we do not object to this regulation's contents in principle, we too regret that it has been necessary for the Government to bring this instrument forward. After all, the regulations consist mostly of technical amendments to regulations previously made under the Building Safety Act after it came into force. Surely the need for such basic definitions could have been anticipated in the drafting of the previous regulations. We appreciate fully that these are not simple matters, but instruments coming forward to correct what are largely obvious deficiencies and admissions in the drafting of previously approved regulations do not exactly inspire confidence in the Government's approach to leaseholder protection and to the building safety crisis more generally.

At the heart of this issue are the millions of leaseholders who are losing sleep and their hard-earned cash over the remediation costs issue. During the passage of the Building Safety Bill, Members of both Houses warned about the consequences of rapidly overhauling what was already a complex and technical piece of legislation in order to reflect the Government's belated change of approach. Indeed, my honourable friend Matthew Pennycook MP said at the time that

"this is no way to make good law".—[*Official Report*, Commons, 20/4/22; col. 191.]

The noble Lord, Lord Stunell, referred to a previous regret Motion tabled by the noble Baroness, Lady Pinnock, regarding judicial reviews and attempts at redrafting.

All this could have been avoided if the Government had just grasped the nettle and brought forward a comprehensive Bill to abolish the outdated and anachronistic system that leasehold tenure is. I pay tribute to my noble friend Lord Kennedy of Southwark's work—he has brought this matter before the House so many times—but we still seem to be no further forward. The Secretary of State described leasehold as an outdated feudal system in January this year and promised to bring forward a Bill to scrap it, saying that

"the fundamental thing is that leasehold is just an unfair form of property ownership. In crude terms, if you buy a flat, that should be yours. You shouldn't be on the hook for charges which managing agents and other people can land you with".

That should apply to remediation costs, too.

The Law Commission, asked to review leasehold by the Government, produced a report proposing an overhaul of the right-to-manage process and suggested that landlords' legal costs should not be passed to leaseholders. Yet here we are, seven months later, with no sign of a Bill so far and increasingly complex instruments coming before us to try to sort out the mess that the Government have made in previous regulations. The Secondary Legislation Scrutiny Committee said in its report on 29 June, which has already been highlighted by the Minister:

"We are disappointed that this is a further example of a wider concern we have highlighted in recent reports, whereby we have had to ask basic questions about the rationale of changes made in an instrument and report the answers in our weekly reports, when such information should have been in the EM accompanying the instrument".

What assurances can the Minister give that, in rectifying the deficiencies and omissions in previously approved regulations, the same errors will not recur in respect of the many other building safety instruments we still need to consider? What is the Minister doing to ensure that the overall quality of statutory instruments

[Baroness Taylor of Stevenage]
that come before this House is improved so that they are not the subject of amending instruments and judicial review?

The noble Earl, Lord Lytton, set out in great detail the technical issues in relation to this regulation. Our concern is that, while we understand that the Government's intention is to ensure that landlords cannot avoid their responsibility to leaseholders in relation to building safety through complex corporate structures, if the instruments are not properly drafted, they will provide loopholes that enable that avoidance. What reassurance can the Minister give us today that this new instrument is sufficiently tight in its drafting to ensure that landlords will have to meet their obligations? The introduction given to us by the Minister, which referred to potential further redrafts and potentially even further primary legislation, does nothing to reassure us.

We note that Regulation 4 adds Homes England to the list of interested persons who may seek remediation orders and remediation contribution orders. Leaving aside the obvious question of why it was not included from the outset, particularly given that it administers the Building Safety Fund outside London, the Minister in the other place, Rachel Maclean, clarified that it is not the Government's intention that Homes England takes over these responsibilities from government. However, the regulation does give it new responsibilities, so will Homes England be provided with further funding to fulfil these new responsibilities?

While we understand and share some of the concerns that sit behind the amendment moved by the noble Earl, Lord Lytton, the instrument contains a series of perfectly sensible refinements to previous regulations, the effect of which, we hope, will be to streamline the landlord certificate and leaseholder deed of certificate process. We take no issue with those measures, but we regret that, although the instrument makes the necessary changes, it is a missed opportunity to resolve other glaring deficiencies in the Building Safety Act that the Government should have resolved by now, such as the gap relating to leaseholders extending or varying their lease on or after 14 February 2022, which the noble Earl, Lord Lytton, referred to, which the Government promised in this House on 2 May that they would legislate to resolve as soon as parliamentary time allowed, and the fact that service charges to cover remedial acts were sent out to leaseholders quickly before the Act came into force, because those charges could not be applied retrospectively. That has left leaseholders at the expense of litigation to resolve the matter. We, too, are interested in the cost to the Treasury of claims that exceed the cap referred to by the noble Lord, Lord Stunell. Why are the Government not using this instrument to address the shortcomings I have mentioned?

I thank the noble Earl, Lord Lytton, for moving his amendment to give us the opportunity to have this debate, and I thank noble Lords who have contributed. I look forward to hearing the response from the Minister.

**Baroness Scott of Bybrook (Con):** I thank the noble Lords for their contributions today. I will try to answer as many points as I can, but I imagine that on many points, particularly those from the noble Earl, Lord Lytton, I will have to write. I reiterate my invitation to him to meet us to talk about some of his concerns.

The noble Earl asked about the complexity and clarity of existing regulations and what they do to address the concerns of the SLSC and the JCSI. As I said, this is what these regulations are for. They are there to address those concerns. The department will be publishing further guidance on GOV.UK to accompany the regulations. This will be published shortly after the regulations come into force.

The noble Earl also asked why the regulations do not address his concerns in relation to some leaseholders being liable in some circumstances. I am aware that I responded previously to the noble Earl when he brought forward his "polluter pays" amendments recently, which I now understand are being called building safety remediations. He seeks to return us to a subject that your Lordships debated extensively in the spring of last year, in what was then the Building Safety Bill. I say once more to the noble Earl, with the greatest of respect, that this House and the other place considered his arguments very carefully last year and rejected them. I still do not think that the Levelling-up and Regeneration Bill is an appropriate place to try and reopen these issues.

In any event, the noble Earl presents his amendments—I thought it was "polluter pays", but it is now building safety remediation—as though that is not what the Act and the various government schemes do. His scheme seeks to use the planning system to force compliance, as does the Government's responsible actors' scheme. We are told that the proposed scheme would avoid expensive litigation, yet it would replace the expanded jurisdiction of the First-tier Tribunal, which is now dealing with a significant number of cases, with that of the High Court, where costs and delays are far higher. The noble Earl's scheme would not make a significant difference to leaseholders, other than to set back the progress of remediation by over a year as the industry and leaseholders work to understand yet another new system, just as they get to grips with the Building Safety Act.

The noble Earl also asked whether liability should fall on L for unavoidable errors in certificates. Under the leaseholder protection regulations, as he will know, L is the person with managing and repairing obligations. It is the current landlord who must provide the landlord certificate, not L. Where the current landlord produces a certificate that does not meet the prescribed requirements, liability for the relevant defect falls to them. L, the person responsible for the maintenance and repairs, may pursue them for amounts owed via a remediation contribution order.

The noble Earl also asked about consultations with practitioners and leaseholders, including those who have been prevented from selling. I set out in my opening speech that the department has engaged with numerous practitioners, including landlords, named managers, conveyancers and lenders. I can confirm that this was done through written correspondence to the department and stakeholder round tables. I reiterate that the department is not required to consult on these regulations.

The noble Earl also asked about the ability of leaseholders or professionals, in particular, to check facts in landlord certificates. There is no expectation on any party to verify the information set out in the landlord certificates, and these regulations do not change that. Regulation 11 of SI 2022/711 provides that those leaseholders may apply to the First-tier Tribunal for an order, where they have a reason to believe that the information in a landlord certificate is incorrect. He also asked about the volume of information required to be sourced and collected. I have said before that regulations reduce the evidence requirement or burden on landlords where they accept liability for a relevant defect.

The noble Earl asked about the disparity between ascertainable facts, as at 14 February 2022, and subsequent facts coming to light at a later stage. The tests apply on 14 February 2022 to ensure that landlords cannot circumvent the rules, particularly in relation to their net worth. Subsequent facts are not considered for the purpose of the tests. Where the landlord has since sold their assets then their liability, determined on 14 February 2022, falls to the person who bought the landlord's asset, but the original landlord may still be pursued by a remediation contribution order. The Building Safety Act 2022 provides for insolvency orders to recover remediation amounts from a company that is in the process of winding up, and associated companies of that insolvent company may be held liable.

The noble Earl then asked about the need for the landlord to gather information from L. We are aware of the issues concerning the landlord being unable to legally enforce the provision of information in relation to relevant defects in the building. It is of course in the leaseholders' interest for the person responsible for repairs and maintenance, often resident led, to provide that information to reduce a qualifying leaseholders cap. We are looking to bring forward primary legislation to resolve this issue as soon as parliamentary time allows.

*2.15 pm*

The noble Earl then asked about the operation of the concept of associated companies and landlord groups. The term "associated person" was defined in the Building Safety Act 2022 and amended in the February regulations SI 2023/126. As the noble Earl will recall, it is not being amended for these regulations.

The noble Earl asked about UK Finance requiring a landlord certificate. I would like to clarify that a landlord certificate is not normally required for the sale of a leasehold property. On 20 December, the six major mortgage lenders committed to lend on properties in buildings in England of 11 metres or five storeys and above, and there is no requirement for the building to have been remediated, providing it is part of a developer or government remediation scheme or the property is protected by the leaseholder protections in the Building Safety Act, as evidenced by the leaseholder deed of covenant only.

We are working with UK Finance and representative bodies from the conveyancing industry to ensure that the positive impact of a mortgage lender's commitment is fully understood and customers experience a smooth customer journey when buying or selling a property. UKF has given its commitment to DLUHC that it will update the handbook and engage with the conveyancing sector to address wider concerns with the lender instructions.

The noble Earl asked about professional risks and PI insurance for this. We are working closely with representative bodies from the conveyancing industry to ensure conveyancers fully understand the protections provided in the Building Safety Act and the solutions in place to fix buildings so they can advise clients looking to buy impacted flats appropriately. We do not consider these regulations have a material impact on the market or the other issues raised by the noble Earl.

The noble Earl asked about leaseholders losing their protection as a result of failing to provide a leaseholder deed of certificate. Where the leaseholder does not provide the certificate in the required timeframe, they may be held liable for remediation costs as if they were not qualifying for that relevant defect. These regulations provide that a landlord must update their landlord certificate to take into account a new leaseholder deed of certificate. Therefore, if a leaseholder provides one at a later date, their qualifying status and protections can then apply.

Finally, the noble Earl asked about lease extensions. I have said to noble Lords before, most recently on Monday, that we are aware of the issue concerning leaseholder protections where leases are extended or varied and are looking to bring forward primary legislation to resolve this issue as soon as parliamentary time allows. This is not something that could have been addressed through these regulations.

I am pretty sure that I missed more than one issue, but as I said, we will look at *Hansard*, respond in writing and put a copy in the Library and send it to everyone who has spoken today. I am very happy to have a further meeting because these are very technical issues, and I am happy to speak further on them

The noble Lord, Lord Stunell, asked why the Government are amending leaseholder protections again. I thought I had made it clear, but I want to assure the noble Lord that the Government absolutely committed in the House last summer to making any necessary amendments to the leaseholder protection regulations. That is exactly what we are doing. The Building Safety (Leaseholder Protections etc.) (England) (Amendment) Regulations 2023, which came into force in February, corrected an error in the definition of associated persons to ensure that complex corporate structures cannot avoid liability, which was always the Government's intention. Those regulations were able to be dealt with under the negative procedure, which is why were able to bring them into force the day after making them. It was important to do that to ensure that landlords could not avoid the new requirement of these regulations. These regulations, considered under the affirmative procedure, minimise information sharing requirements for landlords and provide clarity to ensure the protections have the effect in the way they were originally intended.

I am sorry that I still do not have the number of cases that were affected—we may never get the full numbers. I think the noble Lord said that the cap on the amount of money that would be paid by these cases would be £15,000; just to clarify, it is £1,500.

[Baroness Scott of Bybrook]

I can tell the noble Baroness, Lady Taylor of Stevenage, who spoke on behalf of the noble Lord, Lord Kennedy, that as I have said many times at this Dispatch Box, we will bring further leaseholder reforms. That was in our manifesto and we will bring them forward in this Parliament.

**The Earl of Lytton (CB):** My Lords, I am grateful for the Minister's comments, for the support of the noble Lord, Lord Stunell, who has much greater credibility in this area than I will ever have, and for the support and comments of the noble Baroness, Lady Taylor of Stevenage.

In a sense, I shrug my shoulders slightly here, because the cat is already coming out of the bag. Yesterday, my attention was drawn to the case of URS Corporation Ltd v BDW Trading Ltd, which is a defective premises case which looks set to attach liabilities to all sorts of people, not just the developer. I appreciate the Minister's comments about my building safety remediation scheme, which tries to effect strict liability for defects rather than this rather curious containment process that is neither fish nor fowl. None the less, if the Minister does not accept it, and the Government cannot take it on board, I think interaction with the courts and litigation will probably procure it but in a slower, more painful and more gruesome fashion. That is where I think things are heading.

I want to take a moment to pay tribute to some of the people who have helped me. Alison Hills, Zahrah Aullybocus and Stephen Desmond are practitioners who have been very happy to share their experiences with me—and their experiences seem to be widely shared by other professionals. What the department is saying and what is happening in reality seem to be two quite different things.

I quoted from the UK finance guidelines, which are the ones that people look to at the moment, and commented on the professional indemnity insurance issues. These are not matters of regulation. This is not a case of raising a magic wand and saying, "We have made a regulation and therefore it is all right, is it not?" This is the court of practical application in real life.

It appears to me that, notwithstanding what the Minister says, the department does not seem to have consulted in depth with practitioners, otherwise I would not be getting all this feedback from people who have attended seminars and courses and discoursed with specialists in this area. All sorts of people, from the likes of Falcon Chambers downwards through a number of specialist firms and practitioners, are saying the same thing. I suspect that, whatever consultation and discussion process is going on—noting that they do not have a duty at all to consult on this—the Government do not appear to be getting their information from the sources they need, and the proof of the pudding is what is happening in the market.

The Government do not appear to have acquainted themselves with the actual experience of leaseholders and professionals. Over recent weeks, some 240 individuals have written to me about one thing or another—not necessarily about this particular set of regulations but about the way in which the Building Safety Act provisions and regulations are not working for them. I believe that is simply the tip of the iceberg.

Although I will continue to press for much more significant reform, and I appreciate the support from all round the House on this, it is not my intention to put this to a vote. I end by saying that I am grateful for the positive points of clarification that the Minister has been able to make on landlord certificates and leaseholder extensions. I certainly look forward to the opportunity of having a dialogue with her and her officials as time goes forward, and perhaps bring together some of the experts that have been helping me. With that, this is not the time to press this amendment, and I beg leave to withdraw.

*Amendment to the Motion withdrawn.*

*Motion agreed.*

## Royal Assent

*2.26 pm*

*The following Acts were given Royal Assent:*

Employment Relations (Flexible Working) Act,
Equipment Theft (Prevention) Act,
Child Support (Enforcement) Act,
Social Housing (Regulation) Act,
Illegal Migration Act,
Electronic Trade Documents Act,
Strikes (Minimum Service Levels) Act.

## Veterans Update

*Statement*

*The following Statement was made in the House of Commons on Wednesday 19 July.*

"With permission, Mr Speaker, I would like expand on the apology delivered by the Prime Minister this afternoon for the unacceptable hurt caused to LGBT members of our nation's Armed Forces by the 1967 to 2000 ban on homosexuality. It was not acceptable and it was not what the brave men and women it affected deserved. For that, on behalf of the Government and the Armed Forces, I am deeply sorry.

For hundreds of years, joining the British Armed Forces has been a career choice full of opportunity, adventure and self-improvement; one of the most fulfilling and stimulating occupations a young person can choose. But it is also one of self-sacrifice and bravery. This morning, we published the independent review into the service and experience of LGBT veterans who served prior to 2000. It makes for miserable and distressing reading. It is only right that the House takes the time to acknowledge and reflect on those veterans who have shared their experiences with the review.

I, along with a number of colleagues in the House, served in our Armed Forces when the ban was in place. I cannot imagine what it must have been like for someone to join the Armed Forces, buoyed up by that great spirit of service, only to discover, to their horror, that many believed they did not fit. I cannot imagine what it must have felt like to be hounded out of a job

they loved simply on account of their sexuality. Nor can I imagine what it must have been like to lose their livelihood, their family and their home simply because of the person they chose to love, yet that was the experience of many sailors, soldiers and aviators over decades, and it happened here—in this country—little over 20 years ago. The report published today brings the experience to life for us and spotlights the hurt felt by those affected. For that, I am truly grateful.

The ban was introduced in 1967—unbelievably, after the Sexual Offences Act 1967 decriminalised same-sex sexual acts in private between consenting adults. To add to the injustice, when the ban ended at the beginning of the millennium, the stories of those who suffered were forgotten and their records were buried. Additionally, in 2010 and 2011, in line with Government policy agreed by the Association of Chief Police Officers, the Ministry of Defence enacted a policy to destroy legacy police investigation records concerning decriminalised sexual offences, so that historical decriminalised convictions could not show up on criminal record checks of service personnel. I assure veterans that this was not a cover-up and does not mean that their wider service records have been destroyed.

I want to place on the record my thanks and gratitude to Lord Etherton and his team for compiling this comprehensive report. It was commissioned in January 2022 and, since, 1,128 people have responded with their experiences, many in substantial detail. I pay particular tribute to all those who came forward. They have shown tremendous courage in chronicling traumatic experiences, which for many had been causing grief and groundless shame for decades. I also place on record my admiration and thanks to Fighting With Pride, and especially Craig and Caroline, who have held the baton for so long.

The testimonies make truly harrowing reading. They paint a shocking and shameful picture of a Defence that is hard to comprehend. The enforcement of the ban became something of a witch hunt. The testimonies detail investigations, invasive searches and examinations, degrading tests, brutal bullying and, in some cases, sexual abuse. One doctor who joined in 1984 describes how he had to perform a test for which there was no medical or clinical basis. Some who thought they could confide in their chaplains were stunned to find their details were passed to their superiors.

For those affected, the hardships impacted every aspect of their lives. Reputations were demeaned and defamed. Commissions were surrendered and officers demoted by multiple ranks. Veterans who served with distinction, awarded medals in famous campaigns from the Falklands to the Gulf, were stripped of their medals.

We cannot turn back the clock, but we can make amends and take action. This report makes 49 recommendations. My department, alongside the Office for Veterans' Affairs, the Department for Health and Social Care and others across Government, in partnership with the devolved Administrations and the charity sector, all have a role in delivering the report's recommendations. Many in the LGBT veteran community have been eagerly awaiting the publication of this report, and rightly so—they have been waiting for decades to be heard. I am pleased to say that, since we received this report at the end of May, multiple government departments have been busy working through the recommendations to ensure that we come to the House today accepting, in principle, the vast majority of the report's recommendations. While we agree with the intent behind them, we may deliver a number in different ways from that described in the report.

We will set out those differences when we publish the Government's full response to the review after the summer recess, but I assure the House: that will be the time when we can not only deliver restitution and redress to the LGBT veteran community, but make sure that the House properly debates the report and the Government's response to it and its recommendations. This of course is a statement today. While I welcome all colleagues' challenges and requests on it, I have decided specifically that a debate in the House should take place to give a chance to debate the Government's recommendations. That is the right thing to do. Although that may take the summer, it is important that both Opposition and our colleagues can hold me or my successor to account. In fact, we have already delivered six of the recommendations today; the Prime Minister delivered the first this morning at the Dispatch Box.

Importantly, we have set up a digital front door, which went live today at midday, to offer information on veterans' services, support and restorative measures to those affected by the ban. I encourage LGBT veterans to visit it to see what support is available to them now, and to stay informed as our delivery of the recommendations is rolled out. I am happy to be drawn on further details on the recommendations during today's questions but, as I said, the House should have proper time to debate and scrutinise them.

I am glad that today's MoD is a very different place today from the Defence of the late '60s to '90s. Our LGBT colleagues are an integral and undifferentiated part of the Defence family, making a fantastic difference all over the world. At the start of this month, the Minister for Defence People, Veterans and Service Families, my right honourable friend the Member for South West Wiltshire, Dr Murrison, met LGBT members of our Armed Forces and veterans before they marched at London Pride. The occasion has become a celebrated part of our military calendar. Today's MoD policies are geared towards LGBT issues. There is training for LGBT allies and thriving LGBT staff networks.

There is no place for prejudice in the modern Armed Forces. However, things are by no means perfect, which is why we continue to improve on our zero-tolerance policy towards discrimination. We should not forget that we could not have reached this point were it not for some incredibly brave people. I pay tribute to those who have campaigned for justice over the decades, including Fighting With Pride, Rank Outsiders and the Armed Forces Legal Action Group.

Cultural change takes time, particularly in such large organisations as our Armed Forces. But it can only really begin when individuals are prepared to stand up and be counted. This Government have shown they care about righting historic wrongs. That is why we brought forward this review. Once we have taken the time needed to fully work out how to

deliver recompense for this community, we look forward to being back at the Dispatch Box to outline those details.

In his preface to the report, Lord Etherton notes:

'The survivors have waited for at least 23 years for acknowledgment of what they have suffered, and for justice and restitution.'

Today is about that acknowledgment. It is about recognising the saddening personal accounts and the deep traumatic hurt that the historic ban has caused. It is about acknowledging the adversity they overcame. It is about celebrating the spirit of service they displayed. And it is about taking the time to acknowledge their importance within our Defence family, serving or veteran.

I was struck by one particular quote in the report from a veteran:

'I don't feel I am a veteran. I have never asked for help. I don't feel like my service was recognised.'

Today, we want to say to all those ex-soldiers, sailors and aviators, many of whom are in retirement: you are one of us, you belong to our community and, in choosing to put yourself in harm's way for the good of your colleagues, your community and your country, you have proven yourselves the best of us.

I say again to the veteran community—I am deeply sorry for what happened to you. The very tolerance and values of a western democracy that we expected you to fight for we denied to you. It was profoundly wrong. I am determined as Defence Secretary, and as a veteran, to do all I can today to right those historic wrongs, so that you can once again take pride in your service and inspire future generations to follow in your footsteps."

*2.27 pm*

**Lord Coaker (Lab):** My Lords, I begin once again by associating His Majesty's Opposition with the Prime Minister, the Defence Secretary and the noble Baroness, Lady Goldie, and thank them for their full and heartfelt apologies yesterday following the report of the noble and learned Lord, Lord Etherton, which highlighted the appalling and disgusting treatment of LGBT+ military personnel between 1967 and 2000. I also pay tribute to the noble and learned Lord, Lord Etherton, for his excellent report, and to fellow Peers such as the noble Lord, Lord Lexden, and my noble friend Lord Cashman, who have continually raised these issues with other Members of your Lordships' House. It is an outstanding report by the noble and learned Lord, Lord Etherton.

I spent much of this morning reading the report, which highlights this disgraceful policy and its consequences. It is worth reminding ourselves what it was. I make no apologies for quoting from the report again and putting it on record:

"The policy was that no person subject to service law who was gay, lesbian, transgender or transitioning due to gender dysphoria, or who was perceived to be such, even if they were not in fact, could be or remain a member of the armed forces".

The consequences of this were horrific, and have only now been truly exposed through the bravery of those who suffered. One can only imagine the strength and courage that it has taken for these individuals to come forward. In the call for action, 1,128 responses were received. Harrowing stories are told by these men and women—service personnel who would, or indeed have, put their lives at risk for their country in defence of our freedom and liberty.

This is not in some bygone age centuries ago but in all our lifetimes, right up until the year 2000. Some 20,000 LGBT+ veterans were jailed, dismissed, outed to their families, assaulted or abused, often sexually. Many lost jobs, pensions and honours and could not wear their uniforms at remembrance events—not to mention the impact on their self-worth and self-esteem. It is important that these testimonies and this evidence are heard, as individuals recall what happened to them.

In particular, I will recount one such piece of evidence, which seemed to me to sum up the horrific prejudice that led to these barbaric and sickening practices. Page 64 of the report says that, on HMS "Norfolk", one of our warships,

"there was a Defence Council Instruction … kept in the sickbay safe called 'Unnatural Offences'".

This testimony says that gay people were labelled "deviants" and "disgusting". The instruction set out procedures for an "intrusive forensic medical exam"—unbelievable. Testimony after testimony shows the consequences of this shocking prejudice.

The report details a number of helpful and important recommendations that cannot undo what happened but can try to put right, as far as possible, the continuing hurt, pain and injustice. Can the Minister outline how these various recommendations are to be implemented and how we will ensure that this is done quickly? How will we ensure that all those who are eligible are made aware of their entitlements under these new processes? How is eligibility to be defined?

The Defence Secretary said that the intent of some of the recommendations is accepted but will be delivered in a different way. Which recommendations are these, and will discussions continue with LGBT+ veterans' groups and individuals to ensure their consent to this approach? Is there any timeframe for the application for the restoration of pension rights, compensation or financial assistance, and the restoration of medals? Will all military personnel affected by this ban now be rightfully entitled to wear their military uniform or, where it has been confiscated from them, have it returned in time for this year's remembrance events? The Defence Secretary rightly spoke of the need for a "zero-tolerance" approach in our Armed Forces today. Can the Minister outline how we are ensuring that this is the case and that anyone who has concerns today can come forward, be supported and, where necessary, have the appropriate action taken?

This was an appalling failure by many Governments. Men and women bravely serving their country were subject to the most appalling abuse—a policy officially sanctioned. This is a scandal of immense proportions that we must put right. We cannot undo the past, but we must do all we can, as quickly as we can, to put right this historic injustice. So many still live with the horrors of the past; the least they can expect is for us to do all we can to bring, as far as we can, their nightmare to an end as soon as possible.

**Baroness Smith of Newnham (LD):** My Lords, from these Benches I too very much welcome the report from the noble and learned Lord, Lord Etherton. We talked about some of these issues yesterday, but it is absolutely right to put on the record again how wrong it was that the ban was in place and to give the apologies of this nation to those who were forced to leave Her Majesty's Armed Forces, whether because they were homosexual or because they were perceived to be so.

The history is shocking. The ban was wrong, but the way it was enforced was absolutely repugnant. The report gives testimony after testimony from former LGBT members of the Armed Forces and those who were not LGBT but, in some cases, were perceived to be so. How on earth could we have had a piece of legislation that even talked about someone being "perceived to be" so? Who was supposed to make the decisions or the judgment about how somebody looked, dressed or walked? What world had we taken ourselves into, and what right did the Ministry of Defence have to put forward a set of rules for men and women who only wanted to serve their country in the best way possible?

There is a tragic case, outlined on pages 78 and 79, of somebody now in their sixties who had only ever wanted to be a Royal Marine, and at 15 they were finally allowed to sign up and put their name forward. Then, after a drunken night out, another male youngster, also of 16, ended up in his bed. The person who gave their testimony now was not homosexual but was subjected to an examination that, as he said, was not with his consent, and he was forced to leave the Royal Marines. As a country, we need to do everything possible to make reparations to those who lost their careers and their dignity.

The cases outlined here are tragic. Following some of the points made by the noble Lord, Lord Coaker, I would like the Minister to give the House a sense of the timeline that His Majesty's Government have in mind for responding to all the recommendations in this report and, where they do not accept the recommendations, to make explicit what alternatives are being put in place to ensure that justice finally can be given to veterans and the families of those who have already died. There is a suggestion in here of a recommendation that interested parties who are sufficiently close should be able to make a case for veterans who have passed away, or perhaps committed suicide because of the way they were treated. I would like to know what His Majesty's Government propose for people being able to bring cases, whether legislation is going to be brought forward and what role Parliament will play, because we all need to make sure that any changes and reparations are done in a timely manner. We are talking about justice being denied for at least 23 years, but for many people more than half a century. This needs to be rectified as soon as possible.

Finally, in light of the comments in both the report and the Secretary of State's Statement on Wednesday, can the Minister reassure the House that nobody in His Majesty's Armed Forces today faces injustice and prejudice because of their gender identity or sexual orientation, or even—heaven forbid—the perception of either of these, because we really need to have moved on?

**The Minister of State, Ministry of Defence (Baroness Goldie) (Con):** My Lords, I thank both the noble Lord, Lord Coaker, and the noble Baroness, Lady Smith, for their very helpful introductory remarks and observations, with which I entirely associate myself, particularly their passionately expressed sentiments about just how wrong, unjustifiable and unacceptable this ban was, not to mention its brutal enforcement. I said yesterday that I pay tribute particularly to the courage of those who have come forward, and I hope that by doing so they will feel that, at long last, they have been able to speak in safety, knowing that their testimonies will not just add cogency to the report, which they have done, but be respected, and that there will be a genuine attempt by government to respond to the appalling, atrocious experiences they endured.

I will deal specifically with some of the points raised. Before doing so, I will move some of the glasses next to the Dispatch Box; it is a bit like a cocktail bar here. It is slightly less enlivening in the imbibing sense, but still slightly cluttered.

The noble Lord, Lord Coaker, was interested in the broad frame of eligibility. I double-checked that myself and think that it is pretty explicit from the terms of reference given by the noble and learned Lord, Lord Etherton. In particular, page 212 of the report says that the intention is that this should be

> "an independent account of the service and experiences of LGBT veterans who served in Her Majesty's Armed Forces between 1967 and 2000".

That is a qualifying criterion. Indeed, the noble and learned Lord reiterates that on page 251, when he comes to deal with:

> "Restitution, recognition and just satisfaction".

I cite that to clarify these aspects.

The noble Lord, Lord Coaker, also asked about implementation, as did the noble Baroness, Lady Smith. I can confirm that a full implementation plan with details on how those affected can access restorative measures will be published in due course. I can further confirm that a government website page went live online yesterday to give further guidance. With specific reference to that plan, I would say that nothing is intended to be either elusive or evasive about this response.

As my right honourable friend the Secretary of State made clear in the other place yesterday, we have to consult over the summer with all the interested groups that have been so supportive and helpful to the noble and learned Lord in contributing to his review and report, and we have to discuss with them how best we can deliver on the recommendations. My right honourable friend also indicated yesterday that, while we absolutely accept in full the spirit of the recommendations, there may be some areas where we have to look at delivery in a slightly different fashion. If your Lordships look at the breadth of the recommendations, it is fairly clear that they cover a wide spectrum of delivery agencies—some will be within the control of the Westminster Government, others not—but the noble and learned Lord has very helpfully provided further advice as to how he thinks the other agencies should approach these responsibilities.

[Baroness Goldie]

I will give an example of where there has to be discussion over the summer. My right honourable friend the Secretary of State, in the other place yesterday, took as

"an example: the veterans badge".—[*Official Report*, Commons, 19/7/23; col. 294.]

We agree, in principle, that it absolutely should be given. However, some members of the LGBT community would say that they are veterans, so they want to be part of the whole veteran family and do not wish to be differentiated; they want the same badge as everyone else. Then there are others who want a separated badge—so there is no easy answer at the moment as to how we approach this. That is indicative of the kind of discussion that will be necessary over the summer months, requiring careful, engaged and sensitive discussions with those who can help to inform us.

The same goes for financial provision. Again, there will be, I think, hugely varying views from applicants as to what they seek, and there has to be sensible determination about how the applications will be treated, particularly in relation to pensions. As your Lordships will be aware, there is now a website giving advice and either the information is on yesterday's new website or there is a link to where such advice can be received.

As my right honourable friend made clear yesterday in the other place, and as I make clear, we are very happy to work with the Opposition. We would welcome discussions and contributions, because this is not about party politics; this is about the British state, through all our different agencies and all the different existing conduits, doing whatever we can to deliver this long-awaited restoration, compensation and recognition of just how badly things went wrong.

The noble Lord, Lord Coaker, specifically asked about uniforms. Yes, veterans who were dismissed will be able to wear their uniforms. He also asked about the Remembrance Day service this year. It would be a very laudable objective for that to be achieved, and I am sure that it will be very prominent in the discussions over the summer. I want to assure your Lordships that this is an open door; the Government want to do everything possible to facilitate delivery of the recommendations.

The noble Baroness, Lady Smith, asked in particular about deceased veterans. The intention is that, yes, representatives of deceased veterans should be able to benefit from the recommendations in the report.

The noble and learned Lord, Lord Etherton, has suggested a time period of 24 months for everyone. That is sufficient to allow everyone to be informed of what is happening. I hope that, if people wish to avail themselves of the recommendations, restitutions, rights and entitlements that the noble and learned Lord laid out, this will be sufficient time for them to activate that.

I have a little note here to assist me. I can indicate to your Lordships that six of the recommendations have already been implemented; it might be helpful for noble Lords to know that. Yesterday, we implemented recommendation 1, which is about apologies, both in the other place and in this Chamber. Recommendation 4 is about Armed Forces veterans' badges. They should be given; there is a link on GOV.UK and, as I say, there is just a decision to be made about what form this is to take. Recommendation 5 says that medals should be restored. Absolutely; provision has been made for that and, again, there is a link to inform veterans. Recommendation 6 concerns campaign medals. Where these were with withheld, they should be restored; again, advice is available. I mentioned pension rights; steps have been taken to provide clarification on those. Recommendation 25 is that Sections 194 and 195 of the Police, Crime, Sentencing and Courts Act 2022 should be brought into force; action has been taken to achieve that. I lay these out merely to reassure your Lordships that there is a very serious direction of travel here.

The noble Baroness, Lady Smith, mentioned two things. One was the case of a Royal Marine. I wish to say that I read that case with absolute horror. I found it quite extraordinary that a 16 year-old, a complete innocent in the Armed Forces environment who was away from home, could be treated at that age as that individual was. We know that there were lasting consequences; that is explicit from the evidence. All I can say is that I hope they are one of the witnesses who feel that something positive has happened as a result of their courage in deciding to give their testimony to the noble and learned Lord, Lord Etherton.

Finally, the noble Baroness asked whether I could give an assurance that no one today faces such prejudice. I can give an absolute assurance that mechanisms exist to ensure that anybody who faces such absolutely unacceptable behaviour will be dealt with. This requires, in the current Armed Forces, people being prepared to speak up. We recognise that that is still a difficult thing to do, but we have made it clear that we have both simplified the complaints procedure and introduced an element of independence to that procedure. We are told that many people find that helpful and reassuring and that it gives them confidence to call out behaviour, whether it is to do with the LGBT community or any other form of unacceptable behaviour.

As noble Lords will be aware, we have also reformed our approach to the service justice system, again to ensure that it is simpler, that it is much easier for the victim to use and that, at all stages, support and help are being given. It would be absolutely marvellous if I could stand at this Dispatch Box and guarantee that no one will ever be inappropriately addressed or be the victim of unacceptable conduct, but we live in a life where human beings are not perfect. However, we certainly have procedures in place to ensure that, if any such completely unacceptable conduct takes place, there are mechanisms by which it can be addressed.

I have tried to address the points that have been made. As ever, I will check *Hansard* and, if I have missed anything out, I shall undertake to write.

*2.49 pm*

**Lord Lexden (Con):** My Lords, having yesterday expressed the hope that the House would be given an opportunity to comment on the Secretary of State for Defence's Statement yesterday, perhaps I may now express gratitude that such an opportunity has been provided at such an early point, even though it prevents me speaking in the debate in the Grand Committee as I had intended.

The report of the noble and learned Lord, Lord Etherton, is a truly remarkable document of some 270 pages which reveals suffering on a truly appalling scale, as we all agree across the House. I want to raise a few points about the Government's response to it.

First, will it not be vital for carefully co-ordinated work to be done across government departments to ensure that action in response to the 49 recommendations made by the noble and learned Lord is successfully implemented? Has an implementation team been set up to provide direction and momentum for the necessary work?

On pensions, will the Government follow the recommendation that the MoD should invite LGBT veterans to seek clarification as to their entitlement to a service pension where they have not received any pension but believe they were entitled to it?

I also express the hope that the Government will consider very carefully the important recommendations in relation to memorialisation, particularly a public memorial at the National Memorial Arboretum.

Finally, will the Government commit to updating the relevant discharge papers of LGBT people, as recommended, and, if necessary, introduce legislation contained in Annexe 10 of the report to record officially that discharge was unjust and unfair? That would be very much in line with the recent extension of the disregard and pardon schemes to service personnel that I worked over many years with the noble Lord, Lord Cashman, and Professor Paul Johnson to achieve.

**Baroness Goldie (Con):** I thank my noble friend for his presence here today—we are the beneficiaries of that presence, even if the Committee elsewhere is a loser. I thank him too for his clearly expressed wish yesterday that we should have a little more time to discuss this matter. In answering his Question yesterday, I deliberately took fewer questions, because I thought it was important for the Chamber to understand the broader hinterland of how the Government were responding to and proposed to deal with the noble and learned Lord's report. I am delighted that we have had a broader opportunity to discuss it today.

I can reassure my noble friend that cross-government activity has already been happening in anticipation of the report. He is absolutely correct that cross-government activity will be critical. It will also involve reaching out to devolved Administrations, because they will be involved in implementing some of the recommendations. On the team, certainly within the MoD we have a very well resourced and skilful directorate dealing with these matters. They will be the lead presence in the MoD. Again, because of the widespread awareness of and interest in the report, I reassure my noble friend that we will be communing at top level with other relevant offices—because the Office for Veterans' Affairs is also involved—to make sure that there is leadership through the summer to supervise this.

On pensions, my noble friend is quite right that there has been doubt and uncertainty as to who is eligible. Advice is now available on the website to which I referred. I hope that will be helpful to potential applicants.

My noble friend raised the issue of the desire for a memorial to be an enduring acknowledgment and testament to those who were so badly treated. My understanding is that the National Memorial Arboretum is administered by independent trustees, so this may be one area where we absolutely understand the spirit of what the recommendations wish to achieve but where the power of delivery may be slightly beyond either the MoD or the Office for Veterans' Affairs.

On the matter of discharge papers, I too looked at that recommendation and think it a very reasonable one to make. Subject to the administrative challenges of identifying papers and personnel records, the desire would be to absolutely ensure that these papers were amended and issued as they should have been originally.

**Lord Cashman (Lab):** My Lords, I first became involved in this issue in 1991 when, along with Robert Ely and Elaine Chambers, the founders of Rank Outsiders, I gave evidence to the Armed Forces Select Committee to lift the ban. The ban was duly and rightly lifted by the courage of Duncan Lustig-Prean, Jeanette Smith, John Beckett and Graeme Grady, who with Stonewall took the case through the courts to the European Court of Human Rights.

I see this rather brilliant report as the final part of the mosaic of reparation and national apology. The noble and learned Lord, Lord Etherton, has become somewhat embarrassed by the adulation that he and the report are receiving. My advice to him is to get used to it, because it is going to go on for a very long time, so long as this report is read and referred to. Therefore, I come to my question and my recommendation to the Minister, which I raised yesterday. As the noble Lord, Lord Lexden, indicated, the work that he and I—with Professor Paul Johnson and others and, indeed, the Minister—have done has widened the pardons and disregards to include the armed services. Working cross-party, we have shown what we can achieve by working together. In that respect, I urge the Minister to consider, at departmental level, bringing forward, as I have suggested before, a small task force to oversee the implementation of the 49 recommendations and indeed the additional suggestions. We have six under way, with 43 more to go. I think a task force that oversees how they are being undertaken and, I might say, enforced, will enable the House to call on the department periodically to report back on the progress of the implementation of the recommendations and suggestions of the independent review.

**Baroness Goldie (Con):** I thank the noble Lord and pay tribute to him for his passion, commitment and dogged pursuit of justice for those who were so badly wronged over so many years. I join him in the accolades he has extended to my noble friend Lord Lexden and of course the academic Professor Paul Johnson. I know they have all been instrumental in pushing forward, and doing that with great determination, energy and vigour. We are indebted to them for the dogged determination they have shown and we see the fruits of this today.

On the matter of the small task force, I hear what the noble Lord says. I am very happy to take that back to the department and see if we bring greater clarity to

[Baroness Goldie]
the concern of your Lordships that this should be constantly monitored, supervised and progress measured. I totally understand all that; I will take that suggestion back and undertake to reply to him.

**Baroness Barker (LD):** My Lords, I declare an interest as patron of Opening Doors, the charity for older LGBT people. In that capacity I thank the noble and learned Lord, Lord Etherton, very much for bringing to the attention of the nation the stories of individuals—some of whom I have known for over 30 years—and explaining to the nation the harm that was done to these people.

I want to raise a very few specific issues with the Minister. First, because I know some of these people, I know there is something that happened a lot. Compassionate officers resorted to euphemism or other excuses to try to minimise the harm of implementing a policy, which sometimes they had to do against their better judgment. It is quite often the case that people had to leave the service, but their records do not state explicitly the actual reason. Therefore, I ask the Minister whether, in the implementation of this report, there will be latitude given when people come forward for consideration to be included under this policy.

Secondly, and related to that, the disproportionate effect on women is something that the noble and learned Lord, Lord Etherton, notes in his report. I think that, quite often, women suffered a great deal in silence. Therefore, I ask whether and how particular attention will be paid to the experience of women who were badly affected by this policy.

Thirdly, the noble and learned Lord, Lord Etherton, talks about health in general terms. I understand why, and I am glad that he does. However, given the time period that we are talking about, it is remarkable that there is no mention of HIV. Because of a particular Answer that the noble Baroness gave to me recently about current treatment of people with HIV in the military forces, I wonder whether she would be willing to meet me and other members of the APPG on HIV/AIDS, because I think that there is still an issue of discrimination happening there.

Finally, to follow my noble friend Lord Cashman, it is commendable that there is going to be cross-government working on this. However, at the end of the day, who will be accountable for the implementation and to whom will we be able to go to check what the progress has actually been?

**Baroness Goldie (Con):** On the information contained in records, I am able to reassure the Chamber that, because of the destruction of many of the criminal records, we are satisfied that intact personnel records exist. Often these coexist with medallic award records, so we think that we have a good body of information. That means that, when people apply, feeling that they have been wronged, we will be prepared to consider their accounts in conjunction with what the records disclose.

On the matter of women, I entirely agree. Indeed, one of the horrific experiences that I have read from one of the witnesses involved a medical examination which would constitute a criminal assault nowadays. It was absolutely terrible. We are very conscious of the vulnerability of many women who suffered these experiences, but I think the noble and learned Lord's recommendations are a comprehensive and supportive collection of proposals to support and assist them.

The matter of HIV did not seem to feature, certainly not in the services during that time; it has very much featured thereafter. As the noble Baroness is aware, we have taken great steps within the MoD to help and support people with HIV. As I indicated in my recent Answers to her Questions, we always have to weigh up operational safety; we have no other risk assessment that we can apply. At the end of the day, we ask our Armed Forces to do extraordinarily responsible things, at times in very difficult circumstances, and to operate some very technical equipment. As with everyone—it could apply to someone with any health condition—we have to make an assessment as to whether safety would be compromised. We apply that rigorously, but with an understanding that there may be other areas of activity where people with health conditions can be usefully and productively employed.

**Lord Herbert of South Downs (Con):** My Lords, I draw attention to my entry in the register of Members' interests, and in particular to my position as the Prime Minister's special envoy on LGBT rights. I add my thanks to my noble and learned friend Lord Etherton for his work on this comprehensive report. Nobody who was read it, and in particular the nearly 100 pages of personal testimonies of veterans, can be in any doubt that a terrible injustice was done to people who were serving their country, and that an apology by the Prime Minister and other Ministers on behalf of the state was entirely the right thing to do.

These people not only lost their jobs for no other reason than that they were gay, which would be a terrible thing in any walk of life, but they were people who, as serving members of the Armed Forces, had a particular attachment to their work. They regarded themselves as members of a family. To be forcibly removed from that family undoubtedly had a severely traumatic effect on very many of them, and in some cases a devastating and tragic effect.

Would my noble friend the Minister confirm that, as well as implementing the recommendations entirely—in spirit if not to the letter, for the reasons that she has explained—the Government will do so in a timely manner? These people have waited a long time for this moment. It has been some 23 years since the law was changed, and for a while their position, having been affected so badly by the previous law, was forgotten. The great good that will have come from the publication of this report and the apology yesterday would be undone were there to be an elapse of time before all the recommendations were implemented in full. A timely response would be immensely appreciated by all those concerned.

**Baroness Goldie (Con):** I seek to reassure my noble friend and say that there is a desire to give a timely response. By way of affirmation, I remind your Lordships that, yesterday, in the other place, my right honourable friend the Secretary of State anticipated a debate there in the autumn that would consider not just the whole

report but the progress made. This is a classic situation where the Government will have their feet held to the fire by the presence of opposition politicians. The Government are aware that that is a perfectly legitimate call to account. We anticipate being in a position in the autumn to be able to take this much further and to explain to the other place and to your Lordships what progress has been made.

**Viscount Stansgate (Lab):** My Lords, I associate myself with so many of the comments made by noble Lords around the Chamber, especially those from my noble friend on the Front Bench. I pay tribute to the noble and learned Lord, Lord Etherton, for his report, which is a very difficult read but is, and will remain, a remarkable historical document of what happened. The whole House can be grateful to him for that.

Many of the questions I wanted to ask, especially about the follow-up group that will take these recommendations forward, have been asked and answered already, but there is one thing I want to ask the Minister: what steps are being taken by the Government to disseminate the report within the Armed Forces now? It is important that those serving now have access to what we now know happened during this difficult and bad period. What are the Government actively doing to ensure that it is disseminated and can be understood for the future?

**Baroness Goldie (Con):** I can confirm to the noble Viscount that the review was published and can be found on GOV.UK, so it is publicly available. The MoD has numerous internal modes of communication, including DefNet. I am certain that, through our directorate of diversity and inclusion, there will be spirited attempts to ensure it disseminates down through the Armed Forces so there is widespread awareness.

**Lord Coaker (Lab):** It is on "Forces News".

**Baroness Goldie (Con):** My friend the noble Lord, Lord Coaker, is ahead of me; I am delighted to hear that. We have a variety of extremely effective communications media within the MoD, and I am thrilled to hear it has reached them. I think there will be broad awareness within the MoD. I noticed that there was media coverage today, so that will have reached another audience.

**The Deputy Speaker (Baroness Henig) (Lab):** The questions have now finished, so we will move on to the next item. Oh, I am sorry, we shall hear from the noble and learned Lord, Lord Etherton.

**Lord Etherton (CB):** I thought it would be important to finish the debate by acknowledging what many other noble Lords, including the Minister, have said, which is that, without the live contributions from those veterans who were affected by the ban and suffered under it, and who sent statements to us, the report would have been a mere shadow. I ask that the whole House acknowledges the extraordinary courage that compelled some of these people, for the very first time in their lives, to reveal things of the greatest intimacy that they would never have revealed to anyone else. At the end of the day, that courage is really what the report is about, and it leads us, as so many here have said, to implement as much as we can in order to meet the injustice that these people have suffered.

## Higher Education Reform

*Statement*

*3.11 pm*

**The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con):** My Lords, I shall now repeat the Statement made in the House of Commons on Monday 17 July:

"With permission, Mr Speaker, I would like to announce the publication of the Government's higher education reform consultation response. This country is one of the best in the world for studying in higher education, boasting four of the world's top 10 universities. For most, higher education is a sound investment, with graduates expected to earn on average £100,000 more over their lifetime than those who do not go to university.

However, there are still pockets of higher education provision where the promise that university education will be worth while does not hold true and where an unacceptable number of students do not finish their studies or find a good job after graduating. That cannot continue. It is not fair to taxpayers who subsidise that education, but most of all it is not fair to those students who are being sold a promise of a better tomorrow, only to be disappointed and end up paying far into the future for a degree that did not offer them good value.

We want to make sure that students are charged a fair price for their studies and that a university education offers a good return. Our reforms are aimed at achieving that objective. That is why the Government launched the consultation in 2022 in order to seek views on policies based on recommendations made by Sir Philip Augar and his independent panel. The consultation ended in May 2022, and the Department for Education has been considering the responses received. I am now able to set out the programme of reforms that we are taking forward.

I believe that the traditional degree continues to hold great value, but it is not the only higher education pathway. Over the past 13 years we have made substantial reforms to ensure that the traditional route is not the only pathway to a good career. Higher technical qualifications massively enhance students' skills and career prospects, and deserve parity of esteem with undergraduate degrees. We have seen a growth in degree-level apprenticeships, with over 188,000 students enrolling since their introduction in 2014. I have asked the Office for Students to establish a £40 million competitive degree apprenticeships fund to drive forward capacity-building projects to broaden access to degree apprenticeships over the next two years.

That drive to encourage skills is why we are also investing up to £115 million to help providers deliver higher technical education. In March we set out detailed information on how the lifelong loan entitlement will transform the way in which individuals can undertake post-18 education, and we continue to support that transformation through the Lifelong Learning (Higher Education Fee Limits) Bill that is currently passing

[Baroness Barran]
through the other place. We anticipate that that funding, coupled with the introduction of the LLE from 2025, will help to incentivise the take-up of higher technical education, filling vital skills gaps across the country.

Each of those reforms has had one simple premise: that we are educating people with the skills that will enable them to have a long and fulfilling career. I believe that we should have the same expectation for higher education: it should prepare students for life by giving them the right skills and knowledge to get well-paid jobs. With the advent of the LLE, it is neither fair nor right for students to use potentially three quarters of their lifelong loan entitlement for a university degree that does not offer them good returns. That would constrain their future ability to learn, earn and retrain. We must shrink the parts of the sector that do not deliver value, and ensure that students and taxpayers are getting value for money given their considerable investment.

Data shows that there were 66 providers from which fewer than 60% of graduates progressed to high-skilled employment or further study 15 months after graduating. That is not acceptable. I will therefore issue statutory guidance to the OfS, setting out that it should impose recruitment limits on provision that does not meet its rigorous quality requirements for positive student outcomes, to help to constrain the size and growth of courses that do not deliver for students. We will also ask the OfS to consider how it can incorporate graduate earnings into its quality regime. We recognise that many factors can influence graduate earnings, but students have a right to expect that their investment in higher education will improve their career prospects, and we should rightly scrutinise courses that appear to offer limited added value to students on the metric that matters most to many.

We will work with the OfS to consider franchising arrangements in the sector. All organisations that deliver higher education must be held to robust standards. I am concerned about some indications that franchising is acting as a potential route for low quality to seep into the higher education system, and I am absolutely clear that lead providers have a responsibility to ensure that franchised provision is of the same quality as directly delivered provision. If we find examples of undesirable practices, we will not hesitate to act further on franchising.

As I have said, we will ensure that students are charged a fair price for their studies. That is why we are also reducing to £5,760 the fees for classroom-based foundation year courses such as business studies and social sciences, in line with the highest standard funding rate for access to higher education diplomas. Recently we have seen an explosion in the growth of many such courses, but limited evidence that they are in the best interests of students. We are not reducing the fee limits for high-cost, strategically important subjects such as veterinary sciences and medicine, but we want to ensure that foundation years are not used to add to the bottom line of institutions at the expense of those who study them. We will continue to monitor closely the growth of foundation year provision, and we will not hesitate to introduce further restrictions or reductions. I want providers to consider whether those courses add value for students, and to phase out that provision in favour of a broad range of tertiary options with the advent of the LLE.

Our aim is that everyone who wants to benefit from higher education has the opportunity to do so. That is why we will not proceed at this time with a minimum requirement of academic attainment to access student finance—although we will keep that option under review. I am confident that the sector will respond with the ambition and focused collaboration required to deliver this package of reforms. I extend my wholehearted thanks to those in the sector for their responses to the consultation.

This package of reforms represents the next step in tackling low-quality higher education, but it will not be the last step. The Government will not shy away from further action if required, and will consider all levers available to us if these quality reforms do not result in the improvements we seek. Our higher education system is admired across many countries, and these measures will ensure that it continues to be. I commend this Statement to the House".

*3.19 pm*

**Baroness Twycross (Lab):** My Lords, what is higher education for? If you looked at the approach summarised by the Government's response to the Augar review, you would assume it was solely aimed to monetise learning so that the higher the income of the graduate, the higher the value of the course. The letter from the Minister to Peers says that the Government believe that higher education should give students the right skills and knowledge to get well-paid jobs and that the parts of the sector that do not deliver this need to be shrunk.

Labour also believes that people should have the opportunity to get well-paid jobs, whatever their background or whatever part of the country they come from. We think that they should have the same access to opportunities that present value beyond the Conservative Government's limiting definition. Narrowing the definition of a successful university course solely to earnings means putting a cap on the aspirations of our young people. It ignores the social value and economic importance of areas such as the arts and humanities—I stand here in the House as a language graduate—and targets newer institutions in parts of the country to which we should be spreading opportunity. These universities and higher education establishments tend to draw local students, students whose families may not have attended university, who may not otherwise have the opportunity to participate in higher education. Do the Government really think that this does not represent value of at least some sort?

I am concerned that this approach is the thin end of the wedge and that other courses and routes through education will be targeted next as not having a value. This is not to say that we should not have mechanisms to ensure that the education that students of all ages take up, which the lifelong learning entitlement should allow people to take up throughout their life, is good quality. There already exist mechanisms to assess the quality of courses and limit recruitment for low-progression courses through the Office for Students. Should the Government not simply make sure that

they are being used? Is it the Government's view that the Office for Students is failing in this regard? Does the Minister believe that good quality and social value always equate to the highest-paid roles?

In 2022, 86% of surveyed graduates agreed that their current activity fitted with future plans, with 93% saying that their employment or study was meaningful. Why then do the Government think that they are better placed than students or graduates to make judgments about what is valuable for their future? Labour is concerned that the measures proposed would limit their opportunities, with those from more affluent backgrounds not limited. The announcement on foundation years seems to unfairly punish institutions that recruit a high proportion of students from working-class or ethnic-minority backgrounds. Can the Minister tell us what assessment the DfE has made of the impact that this will have on access to university for students on low incomes, those from minority-ethnic backgrounds and those with disabilities, and how the Government intend to address other issues? The Minister referred to other barriers to high-paid work, such as limited access to paid internships, particularly for those who do not have parental networks to access them through.

In our view, investment in careers advice in schools would ensure that children and young people have the advice to make the right decisions. Good careers advice has to be in place to ensure that the LLE works effectively throughout someone's career. Can the Minister say whether the Government will increase and improve careers advice both at school and for adults?

Labour also has concerns that the announcement in relation to foundation years will limit opportunity and choice for many young people. Are the Government clear that their intention to phase out some foundation courses will do this?

Labour supports improvements to apprenticeships. We think the Government's record on apprenticeships demonstrates that they have not made them the attractive alternative that young people—indeed, people of all ages—need in terms of more technical education. Clearly, with major skills shortages in the country, the UK needs more people with the skills to fill the skills shortages in order for us to grow the economy, but the Government have failed to see that the improvements need to be made before other routes are cut off. You cannot improve the take-up of apprenticeships by blocking other currently more attractive options. You have to improve apprenticeships in the first place.

Following the Statement in the Commons earlier this week, the *Financial Times* and the *Times* ran articles making it clear that the current apprenticeship offer is inadequate. Will the Minister say how the Government plan to move from a situation in which, as a *Times* article stated:

"Too many apprenticeships are slave labour"

that do not lead to good and—dare I say it—well-paid jobs?

In conclusion, I want to be clear that this Statement and these measures miss the point. The Government are missing the point about education and are putting a cap on aspiration, particularly for those who do not have a family history of accessing higher education. It is never their own children who the Government feel should not be at university, and never their children who should not get the opportunities that they might put off for others.

**Baroness Smith of Newnham (LD):** My Lords, from these Benches I find very little to disagree with in the questions and comments from the noble Baroness, Lady Twycross. She looked across at me as I was voicing approval, as if slightly confused that there should be agreement across the Opposition Benches. On the defence side of things, the noble Lord, Lord Coaker, and I tend to agree, but on this higher education Statement, a lot of questions need to be raised to understand His Majesty's Government's understanding of the purpose of higher education.

Before I go any further, I declare my interests as a professor at Cambridge University, one of the UK's four of the top 10 universities mentioned in the Statement. I am also a non-executive director of the Oxford International Education Group, which runs pathway colleges that in turn run foundation courses. That is something I want to come back to, because there are a couple of questions about the domestic versus the international dimension of higher education that could be explored a little more.

Finally, I feel that I have to admit that I am a professor of European politics, which puts me in the school of humanities and social sciences, the sort of area that the Government seem to be a little sceptical about. I know that the noble Lord, Lord Moylan, has in the past suggested that if we rejoin Horizon Europe we should not be part of the social sciences aspect. Yet social sciences and arts and humanities play a vital part in educating our young people, whether at 18 or through lifelong learning. The noble Baroness, Lady Twycross, mentioned being a graduate of languages. Surely that is an area where we should be encouraging young people to go into higher education, to learn languages as a tool for working internationally. As a country that wants to look globally and have global trade markets, we need to be able to communicate internationally. Yet if you were a graduate of modern languages, you might not earn a high salary.

This is where the Statement leaves open a lot of questions. What do His Majesty's Government really understand by value for money in higher education? We cannot always evaluate value for higher education purely in monetary terms. For some people, a higher education matters because they have an intrinsic love of the subject they are studying. You cannot put a financial metric on that. Also, there are people who go through higher education because they want a particular career track. They get the job they want in the industry to which they are attracted—perhaps the creative industries. They will not necessarily earn a high salary but they will be doing the vocation that they have trained for. Do His Majesty's Government think that they should not be doing that? What do His Majesty's Government mean by "a good job", a phrase used in the Statement? Is it good in terms of salary or interest? Clearly, it is right that people should not be paying into the future for a degree that has had no benefit, but how do we evaluate that? Does it mean that the training needs are not met or simply that some arbitrary metric on income is not met?

[Baroness Smith of Newnham]

His Majesty's Government say that there are 66 providers where fewer than 60% of graduates progress to highly skilled employment or further study within 15 months of graduating. Can the Minister tell the House what is meant by highly skilled employment? That really matters for how we understand what His Majesty's Government are seeking to do.

Finally, in terms of foundation courses, pathway colleges train international students who perhaps want to learn English and transition to being able to undertake degrees in British universities. Do His Majesty's Government feel that they should be evaluated against the same metrics being outlined here, or is there perhaps a need to understand a little more about foundation year study? It could be about international students transitioning to the UK, but it may also be, as the noble Baroness, Lady Twycross, mentioned, about widening participation. We need to think very carefully about foundation courses, because there should not be some arbitrary mechanism whereby decisions by the Government or the OfS lead to foundation year courses being closed down, thereby diminishing the chances of participation rather than widening participation.

**Baroness Barran (Con):** My Lords, I thank both noble Baronesses for their remarks and for the opportunity to clarify what feels like a bit of a misunderstanding about where these reforms are focused. Where the Government have sought to specify quality as the issue, both noble Baronesses took that to mean potential earnings, and that is not what the Government intend—and I will seek to clarify that.

The noble Baroness, Lady Twycross, started by philosophically asking what higher education was for. I am sure I cannot do justice to this, but I think it is reasonable to say that one of the key things that this Government and, I think, her party believe is that higher education is an incredible route to opportunity and social mobility and a great mechanism for fairness in our society. But we also believe that it is not the only engine—hence our emphasis on apprenticeships, degree apprenticeships, level 4 and 5 qualifications as opposed to exclusively level 6 and, of course, the flexibility, which I know both noble Baronesses support, that will come from the lifelong loan entitlement. The definition of "quality" is not earnings: the definition we are using comes from that used by the Office for Students—looking at continuation from one year to the next, completion and entry into graduate jobs or continuing education 15 months after completing a degree.

The point we are trying to get across is that degrees vary significantly in quality. One element of that is earnings potential. Because of the way I work, I went on the Discover Uni website, which I commend to noble Lords who have not looked at it already. You can say, "I want to study maths"—which in my case would have been quite a push. But anyway, I pretended I wanted to study maths and put in four different institutions and it gave me a great deal of information about earnings potential. Most of us think of maths as the highest earnings potential degree that one can do, but there are institutions where, if you read maths, three years later you are earning £20,000. I do not think that is the expectation of a young person going to university to read maths. So just understanding the difference is important for empowering the student. The same is true for law degrees and business study degrees and, I am sure, many others. In addition, on Discover Uni you get a huge amount of feedback from students about quality of teaching, student experience, et cetera. I know it is not the only source, but it is a helpful one.

Earnings do matter because we know that feeling financially secure is incredibly important for any individual's sense of well-being. It gives them choices in life about how many children they have, where they live, where they work, and so on. I absolutely understand both noble Baronesses' points that it is not the only metric but to ignore it is not realistic either.

The noble Baroness, Lady Smith, talked in particular about creative arts. She is right to raise that because if one looks at creative arts degrees and future earning potential, that group stands out as being lower. But the focus here is where institutions have failed to meet the B3—which she will understand very well—OfS quality metrics. To repeat, that is about continuation, completion and graduate employment. B3 does not include earnings and there are very few foundation years in creative arts, so I really do not think that is going to be an issue there.

The other point that your Lordships will have heard me make more than once is the fairness between student and taxpayer and fairness to students who do not complete their degrees and then are left with part of their student loan to pay off.

In relation to accessibility, the noble Baroness, Lady Twycross, questioned whether this is going to be discriminating against other people's children rather than our children. I remind her that record numbers of 18 year-olds went to university this year, with the highest percentage ever from the lowest quintile in terms of deprivation, so 25.1% of those children. A child from a disadvantaged background is 86% more likely to go to university today than in 2010.

Both noble Baronesses questioned whether our focus on foundation years might be discriminatory. The data on foundation years suggests that there are a few subjects that have grown exponentially at a relatively limited number of providers. The noble Baroness, Lady Smith, talked about modern foreign languages. In 2015-16, 360 students completed MFL foundation years; in 2021-22 it was 465, so there was very little growth. Bring on those students who want to do more MFL. If we look at medicine and dentistry, the growth was very high, but from 125 students to 555. Business and administrative studies over the same period has gone from 4,250 to 35,580. There really are some examples that warrant greater focus.

I hope that I have addressed most of the points. Forgive me, the noble Baroness, Lady Twycross, talked about quality of apprenticeships. I have to say that I thought she was being slightly harsh. When this Government were elected, one of the things we really focused on was improving the quality of apprenticeships. A huge amount of work has gone into that. Actually, if we have a worry about the apprenticeship levy now, it is that it is going to be overspent rather than underspent. She will know that last year it was fully spent. I genuinely

worry, with her party's proposal to give employers a choice, that we will end up with half the number of apprenticeships that we have today.

*3.39 pm*

**Baroness McIntosh of Pickering (Con):** My Lords, I thank my noble friend for repeating the Statement in this place this afternoon, giving us the opportunity to question her. I declare my interest, such as it is, in that I completed an internship—a stage—in the European Commission, followed by a Bar apprenticeship, both of which counted towards my professional qualification as a Scottish advocate.

Can I just press my noble friend on two small issues? One is that the academic institutions concerned will have sufficient notice of the phasing out of any of the courses concerned and that those who might have applied to them will be given alternatives to which they may be equally suited, with better outcomes for them.

Secondly, my noble friend will be aware that one of the challenges at the moment is obtaining skills and finding those with skills in plumbing, joinery, building, construction and other such areas. Will the new qualifications to which she referred actually plug that gap? That would tick a box because they are among the highest earners at the moment.

**Baroness Barran (Con):** In relation to where qualifications might be phased out, I think that my noble friend is referring to the imposition of recruitment limits by the Office for Students. To be clear, that will happen after it has judged that an institution has not met the quality standards known as the B3 standards. The scale of limit will be a judgment for the OfS to make. There could be a limitation on growing a course. At the other extreme, the OfS might judge that it is not suitable to be delivered at all. I am not taking a view on either of those. I am just saying that it would follow an investigation by the OfS into quality.

I hope very much that universities are considering alternatives. Obviously, they are autonomous organisations, but there is a great human opportunity in offering some of the qualifications to which she referred. Also, from their responsibility for the financial viability of their institutions, there is an opportunity as those courses grow in popularity. For building, construction and other areas, from T-levels through to apprenticeships and other higher technical qualifications, the Government are trying to make sure that there is a pipeline of skills to meet the opportunities to which she refers.

**Baroness Blackstone (Lab):** My Lords, the last time I got up and asked the Minister some questions I was able to be very congratulatory to the Government in relation to the Lifelong Learning (Higher Education Fee Limits) Bill. Regrettably, I cannot be for one second congratulatory about this Statement. I think it is both retrograde and ill thought-out. In implementation, it is going to end up as an unholy mess.

Let me begin with the criteria that the Government are using to define quality, which is essentially drop-out and earnings. I thought the Minister was equivocating in her response to the noble Baronesses, Lady Twycross and Lady Smith, on this subject, saying that it is not only about earnings and that she knows that other facets of higher education are important. But, when it comes to the criteria for closing down courses, this Statement makes it absolutely clear that the level of earnings from different courses is going to be a factor. It is a ludicrous thing to take, because there are many areas where people are badly paid but will have done very good degrees. There are other areas where people will be well-paid graduates but will not have done especially strong degrees from the many different academic criteria that you could use. This needs to be thought about again. It is just so mechanistic. Moreover, there is a well-established system of regulation of the quality and standards of degrees in universities, and that is what should be used to try to do something about those which have low standards.

Take the criteria of drop-out. I spent 10 years running an institution, Birkbeck College, with part-time mature students where there were very high levels of drop-out. But if anybody dares to say to me that it was because the courses were poor, I shall tell them they are talking nonsense. The reasons for drop-out are very rarely anything to do with the quality of the course. It is something about the problems students face, particularly disadvantaged, part-time or mature students. It would be far better if the Government focused a bit more on trying to find support for universities which have a large number of these students so that we do not have fewer disadvantaged students getting to the end of the courses, which of course we want to avoid.

I must not talk for too long, but I will comment on a couple of other things. I do not know how the Office for Students will collect evidence about all of this that is up to date, clear and valid. It will be enormously expensive and extremely complicated, and the OfS is bound to end up with errors about which courses it decides should not be continued and which should continue. What kind of discussions have the Government had with the Office for Students about exactly how to implement this particular programme?

I will make a final point about the social sciences. As a social scientist myself, I was somewhat offended to see that they have been identified as an area where we perhaps want fewer students doing foundation courses. I do not know why that should be the case; they are popular among students who want perhaps to come back to university a little later. Incidentally, economics is a social science, and it has some of the most highly paid graduate jobs that exist. The whole thing is an awful muddle, and more attention needs to be paid to the details of how to implement this, because standards are not static; they change all the time.

**Baroness Barran (Con):** I am obviously disappointed that the noble Baroness did not give the same feedback as in the Statement the other day, but I am more concerned because I think that there is still a misunderstanding about how this would work in practice. I will try to go through the noble Baroness's points in turn.

I am not equivocating about earnings: the criteria are clear. They are the new B3 quality criteria, which are continuation, completion and graduate-level or

[Baroness Barran]
further study or employment 15 months after graduation. However, obviously, higher earnings normally correlates with graduate-level jobs—not across every sector and industry, but frequently. If I was confusing, I apologise, but we are not equivocating.

On how it will work, the regulation and the potential for recruitment limits will happen only after intervention. So the OfS will have gathered evidence—this goes to the noble Baroness's later point about evidence—that shows concerns about whether an institution is meeting the B3 standards. It will investigate and, if it finds that those standards are not met, it will consider recruitment limits.

The noble Baroness referred to her experience at Birkbeck. On the profile of students accessing different courses, I tried in my earlier answer to give examples of how one compares some courses. Obviously the noble Baroness is right: we know that, overall, the profile of non-completion is higher among mature and disadvantaged students. However, it is when a particular course at a particular institution appears to be an outlier in that that we think it is appropriate to apply recruitment limits.

On the social sciences, let me be clear that we are reducing the foundation year funding for classroom-based subjects, among which by far the biggest growth has been in business and management—I gave the numbers earlier. There have been some other subjects where it has grown, but business and management is the outlier. We are reducing it to the same level as that at which an access to higher education course is funded. The question I put back to the noble Baroness—perhaps unfairly, because she cannot reply—is this: is it fair to ask a student to pay almost twice as much and take on almost twice as much debt for two courses that purport to get students to the same level?

**Baroness Bennett of Manor Castle (GP):** My Lords, looking round the House, I venture to ask the Minister two questions.

The Statement refers to trying to deal with students "paying far into the future for a degree that did not offer them good value".
That led me to look at a recent House of Commons report on student debt in general, which has some terribly telling figures. The total level of student debt is about to pass £200 billion, the maximum rate of loans that students are paying is 7.1%, and the average debt at graduation this year is £45,600. Looking back at the history, I see that 2002 was the first year of a cohort with large amounts of debt. More than 20 years later, 44% of those debts are still not paid off.

So my first question to the Minister is: paying far into the future, are the Government really taking account to the impacts—economic, social and health—of now the second generation of students having to keep paying off debts, many of which they will never pay off at all, that will now weigh them down over 40 years?

My second question builds on the comments from the noble Baroness, Lady Blackstone, and others. Even if, as the Minister asks us, we put the question of income to one side and just look at graduate jobs, as the noble Baroness, Lady Blackstone, said, there is very much a regional issue here. People may do a maths degree in some places, but they might choose, because of the circumstances of their life, not to move to a place where they can get a graduate job, as defined by the Office for Students. But that does not mean that they are not benefiting from that degree.

What about, say, a grandmother—the Government say that they are keen on lifelong learning—who does a history degree and puts all her time, energy and talents, when she is not caring for her grandchildren, into doing local history and writing up local history? That is never going to make any money, but it is hugely contributing to the community and her enthusiasm will undoubtedly transmit to the grandchildren and their friends. Or what about someone who is a carer; they start a degree, the university knows they are a carer, it has affected their studies at school and they drop out half way through to go back to their caring responsibilities? Are we not going to see an impact on admissions? Will institutions be forced to direct themselves towards admissions of people who are then going to fulfil the criteria down the track?

**Baroness Barran (Con):** In relation to the noble Baroness's first question about the impact of debt on students far into the future, it is genuinely very interesting—given the level of debt and the amount of debate about debt—that demand to go to university continues to increase and continues to increase in very disadvantaged communities. Young people with an older brother or sister who is grumbling about repaying their student loan know that this is the case, yet there is huge demand for our universities.

I think the noble Baroness would also recognise that there are other taxpayers. Somebody must pay the costs of higher education and currently we have a balance between the students themselves and other taxpayers, some of whom have not been to university. That is a delicate balance to strike. But if one were to do away with student debt entirely, somebody would have to pay and that would obviously fall on every other taxpayer.

In terms of the individual examples she gives, whether it be deciding to live in a particular part of the country or choosing not to take a graduate job, or the grandmother, or the carer, I do not think any of those things change as a result of this. What we are saying is, you have two courses delivering the same thing, and in one course 40% of people drop out and in the other course 10% of people drop out with a similar profile; should we not be asking why that is happening?

**Baroness Lawlor (Con):** My Lords, I thank my noble friend for her interesting analysis of the Statement in replying to questions. I was particularly interested in the questions from the noble Baronesses, Lady Smith and Lady Blackstone. Can I probe my noble friend on two points?

The noble Baroness, Lady Smith, referred to salaries not necessarily being a good indicator of the value of a course, particularly in arts and humanities. Humanities graduates can earn lower salaries than those who go into other subjects, but might I suggest that there is a middle way on this? History is my subject; I began my professional life in Cambridge as an academic historian for my first two jobs. But I found that many historians

went into other jobs: they converted by the GDL—a law conversion course—or moved into media and the BBC, or the Civil Service. What humanities give, and I urge my noble friend to pay full tribute to this, is that a subject such as history encourages the training of the mind, which can be adapted and applied to more professional or vocational subjects. For instance, it is no accident—this is anecdote, but I think it is true—that classicists helped to start Silicon Valley, so there is not such a gap.

With regard to the point made about dropouts by the noble Baroness, Lady Blackstone, I could not agree more that one cannot necessarily blame an institution for poor teaching. Good heavens—Birkbeck College is renowned for attracting good students who take advantage of the flexible courses on offer, which can be taken at night. However, I suggest that we have a real problem here. It must be for the institutions to pay particular attention to selection procedures, so that applicants for their courses are suited to the courses on offer, despite the pressure for fees which most institutions are under today.

**Baroness Barran (Con):** I thank my noble friend very much for her remarks. She does not need to convince me about the importance of a history degree in allowing you to do different things. Personally, I read history, went into the City, ran a charity and now I am here. I am not quite sure what your Lordships might take from that, whether it was a training for the mind or that I just got lucky. My noble friend is absolutely right that the kind of critical thinking skills that one gets in a number of academic disciplines, including history and other arts and humanities subjects, are incredibly important—arguably, increasingly so as we move into a world of AI and beyond.

Again, my noble friend is right about selection procedures. I would say in addition that we see really excellent examples of not just selection but initial support for students, whether that be in an institution such as Birkbeck or in an institution which typically takes more students who have just left school. That is clearly very important and something that many institutions work on. The last point I would make in relation to her remarks about selection also relates to the remarks in the Statement about franchise providers. It concerns the importance of the care that we believe the main institution that is issuing the degree needs to take on which franchise providers it works with.

**The Deputy Speaker (Baroness Henig) (Lab):** My Lords, I think there are no further questions.

*House adjourned at 3.58 pm.*

# Grand Committee

*Thursday 20 July 2023*

## Arrangement of Business

*Announcement*

*1 pm*

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** 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.

## Emergency Healthcare (Public Services Committee Report)

*Motion to Take Note*

*1 pm*

*Moved by* ***Baroness Armstrong of Hill Top***

That the Grand Committee takes note of the Report from the Public Services Committee *Emergency healthcare: a national emergency* (2nd Report, HL Paper 130).

**Baroness Armstrong of Hill Top (Lab):** I thank the noble Baroness for being here to chair this debate; I know that this is an area in which she, too, has a strong interest. I apologise to her and to other members of the Committee, in that more people who were members of the Public Services Committee at the time of the report are not here. There is a rail strike today, which indicates that the House needs to look again at hybrid proceedings when there are events such as this at the end of the week that make it really difficult for Members from outside London to be here. If we want free speech and free expression, we should do whatever we can to enable as many people as possible to participate.

It seems a long time ago since we did this report. It is not that long, but I am now involved with others who are here in another Select Committee, which is looking at integration of primary and community services in the health service. All of that is relevant to today's debate, but I will not go down that route today.

The Public Services Committee began this inquiry last September. It was the end of the summer, when things are supposed to be easy in the NHS, and everything was going wrong. The reports of what was happening were just horrendous, and the committee wanted to look in a more holistic way at might happen. Inevitably, NHS organisation, reorganisation and turmoil took precedence, but we did look at some of the work of services such as the fire service and police service. Both said that how they could help effectively needed to be clarified, and that they should not be expected to do mainstream health jobs. We had some fascinating discussions with fire service operatives, and some good examples were given from around the country—for example, the Hull district fire service providing a full service—but they need their terms of reference, which the Government are considering, to clarify what they can and cannot do. I hope the Government will take account of that. Of course, the police have now largely said that they will not do mental health crises emergency call-outs, which is raising all sorts of questions among community health services about what will replace that intervention.

As I say, we wanted to look at things holistically, but that ended up being quite challenging, and I know that the Government find that difficult, so I will concentrate mainly on the NHS. We looked at all the obvious things and the barriers people face when they seek to access A&E. One is ambulance response times, which I will say a little bit about later. Ambulance response times were longer than we had known before. The average in June 2023 was just under 37 minutes; this is a significant improvement on last year, but it is still twice what the standard should be. There has clearly been progress, but it is not good enough. Worryingly, this year, the figure in June was higher than in April and May. I am sure that the Government are thinking about that—they need to.

In June 2023, 108,000 people waited 12 hours or more in A&E; that is 8% of people going to A&E. That is better than last year, when it was more than 120,000, but it is substantially worse than the years leading up to that. In 2021, the number was just over 60,000; in July 2020, it was less than 10,000. I will say something more about the 12-hour wait later.

We became convinced as we did the report that patient flow was in fact the key issue. If you look at the demand side in GP services, in May, just under 18% waited for two weeks for their GP appointments. In mental health services, there is still a real problem, with too many people ending up in A&E needing constant attention, with no beds available. Users of community mental health services felt that they had not been able to see community services sufficiently in the last 12 months, and almost one third said that they had not seen mental health services often enough.

I will now turn to public health funding. We all know the problem: in too many areas of the country—including the north-east, the area I used to represent down the corridor—funding of public health services has been so significantly reduced that many local authorities feel that they are not fulfilling their potential. It has been cut by 26% in real terms since 2015-16.

There are real challenges in elective treatment. I could give many examples of people who are looking to be in hospital but, because their case is not an emergency, their treatment has been delayed or cancelled. I suspect that members of the committee have very real, live examples of that, as have I in my own family. It means that people turn up in emergency services because they cannot access other services.

We also outlined lots of supply challenges. The biggest, I suspect, are the discharge challenges. Far too many patients remain stuck in hospital longer than necessary, not getting discharged even if they are ready to be. The Government have announced a range of things, including a recovery plan for A&E generally in January this year. The NAO tells us that it is still too early to know whether that discharge plan is effective; it will be towards the end of year before we know that.

[Baroness Armstrong of Hill Top]

Social care is in the midst of this but, tragically, the long-awaited workforce plan—I have given the Minister a hard time before about how long we have waited for it—does not mention or deal with social care. A social care organisation, which I accept is a lobbying organisation, reported last week that there were fewer employees in social care last year than before. We should be increasing their numbers and the work they can do alongside the NHS in improving discharge and stopping people ending up in hospital.

We highlighted that the number of acute beds in hospitals has more than halved over the last 30 years. The Government now recognise that they need to increase bed numbers by 5,000, but this is still a huge challenge. We do not yet know how it will happen and, therefore, whether it will.

There are real accountability and governance challenges. There is also a lack of central vision. This is crucial. The Government do not seem to have a plan, other than to say, "We've now got the new ICBs and they will sort it for us". None of the evidence we heard convinced us of that. ICBs must do their job, but they need to know what the expectations are and what they will be held to account for nationally. Our committee argued that this lack of vision meant that what a good emergency service looks like and what its major components would be was unclear.

We heard different stories about and from ICBs. The interim deputy chief executive of NHS Providers said that many people saw the solutions lying with ambulance care, but that sits outside ICBs at the moment. You need to be able to pull all the levers to have an effective outcome. We got a real feeling of risk aversion—A&E services refusing to accept patients from ambulances due to the number of patients in A&E, and care homes and schools calling for ambulances when they were not needed. There was a real mishmash of people's expectations and how they were being responded to. There was very much a risk-aversion approach, such as 111 services escalating calls to ambulances when alternative care would have been more appropriate. Risk aversion is also an issue for NHS hospitals putting people back into the community, for obvious reasons.

So there is an opportunity to take that more systemic view through ICBs. However, this lack of clarity about the power of ICBs to make services take action means that it is still unclear who the person responsible for identifying an issue will be; also, ambulance services will work with and report to multiple ICBs, which therefore presents them with another huge challenge. The NHS gave us a fairly confused picture, but again, I do not really have time to go into that, because I want now to turn to the workforce.

There are serious shortages in emergency healthcare and ambulance care, and in other sections of the infrastructure which supports and enables good emergency access. I welcome the fact that the Government have now published the workforce plan, which addresses some of the issues we raised in our report. However, there is further still to go, and the Government need to focus on implementing the plan alongside social care.

Turing to the positives, on transparency, I would like the Minister to tell us how far the Government have got on the 12-hour wait. As he knows, we picked up that there was no real honesty with the public about the 12-hour wait, and the Government promised to rectify that and make clear exactly how long people were waiting. I wonder where that has got to now. There are important opportunities for collaboration and there is some really good practice, but how will the Government make sure that that is extended?

I thank everybody who worked on the report. The committee staff—Tom Burke, Claire Coast-Smith, Aimal Fatima Nadeem, Sam Kenny and Suzanne Mason—all made very important contributions and supported us enormously.

This is a life-threatening issue. We heard some terrible stories, and we need to know that we are going into this winter with more hope and preparedness, so that the public do not have to go through what they went through last year and we can assure them of a better service from the National Health Service and the Government.

*1.18 pm*

**The Lord Bishop of St Albans:** My Lords, I thank the noble Baroness, Lady Armstrong of Hill Top, not only for chairing this committee and producing an excellent report but on now bringing it to your Lordships' committee for us to debate. I declare my interest as president of the Rural Coalition and a vice-president of the LGA.

I associate myself with the noble Baroness's concerns that a subject of such huge importance has so few people speaking on it. I understand the problems, but I encourage His Majesty's Government, the Whips and so on to look at how we can give such topics the time they deserve.

I have long expressed my concern about healthcare in England, particularly in rural areas, so I read this report with great interest. I have seen the strain on emergency care in my own diocese of St Albans, which covers Hertfordshire and Bedfordshire. In Hertfordshire, category 1 ambulance calls—those reserved for the most life-threatening injuries—were responded to in just under 12 minutes, on average, well above the national average of seven minutes.

Rural areas have always faced unique challenges in providing care and recruiting and retaining healthcare professionals to care for a predominantly older population. Of course, people who live in rural areas accept that geographical factors mean that it will be more difficult. However, a number of issues particularly associated with rurality make the problem more complex, not least connectivity. In many areas where people rely on mobile phones and there is no coverage, delivering emergency healthcare is even more challenging. I hope the Minister appreciates the profound emergency healthcare challenges faced by rural areas such as those in my diocese.

As the report highlights, it is important for us to recognise that pressures on emergency healthcare are both a cause and effect of the strain on health services across the board. They are a cause because we know that the longer people remain on waiting lists, the more likely they are to acquire co-morbidities that

compound the original underlying health issue, often making treatment more complex; and they are an effect because patients often access emergency healthcare because they feel they now have no other avenues to treatment. The squeeze on healthcare services across the board, including preventive and community healthcare, manifests itself in the kind of pressures on emergency services outlined so accurately and precisely in this report.

The Government have rightly recognised the severity of the problem in the *NHS Long Term Workforce Plan*, which refers to the need to increase training and retention of staff rather than relying on international temporary recruitment. Statistics from the British Medical Association show that 40% of junior doctors are actively planning to leave the NHS as soon as they can find another job, and many are planning to work abroad within the next 12 months. We see a similar story for nurses: more than 40,000 left the NHS last year. With an ever-increasing workload and stagnating salaries, there is no doubting the reason why so many professionals are leaving our health service. We hear regular reports that British junior doctors are being offered packages in places such as Australia that pay more than double what they can achieve if they stay in this country.

Given the profoundly challenging circumstances in rural areas—an ageing population and problems such as connectivity for emergency workers—it is essential that the Government's response helps to tackle them. Will the Minister assure us that the Government's response will be properly and fully rural-proofed as we look at how we respond to it? The Government need to increase investment in people. The report rightly notes the immense difficulty and stress faced by those in the emergency care profession, compounded by shortages across the entire health service. If we cannot encourage our healthcare professionals to stay, then it seems that, unfortunately, they will vote with their feet, as so many are doing. How do the Government plan to compete with the generous packages being offered from overseas?

Then, there is the question of how we can do more joined-up thinking. I was particularly interested to hear what the noble Baroness, Lady Armstrong, said about seeing through the whole process from start to finish and trying to work out how people move through the system, so that it can be done efficiently and effectively. Allied to that is the question of how the NHS and others are going to work with the third sector, with so many churches, community groups and medical charities being capable of offering non-urgent care support. We need to think about how we can relieve the pressure on emergency care described in the report, in order to ensure that patients get not just focused medical treatment but all the social support, friendship, follow-up and other things that add to the holistic approach to health. What discussions are His Majesty's Government having with the third sector in this important area?

To conclude, I thank the noble Baroness and all those who worked on this committee and this report for this excellent and timely debate on emergency healthcare.

*1.24 pm*

**Baroness Morris of Yardley (Lab):** My Lords, I am also pleased to be able to contribute to this debate as a member of the committee. I pay tribute to my noble friend Lady Armstrong, who was the inaugural chair of the Public Services Committee and has led it through its first years. Indeed, this report was the last from the committee under her chairmanship. I overlapped with her only on this one report, but I could tell from the time I spent on the committee how much she had done to establish it as a very important committee in our House. I know that there have been a whole series of reports which will add to our debate and our consideration of some crucial issues facing society at the moment. On behalf of all committee members, I place on record our appreciation for the contribution she has made.

I am sorry that this debate is taking place seven months after the report was published. There was never going to be a queue at the door waiting to get in as the debate started, but I hope the appropriate authorities can take note of this.

Governments are always reluctant to use the word "crisis", as lots of things flow from that. Our committee found that there was a crisis in emergency care, and we used that word. I think we produced sufficient evidence to say that there was a crisis.

Even if you do not take that point, it is interesting to look at the document published by the Government since then, the *Delivery plan for recovering urgent and emergency care services*, in which they describe what happened last winter and the state we are in. They said it was

"the most testing time in NHS history",

that there were

"problems discharging patients to the most appropriate care settings",

and that hospitals reached record occupancy levels. The document also says that patients were spending longer in accident and emergency departments and waited longer for ambulances, and that that has taken its

"toll on staff, who … work in an increasingly tough environment".

The committee could not match the description the Government themselves gave of the state of the ambulance service and emergency services at key points during last winter. So, whether you want to use the term "crisis" or not, our joint starting point is that things were intolerable last winter and have been intolerable for quite a while. We are not confident that they are going to be any better this winter. To some extent, the challenge for this debate and for the Government now is whether they can use those experiences and the evidence we gave in the report to make sure that things are not as bad next winter and that we can move on.

Lots of things have happened since our report was published, and I want to refer to some of them. It is very difficult, given the time of year and the way the public debate moves on, to know exactly what progress has been made since our report was published in January. I know that some of the figures on waiting times for ambulances have got better. I do not know if that is because of the time of year or because of action

[Baroness Morris of Yardley]
the Government have taken. However, I noted with some concern the National Audit Office's report from June this year. When it looked at recent performance, it concluded that patient access to services for unplanned or urgent care has worsened; that there is too great a variation in service throughout the country; that the NHS has not met operational standards; and that performance has worsened in terms of delays in transferring patients from one service to another.

That is where I think we are. There is joint knowledge and a shared platform of debate that there was a crisis last time, and some of the statistics were very worrying. The one bit of evidence we have from a third party—the NAO report—does not indicate that things are getting any better. The effect this has had on the public, communities and their confidence is well known. It is no exaggeration to say that people lost their lives because this service was not performing at a higher level.

I want to take six points from our committee which struck me, on reflection, go through them and invite a response from the Minister. These are the six areas that stuck most in my mind, and I would like some reassurance that progress is being made on them. First is the immense complexity and connectedness of all the different parts of the system. We talk a lot about the health service and social care and how they do not work together. However, when you look at the emergency services, it is not just those two that have to work together: it is the police and the fire service, and the attitude of the public.

That leads to the second point: it is very difficult to work out who has the ability to effect change. People want to change things. They want to change their bit of the service, but they cannot change other bits. What became evident during the committee's deliberations is that there is no one leader who can solve the difficulty. That is a problem, but the system itself does not allow people to make changes that have to be made if they are to improve their bit of the service. There has been a really good example of that since our committee's report was published: the decision of the Metropolitan Police not to attend mental health cases.

I know why the police have done that, because in the committee you would hear somebody tell you that some police officers are spending the whole of their shift sitting in A&E with a person who has mental health problems, whom they have been called to assist. I can absolutely understand why they have said that that cannot happen any longer. I do not believe for one minute that the head of the Metropolitan Police has not tried to solve the problem as well, but I suspect that he has concluded that he cannot get other bits of the system to shift or make the changes in social care, the local authority or the health service—he has to act unilaterally to protect the service that he is absolutely accountable for and responsible for delivering. That is just one example, but that has happened in the last few months. We find so many cases of that, where people knew what they wanted to do to make their bit of the service better but were powerless, because changes needed to be made elsewhere, and the structure that could have brought everyone together to make the changes just does not seem to be there.

My third point, and the point that the noble Baroness, Lady Armstrong, made, was that people are risk averse, and there is very little approach to shared risk. I was pretty appalled to find that some schools, as a matter of policy, called an ambulance every time a child had a head knock, even if the parents were there and were prepared to take their child to accident and emergency. I do not want to belittle the difficulty of taking decisions like that if you are a headteacher or a teacher, but something is wrong there, if mum and dad say that they will take their child to accident and emergency, and the school says that no, the policy is that they have to call an ambulance for every child who bangs their head. We heard similar stories in care homes with patients who had fallen. The public are risk averse to making decisions which on reflection, might perhaps be more sensible.

We see that with 111 services as well. The statistics show that the 111 person is more likely to say to go to the accident and emergency than they are anything else, because there is a risk-averse attitude there. With some of the targets, the attitude to risk is problematic. For those responsible for making sure that ambulances do not wait in the car park at the entrance to the hospital, the best thing to do is to get the patient into the A&E waiting room, because they have then met the target—but it has not solved the problem for the patient, who is now in the waiting room. Others want to get them out the other end, because their target is to get the accident and emergency casualty waiting room down to as few people in it as possible. So they push the patients out to somewhere else, where they wait to go into care or back into the community, and they have met their target.

There are so many instances where people behave in a way that shows that they are not connected to other bits of the service, and they are risk averse. They want to solve their bit of the problem and make sure they can show that their service is performing better with regard to targets. No one actually says, "Let's put our risks together—let's put it all together and let's have some sort of target, which means that I in my bit of the system act in a way that helps you as well as me".

The fourth point is that one thing that frustrated me, time after time, was that I sat and listened in the committee to the most wonderful pilots going on in different parts of the country. I thought, "Why have we got a problem? Why is anything wrong, because I have just heard the most wonderful example of what is happening?" Nobody knew why it did not happen elsewhere as well. Nobody knew who was evaluating it or who had the power to say that it should happen elsewhere, and that is a problem. So I say to the Government that, while I welcome some of the initiatives that they have announced in recent months—full service virtual wards, transfer of care hubs, and greater flexibility for clinicians—the key thing remains that they are all relatively confined things that are likely to bring about some success.

The key problem for me—and this is where I finish—is that, with the integrated care boards, who is going to make sure that someone can implement the plan that they have been charged with writing up? Could we do more so that the regulators actually make a judgment as to whether services are working together, as well as

whether they are working for their own interests? Can the Minister perhaps reflect about whether he is absolutely confident that the people who need to make changes have the power to do so?

*1.35 pm*

**Baroness Bennett of Manor Castle (GP):** My Lords, it is a pleasure to follow the noble Baroness, Lady Morris of Yardley, and to join others in thanking the noble Baroness, Lady Armstrong of Hill Top, for this report. I share the reflection that it is a great pity that there is no capacity for people to participate remotely, particularly given that there is a speakers' list here, so it would be very easy, logistically, to facilitate. This debate does not have the potential difficulties of when there is no speakers' list. I also join in with the comments about how long it has taken us to get a debate on this.

As others have said, the report came at a point of absolute crisis in emergency services, but there is no real evidence that the crisis has in any way abated. I did not originally plan to, but I will speak from a different perspective that might at first be surprising: the environmental impact of emergency care. The context is that yesterday, my office launched a policy briefing entitled, *Eco-directed and Sustainable Prescribing of Pharmaceuticals in the United Kingdom*. It was written by my interns, Julze Alejandre and Emily Stevenson, working with Paul-Enguerrand Fady. I acknowledge the financial support of the British Society for Antimicrobial Chemotherapy for that work.

I must admit that, in thinking about the report and the environmental impact of pharmaceuticals and medical devices, I have mostly thought about chronic conditions and treatment in the community and the great deal of discussion about the alternatives of using social and green prescribing—issues that do not apply to emergency care. However, I was absolutely inspired at the launch event yesterday by one of the attendees, a critical care consultant from a foundation trust in the north of England. They said, "Each day, I consider the environmental impact of the treatments that I give my patients in the ICU". The doctor set out that that meant three steps, or principles: first, choosing the most environmentally friendly route for medical care, which means acknowledging that intravenously administering drugs requires more plastic packaging; secondly, minimising the amount of PPE used by opening only the PPE that is needed; and thirdly, demedicalising by trying to shorten the length of hospital stays where possible, which means less PPE and generally lower consumption of resources in hospital. The consultant told us that these environmental considerations are included in the doctors' notes and discussed by the healthcare team during the patient handover.

That approach addresses something that we are starting to get some attention and focus on: the fact that, in England, 4% of our total greenhouse gas emissions come from the healthcare sector. There is the impact of plastics, which is increasingly acknowledged, and the pharmaceuticals going into the water supply.

Another of yesterday's inspiring speakers was Sharon Pfleger from the One Health Breakthrough Partnership in Scotland, a partnership of the NHS Highland, the University of Highlands and Islands, the Environmental Research Institute and the University of Nottingham, which has a £100,000 UKRI Medical Research Council grant. This picks up the point that the noble Baroness, Lady Morris, made about joining up all the issues and all the healthcare bodies, as well as those not immediately related to healthcare, that collectively make up part of our healthcare system. We cannot afford to think, "Here's the NHS that does healthcare, and everybody else does other things". This applies in the case of the environment as well as in other things. Looking at the overall aims of the One Health Breakthrough Partnership, I see that it

"seeks to facilitate new knowledge sharing across organisational boundaries, raise awareness of the environmental impact of medicines, and develop novel and robust solutions to complex sustainability issues".

That joined-up, complexity-systems thinking is an example of what we need to do.

I was reminded of an interview I did recently on LBC. We had been talking for some time about what might be described as the social determinants of health, and how environment helps determine people's health and whether they will need the emergency care that is now so stretched—meaning everything from mouldy, cold homes to air pollution and all those other issues—when the presenter said to me, "I realised that I invited you on to talk about environmental problems, but you are talking about social problems too. They are all interrelated". I thought, "Bingo! We have just had a moment of understanding".

The point I really wanted to make is that, when we talk about healthcare and environment, emergency medicine probably looks like the most distant part—the part where it is hardest to think about the environmental impact. You have an emergency situation in front of you and you have to care for this patient. I think, however, that I have just shared with the Committee a really inspiring example of where individual leadership is really showing a way of operating differently. This is what we need to encourage and evolve. Consultants are, perhaps, seen to have the power to do something like that on their own ward; we need to empower people right across the healthcare system and more broadly to take the steps needed.

To pick up the point made by the noble Baroness, Lady Morris, there are so many good pilots. One of the great institutional problems in the UK is that we have funding for pilots, systems for funding new ideas and people who really clearly see the problem, and who can maybe make a difference in their local trust in their local area, but it does not get rolled out further.

We are the most centralised polity in Europe. Power and resources are concentrated in Westminster and Whitehall. We need to move to a system where the power and resources are held vastly more locally to create circumstances that work for local conditions.

*1.42 pm*

**Lord Allan of Hallam (LD):** My Lords, we are all grateful to the members and staff of the Public Services Committee for producing this excellent report and to the noble Baroness, Lady Armstrong, for introducing it. I want to explore five issues that arise from it.

[Lord Allan of Hallam]

First, I was very much struck by the comments in the report that the waiting times that we get for accident and emergency are calculated using a "dishonest" method. I recognise that the committee was quoting one of the people who had spoken to it. It seems to me that these statistics are so fundamental to our understanding of what is happening with emergency care that I hope the Minister can respond more fully on what is collected and how the data should and should not be used. I note that the noble Lord, Lord Harlech, is here; we have been together sitting through many days' consideration of the Online Safety Bill and discussing the kind of transparency that we want from online companies. There, the maxim is "more is more". The more data that we get about their performance, the better. The same should apply here. Certainly, we should be given as much data as possible about all the different aspects of waiting times as one goes through the health emergency care treatment path—the ambulance times, the wait times before you see a doctor in A&E, the wait times from seeing a doctor to being admitted and so on. Then we can make our minds up about whether it is effective. Today, I think we often get statistics that could accurately be described as misleading in the impression that they give.

The second issue that I picked up, which was absolutely fascinating, was a reference to the Frequent Caller National Network, which looks at people who make five or more emergency calls in a month or 12 or more over three months. I also remember an article from the Times Health Commission on 10 June. The journalist Rachel Sylvester had been out with the London Ambulance Service and reported that, in London, 4% of patients account for 22% of demand. The Frequent Caller National Network pointed to a number of reasons why we seem to be getting these frequent callers regularly and the numbers are not coming down. It talked about the lack of mental health support—something that has already come up in the debate and seems fundamental—the lack of primary care support and the lack of NHS system integration. The people manning 999 and emergency care professionals do not necessarily have access to the NHS systems—never mind any other systems—that they would need to direct someone to something more appropriate for them.

I am interested in the Minister's response to the issues that were identified. Again, we have waited a while to debate the report—the committee produced its evidence last year—but it is very compelling, and I hope the Minister will be able to talk about some actions that have been taken.

Of course, for frequent callers, the real answer is that they can be helped to navigate to the most appropriate care for them. The right reverend Prelate the Bishop of St Albans made an important point about rural services, where, again, we must ensure that services of all kinds, whether mental health support, social care support or primary healthcare support, are available everywhere, otherwise people will default to calling 999 if the service is not there for them.

The noble Baroness, Lady Morris of Yardley, made a critical point about risk aversion. It has been pointed out to me that even if you, as the 999 caller, know—because you have the record—that you are 99% sure that an individual does not need an ambulance, the 1% stops you from directing that person to the service that is the most appropriate. We must have a grown-up discussion about this, otherwise everyone will call 999 and always get an ambulance and always go to A&E, and the service will break down. There must be a better way of thinking about risk than this.

Thirdly, it would be extremely helpful to have a progress report on the emergency care plan announced with great fanfare back in January. I note that *Health Service Journal* this week carried a quote from someone who said that the approach of NHS England in trying to deliver this care plan by reaching out to integrated care boards and others was like

"whipping the dead horse harder",

which does not suggest that all is going well in the relationship between NHS England and those who have to deliver the plan. How would the Minister characterise progress on the plan and how confident is he that the capacity will be there for the winter of 2023-24 so that we do not see a repeat of last year's meltdown?

Again, the noble Baroness, Lady Morris of Yardley, helpfully used the word "intolerable", which is good because it reflects the public mood. The public in the United Kingdom are generally extraordinarily patient and respectful of the NHS because they believe that it is trying to do its best, but sometimes their experiences mean that even the most tolerant person feels that there is failure. That is certainly the situation we have got to with a number of areas of NHS care, but particularly around emergency care. Even the person most tolerant and respectful of the NHS feels at times that the service offered is intolerable and unacceptable.

Fourthly, we know that a key plank of the recovery plan is to deliver 5,000 more beds. There remain concerns that when the Government said that they would deliver more beds, that was all about surge beds in corridors and other spaces that are in fact unsuitable. I hope that the Minister can update us on the plan for beds so that when we reach the next winter surge they are there. Of course, the long-term solution is for there to be brand new and replacement hospitals but, yet again, we saw from the National Audit Office that the hospital-building programme is falling behind and will not deliver what was promised. I am interested in the Minister's response to that report, which I think came out since we last debated the hospital programme. It says in terms that only 32 of the 40 hospitals will be delivered by 2030, and even getting to that 32 depends on everything going right in the programme. Sadly, as experience tells us, there is many a slip 'twixt cup and lip, and it will be extraordinary if this hospital programme does not also encounter issues along the way.

Finally, I wanted to raise again the issue of management capacity, which I flagged when responding to the workforce plan. It is an area that we do not talk about as often as we talk about doctors and nurses. I was going to suggest that I had an interest in this area as I once worked as a health service manager, but rather than using "interest" for these things that we once did years ago, the word "affinity" might be better. I have an affinity for people who work in health service data

and health service management, who are trying to make the resources that we already have stretch further. This is one area where there seems to be significant scope for that.

However, this depends both on data being turned into information and on information being turned into action. It is very interesting to have a dashboard that shows you how bad things are, but the real value comes in taking that information and feeding it into process improvement. The noble Baroness, Lady Morris of Yardley, reminded us how difficult that can be when you have disjointed services. Somebody sitting there with a police, social services or health dashboard is fine, but the improvement process requires police, local authorities and health all to work together. I would be really interested to hear from the Minister where that capacity is coming from. It is hard work convening people and making cross-service improvements. I would like to hear from the Minister how capacity is being built into data analytics and change management to improve emergency and urgent care.

Finally, I will reflect on a point made by the noble Baronesses, Lady Morris and Lady Bennett, about "pilotitis"; we are good at creating examples of best practice but the real challenge is how to scale it once you have created it. I repeat a call we have made previously to the Minister that he should visit the laggards as well as the leaders and reflect on how we get those bits of the health service that are not so good up to the standards of the really good bits, which I suspect are where his officials mainly take him.

*1.51 pm*

**Baroness Merron (Lab):** My Lords, I join other noble Lords in paying tribute to my noble friend Lady Armstrong for her leadership on this very important report. I also thank members and staff of the House of Lords Public Services Committee for taking the initiative to launch this inquiry to investigate the barriers to accessing emergency services, which we have discussed numerous times in the Chamber and will I suspect, sadly, continue to debate. I am glad finally to have the opportunity to debate this important report. As my noble friend Lady Morris justified and reminded us—although she should not have needed to justify it—the committee used the word "crisis".

Worryingly, the committee argued that there was no sign of an adequate plan or the necessary leadership to address the problems it had unearthed. I am sure that is a concern to the Minister. This is against a backdrop of dangerous waiting times which have meant some 5,500 more deaths in 2022 than we had in 2019. This debate is an opportunity to unpick the Government's recovery plan, which I will come back to later. It is a step in the right direction, but it is not sufficiently ambitious to ensure that patients are not waiting longer than is safe and the ambition it does have is not sufficiently underpinned by substance.

Several noble Lords have referred to the workforce plan. It was indeed long overdue and still needs substance behind it to make the difference it promises. I highlight that it is not matched by a social care workforce plan, which will always cause a problem for the NHS workforce plan. The key findings of the committee's report on social care referred to the finding that:

> "Unmet need in primary and community care and low capacity in hospitals and social care has left the emergency health services gridlocked and overwhelmed".

The committee also discovered that when patients are ready for discharge, as my noble friend Lady Armstrong highlighted, there are often waits for community or social care to become available, meaning that beds cannot be accessed by other patients. Demographic change means that this problem in social care is not going away and will get only worse.

We therefore have a problem of a lack of a joined-up approach. I particularly want to highlight that, because my noble friend Lady Morris rightly illustrated that the whole system, which needs to work together, does not work together to allow for positive change. She used a very good example of the Metropolitan Police not responding to mental health call-outs. She was extremely reasonable in how she described it and used one of the many connections that there are: the interface between the police and the NHS. There are so many more, such as the interfaces I have just referred to between social care and the NHS, and between rural and urban, as the right reverend Prelate referred to. I am sure we in this Room could come up with a whole list of interconnecting situations not being addressed in an interconnected fashion. Perhaps the Minister could tell the Committee what work is going on to address this. It seems to me that this is absolutely at the heart of it.

I am also struck that problems faced by the NHS are not exclusive to the NHS. The noble Lord, Lord Allan, referred to frequent callers. Frequent callers are an issue that many other parts of our services are trying to deal with—for example, social services and the DWP. My question to the Minister is: what work is going on across government to focus on dealing with this challenge, which does not recognise boundaries? Of course, people do not recognise boundaries when they make a call for help.

I am sure that the Minister will refer to a delivery plan for recovering urgent and emergency care services, so I have a few questions on that in anticipation of his reference to that point. The plan set out a number of ambitions and one was about patients being seen more quickly in the emergency departments. It gives a new target, which says that there will be further improvement in 2024-25, from the original target of 76% of patients being admitted, transferred or discharged within four hours by March 2024. Can the Minister give us something of a flavour of what further improvement we might expect?

Similarly, the same question applies to the ambition of ambulances getting to patients quicker. The Government have stated that their ambition is:

> "Ambulance response times for category 2 incidents will decrease to 30 minutes on average over 2023-24, with further improvements in 2024-25".

Again, what further improvements might we see?

Certain areas were focused on in the recovery plan. I have a few questions on that. First, in respect of improving discharge, what does the recovery plan's reference to "strengthening discharge processes" mean in practice? Is this new metric in place currently? What is that new metric and what is its predicted impact?

[Baroness Merron]

On funding commitments, there is a commitment of £150 million to build 150 new facilities to support mental health urgent and emergency care services, which, with my simple mathematical approach, means £1 million per facility on average. Are these really new facilities—a question raised similarly in respect of so-called new hospitals? If they are being built anew, how much is the expected cost of running them and is there a commitment to that funding to do so?

NHS Providers made some interesting comments, including that funding needs to be available to deliver change. It also talked about rising demand and persistent workforce shortages, because they challenge targets. I absolutely agree with my noble friend Lady Armstrong that the key enabler for achieving targets is improved patient flow. That runs throughout the whole of this report.

On ambulance trusts, there is a reference to a number of ambulance services—this might fall into the category of good practice to be rolled out elsewhere—seeking to increase the proportion of calls that are closed as "hear and treat", where there is an appropriately trained member of staff at the call centre to deal with things over the phone. What progress can we expect to see in order for this to increase, and does the Minister consider this a way of dealing with the many challenges?

Finally, my noble friend Lady Morris mentioned the NAO report, which was extremely timely. She referred to a number of concerns raised by the NAO. I will not repeat them, but they bore out the point about the need to improve patient flow. The NAO talked about considerable variation in service performance and access between regions and across different providers, thereby highlighting inequality. As the right reverend Prelate reminded us, a part of that is the challenges faced by rural areas. The NAO also made the point that these various challenges pre-date the pandemic. Will the Government look at the NAO report alongside the committee's report?

We will see, of course, whether winter pressures are going to be dealt with adequately. This will be an indication of whether the Government's current plan is going to be helpful. However, my final question to the Minister is, what is his assessment of how the winter will look? I do not want us to get to the stage the committee alerted us to: that when we get to winter, we will have the same problems, only worse. The committee has done an excellent job in giving advance warning, and I hope the Minister and his department will take heed.

*2.02 pm*

**The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con):** First, I add my thanks to the noble Baroness, Lady Armstrong, and all the contributors to the report. It was a thoughtful and constructive report, just as today's debate has been. I thank noble Lords for that.

Probably one of the benefits of debating the report now, a few months later, is that we have had an opportunity to learn some of the lessons from last winter. I will try to reflect those in my reply. We have also had the opportunity to take on board the evidence from the committee's report and, as the noble Baroness, Lady Merron, mentioned, the NAO—and, I hope, to reflect quite a few examples of best practice, which I will try to take your Lordships through.

As has featured so much in this debate, I completely agree that this is all about flow. I will try to respond by talking through the flow, because we all agree that that is the vital component.

Of course, the first step of the journey in terms of the flow, as a few noble Lords have said, is demand. We know that as many as 50% of the people going into A&E do not need to be seen there. To me, the first step is how we manage demand and make sure that we treat people in the right place. Of course, that comes in two parts, the first of which is making sure we have sufficient primary care in place, because we know people that often turn up in A&E because they feel that they cannot get the necessary GP appointment. The emphasis we are putting on our primary care recovery plan is very much part of that, as is the direction of travel for the long-term workforce plan—investing much more in primary care and prevention, and having that emphasis versus treatment in hospitals, which is the wrong end of the telescope to be always looking through.

Also we want people to use 111. There will be a complete reset of 111, seeing it as a real navigation tool. Again, as noble Lords have heard me mention a number of times, when we relaunch the app in September, that will be a very important feature, so that people can use the 111 app to establish whether they really need to go to A&E, or whether there is a better place for them to be treated. The other side of this is to establish whether it is appropriate for someone to call 999 and whether they need to be conveyed to A&E. It is about having the right treatment in the right places, and it is all about the "falls" ambulance service, which it is now the responsibility of every ICB to supply. We know that sometimes, you can rectify the situation there and then, set someone right and make sure they are okay, and they do not need to be conveyed to hospital.

It is also about making sure that we have experienced mental health handlers in ambulance services and somebody in the control centre trained in mental health who can help. As for steps in the right direction, we are starting to see the numbers being conveyed go down, which is of course what we want. Whereas 58% of people were being conveyed to A&E a couple of years ago, the current figure is 52%. Clearly, there is more that can be done.

The point that the noble Baroness, Lady Morris, and the noble Lord, Lord Allan, made about the risk-averse nature was absolutely spot on. I shall not pretend that we have proper answers to that, but we need to have a grown-up conversation about it, because we all have very good examples to give. The hope is that the 111 navigation I referred to can help to address that issue, but the human attitude to risk is also a factor.

I turn now to the supply side, response and the ambulances themselves. We are putting more resources into 999, and we are investing in 800 new ambulances. A vital part of that is the discharge hubs for ambulances,

so that they are not waiting in the car park with their patients and can instead get back out on the road as quickly as possible. As we know, that is all part of the UEC plan.

Crucial in all this and in managing flows—this links to the point made by the noble Lord, Lord Allan, about data and process improvement—are the flight control systems. As I think I have mentioned before, one of the first hospital visits I ever did was to Maidstone, where they had a fantastic flight control system, managing everything in real time. You knew whether the ambulance was there and whether a person was likely to need a bed; the system looked straightaway at finding that bed and managing the person through the system. What impressed me was that it addressed head-on the often risk-averse nature of clinicians. Amanda Pritchard herself explained the situation to me. She said, "If I were a doctor talking to you, Nick, I'd be saying, 'I'm pretty happy with how you're doing, but I'm just going to keep you in one more night to be sure.'" However, when that clinician is armed with real-time data and knows that ambulances are coming and there are people with much greater need of a bed than me, they can make the clinical decision that I am 99% probably going to be fine, and another patient needs that ambulance much more. That is an example of real-time data being used by clinicians, and we are rolling that out as we speak to make sure that it is in place for the winter in 16 trusts. I know that 16 is not 120, but it is a good first step towards that, and I hope we will see improvement.

Carrying on in the flow journey and coming to the beds themselves, we are on target to have a real increase of 5,000 beds in place for the key winter period, as per the question from the noble Lord, Lord Allan. In addition, 10,000 virtual ward beds will be available, with the intention of treating about 50,000 patients per month. That will strengthen everything we are trying to do in terms of the back door, the flow and, as mentioned by many noble Lords, the social care element.

We have started to see the impact of all the things we are talking about. The investment that we are putting into social care is starting to have an impact. As for discharge, right now, we are seeing 2,300 fewer beds blocked, for want of a better word. There is still some way to go; as noble Lords will remember, the target is 13,000, but there has been progress towards that. Our action in terms of the extra money is about learning the lesson around getting the discharge fund out early, instead of suddenly getting to January and thinking, "Oh, we've got a problem". A lot of the social care providers have talked about getting it out early so that they can then plan in advance. Those are all things that we are doing towards that aim. Of course, as many noble Lords have mentioned, underpinning all this is the long-term workforce plan, to make sure that we have cover in the appropriate areas.

Best practice more generally was mentioned in the report and by many noble Lords, and I agree that it is often an issue. We do not have a problem with pilots—I am sure that many noble Lords have heard the quip that the NHS has more pilots than British Airways—but the issue is adoption. I have mentioned a couple of examples of that. We now have tiering in place. The performance of hospitals in each area of UEC is looked at and specific plans are put in place with the leadership to address the tiering. There has been some good progress there, but I agree that, of all the things we need to do, that is definitely a work in progress. On that note, the noble Lord, Lord Allan, will be pleased to know that I am spending the summer visiting hospitals. After the last couple of weeks and those coming up, I will have notched up another 15 or 20 on my visit list. I am definitely trying to get out there.

I really appreciated the thoughtful contribution of the noble Baroness, Lady Bennett. She talked about the environmental impact, and I must admit that it made me think about it in a different way. The NHS recognises that it has a role to play in this. I want to give her a proper response because I was struck by what she said and appreciated her sharing that.

The noble Baroness, Lady Armstrong, mentioned the publication of figures on 12-hour waits. We have been publishing them since February 2023, but there is an understanding of the need for complete transparency in this, as mentioned by the noble Lord, Lord Allan. I know that this is something we are trying to achieve.

The right reverend Prelate the Bishop of St Albans mentioned the rural response. We are looking at each ICB to make sure that they are responding with plans that look after all the needs of their area and where they need more help. We know that it is often hard to recruit people to some of those areas, so there is the possibility of these special incentive payments in order to recruit people to them. As ever, if I run out of time and do not manage to answer everything, I will follow up with a detailed letter.

"Frequent flyers" have been mentioned a couple of times. I saw a very good example the other day of one of the best practices we want to roll out. Redhill is taking its top 1% of "frequent flyers" and getting upstream with them by proactively going out to visit, screen and check them. That has resulted in them needing 30% less treatment. What struck me, and as noble Lords have mentioned, is that one of the first experiences I had as NED in DLUHC's forerunner was the troubled families programme, which I thought was an excellent example of trying to look holistically at the problem. I wonder—I am wondering out loud with your Lordships—whether we need to look at that more holistic approach for some of these cases; that is one of my takeaways.

As for the NAO report on the NHP, I am still very confident about the 40 new hospitals. The NAO report talked about the original list of 40 but ignored the fact that we have brought in the RAC hospitals. It says that of the original list of 40, we are committing to only 32 by 2030. That is absolutely correct, because we have brought in the RAC hospitals on top of that which were not previously on the list. It is 40—but it is not the same 40 hospitals. That is what the NHP was pointing out, but I think all of us here today would agree that the RAC hospitals were clearly the priority which should have been brought into the list.

The £150 million is new and is a separate part of the budget which I look after as part of the whole capital programme. It will be subject to bids from the hospitals, which need to make sure that they have the revenue to do it.

[Lord Markham]

To conclude on the question on the assessment: yes, I do think there will be improvements next year. Is it going to be challenging? In all honesty, I think it will. I am not going to pretend that there will be one leap and we will be there, but we have a number of measures in place through which we will see step-by-step improvement next year, and, I hope, reflect a lot of the points made in today's debate on the report.

*2.18 pm*

**Baroness Armstrong of Hill Top (Lab):** My Lords, I thank everyone who has been involved today. There are lots of issues that have come up, but I hope that the Minister understands that we saw this as a national emergency. I do not meet anyone now, who, if they begin to talk to you about the health service, does not talk about this as a crisis—being able to see their GP, or getting access to any professional care and reassurance. I could now go into a whole raft of things which he has not mentioned about what we did on "frequent flyers" 15 years ago, and with the group that is the most prevalent: homeless people. We had very clear ways forward, which have all gone.

So, there are issues and lessons in the past. However, the thing the Minister did not address, which I hope he will think about, is whether the Government and Ministers are thinking about what we mean by good emergency care. What should it look like? What should the public therefore expect, and what should the health service—the ICBs, or whatever the structure—be responding to in terms of what good emergency care should look like?

There are huge issues here. This is essentially about the ability of the public sector in its largest window to respond to people's concerns about whether they will get care when they need it, at the time they need it, and where they need it.

On that basis, I am grateful to everyone for their contribution and I beg to move.

*Motion agreed.*

## Lord Chancellor and Law Officers (Constitution Committee Report)

*Motion to Take Note*

*2.22 pm*

*Moved by* ***Baroness Drake***

That the Grand Committee takes note of the Report from the Constitution Committee *The roles of the Lord Chancellor and the Law Officers*.

**Baroness Drake (Lab):** My Lords, in January this year, the Constitution Committee report into the roles of the Lord Chancellor and the law officers was published. All inquiries have their context. Since the committee's last report in 2014 which examined these issues, the Government's commitment to the rule of law has been called into question; the then Lord Chancellor's lacklustre defence of the judiciary in the wake of the *Daily Mail*'s "Enemies of the People" headline has been heavily criticised; and the global rise in authoritarianism and the impact of the digital revolution on democracy have imposed threats to a rules-based global order.

The rule of law is the common thread which links the distinct constitutional positions of the Lord Chancellor and the law officers: the Attorney-General, Solicitor-General and Advocate-General of Scotland. It is the only constitutional concept with a presence in Cabinet consideration supported by statute, courtesy of the Lord Chancellor's duties under the Constitutional Reform Act 2005.

The Act does not define the principle of the rule of law but its fundamental tenets are set out by Lord Bingham and are well understood. Lord Bingham's formulation was that

"all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts".

He expanded on this formulation with eight principles which are set out in the report. Those principles point to an important element of the rule of law: that it is not simply rule by law. The law itself must conform with the fundamental concept of justice.

Our constitution requires that the Government act according to the rule of law: that Ministers understand its key principles and consider it to have primacy over political expediency. The Lord Chancellor and the law officers have special responsibilities for its maintenance: they take special oaths; their duties, while also being Ministers, place them in a special constitutional position; and they are among the chief guardians of the rule of law.

The eighth principle in Lord Bingham's definition states:

"The rule of law requires compliance by the state with its obligations in international law as in national law".

This conception has been politically resonant in recent years. The committee reported that the Government had, at that point, twice knowingly introduced legislation in Parliament that would breach the UK's international obligations, contravening Lord Bingham's eighth principle. In the case of Part 5 of the United Kingdom Internal Market Act, the Government admitted doing so. In the case of the Northern Ireland Protocol Bill, the Government failed to produce a credible legal justification for doing so.

Parliamentary sovereignty means that Parliament is able to legislate in this way. This does not alter the Government's responsibility to ensure, to the best of their ability, that international obligations are adhered to. They should refrain from knowingly inviting Parliament to legislate contrary to the UK's obligations. Parliament is ultimately responsible for the form of any legislation passed, but preparation and introduction of government legislation is an executive action.

I turn to the role of the Lord Chancellor. The CRA fundamentally altered the role of the Lord Chancellor and the constitutional framework surrounding it, including replacing the Lord Chancellor as head of the judiciary in England and Wales with the Lord Chief Justice. It put into statute the Lord Chancellor's existing constitutional role in relation to the rule of law. It created a new oath that the Lord Chancellor would

respect the rule of law, defend the independence of the judiciary and discharge their duty to ensure the provision of resources for the efficient and effective support of the courts.

The Lord Chancellor's responsibility for the rule of law is not limited to the maintenance of the justice system and the independence of the judiciary. They have a role which, as a full member of the Cabinet, goes beyond that of the Attorney-General to ensure that rule of law issues are defended and understood by government. The committee was concerned that their oath does not adequately reflect the Lord Chancellor's role and recommended that it be amended to explicitly include their duty to uphold the rule of law.

In 2007, the Lord Chancellor's role was combined with that of Secretary of State for Justice, so acquiring a wide range of policy areas in addition to duties as regards rule of law and judiciary independence. Some commentators suggest that this has undermined the Lord Chancellor's ability to fulfil their core duties by giving them distracting or conflicting responsibility for prisons. Others argue that the budgetary responsibility for the Ministry of Justice, including the Prison Service, increases their authority in government. The advantage of separating those responsibilities is not clear, particularly in the light of the disruption caused by machinery of government changes. We recommend, however, that a new Prime Minister embarking on a more comprehensive reorganisation of government might consider separation at that point.

The noble and learned Lord, Lord Burnett of Maldon, the Lord Chief Justice, pressed the case for further consideration in comments made at the recent Lord Chancellor's swearing-in ceremony. At his annual session with the committee, he said:

"It is time to look at it calmly and rationally … and simply to ask the fundamental question of whether the current system is serving the rule of law, the independence of the judiciary and the administration of justice generally as it should be".

Does the Minister agree with the noble and learned Lord, Lord Burnett?

Judicial independence is a vital element of the United Kingdom's uncodified constitution and defending the judiciary against abuse is a core part of the Lord Chancellor's role. The *Daily Mail*'s "Enemies of the People" headline and the then Lord Chancellor's response to it at the very least caused alarm within the judiciary and damaged trust. In 2017, the committee asked the right honourable Elizabeth Truss about her response. She argued that senior judges could speak publicly about what they did and appeared to criticise their reticence to do so. She added:

"Where perhaps I might respectfully disagree with some who have asked me to condemn what the press are writing, is that I think it is dangerous for a government Minister to say this is an acceptable headline and this is not. I am a huge believer in the independence of the judiciary; I am also a very strong believer in a free press".

The noble and learned Lord, Lord Reed of Allermuir, President of the Supreme Court, advised the committee that he had made an effort recently in judgments,

"to spell out what the constitutional relationships are … That has been a response to criticism, because it was evident that people did not understand our role".

Lord Hodge, Deputy President of the Supreme Court, added that,

"it is very important that we do not enter the fray in the face of political criticism, and we leave it to the Lord Chancellor, if necessary, to defend us in the context of defending the rule of law".

Criticism of the content of a judgment is acceptable; targeted personal criticism that unfairly impugns a judge's impartiality or inflames public sentiment against the judiciary is not. In such cases, the committee firmly believes that a Lord Chancellor must intervene promptly and publicly. For the judiciary to feel secure in its duty to decide cases without fear or favour, it needs a Lord Chancellor who is willing to defend it.

The CRA did not require the Lord Chancellor to have a legal background. At the time of the report, only six of the 11 post-2005 officeholders had a legal qualification. The five Lord Chancellors preceding our report spent an average of less than 14 months in office. We would expect a Lord Chancellor normally to be a senior legal figure commanding the respect of the legal community and Parliament. However, in the final analysis, character, intellect and commitment to the rule of law are the most important attributes for a Lord Chancellor to possess.

The responsibilities of the law officers touch on the rule of law in various ways. Our report focused on their role as legal advisers to the Government. On the lawfulness of government action, government lawyers, including the law officers, currently operate on the basis that action may justified if a respectable legal argument can be found that is lawful. The concept of a respectable legal argument is found in the Government Legal Department's guidance to government lawyers. An updated version was published on 2 August 2022 and the then Attorney-General elaborated on her expectations of government lawyers in a series of tweets.

The existence of a "respectable legal argument" as set out in the guidance and elaborated on by the then Attorney-General could sometimes represent a very low threshold for authorising legally uncertain action. The validity of the respectable legal argument depends on an uncertain threshold in the Attorney-General's guidance—the level at which an argument becomes respectable. The guidance explains that this is an argument that could be properly put before the court but also refers to an absence of such arguments being "rare" or "exceptional". It is unclear whether this suggests that the threshold is so low that an argument will almost always be found or that the Government would not expect to be contemplating legally dubious action. Public confidence in the Government's commitment to the rule of law demands that any threshold is meaningful and aligns with an ethos of genuinely seeking to comply with the law and that a decision by Ministers would not be based solely on a calculation of legal inconvenience.

Decisions to authorise armed conflict require greater certainty, and merely a "respectable" argument in this context is a fig leaf and undermines the trust of the public and particularly the military. It was therefore comforting to hear the current Attorney-General tell the committee in recent evidence that,

"the Government have extra duties as a litigant before the courts",

[Baroness Drake]

including the "duty of candour", and

"a duty to advance proper arguments".

However, we shall have to see how this develops in practice, and the concept may yet require further elucidation.

The law officers are senior legal advisers to the Government. They are Ministers and Members of Parliament. Depending on the function, varying degrees of independence are required. Their main duty as senior legal adviser requires a high degree of independence from the Executive. Their responsibilities for legal advice and individual prosecutions are non-ministerial and not subject to collective responsibility. There is great value in the law officers being politicians. It provides them with an understanding of the political context and bolsters the authority of their advice; as MPs, they are accountable. However, it is necessary to balance political status with rule of law functions. Former Attorney-General Suella Braverman KC confirmed this view when she told the House of Commons Justice Committee in 2020 that the officeholders' primary duty lay with the rule of law above party interest. In the same session she went on to say that,

"I am a member of the Cabinet and I subscribe to collective responsibility. I am an elected politician. For me, the political thread that runs through this role is vitally important".

In evidence to the committee, the current Attorney-General said,

"although I have other, sometimes competing, considerations—I have, for example, duties to my constituents … duties to my party, and duties to the Government, of which I am a member—I definitely feel, particularly in this role, that there is no question, but that my duty to the court comes first".

It is vital that law officers recognise that they are different from other Ministers. Key aspects of their role require independence from party politics and government priorities. Public confidence in their impartiality must be retained and they should refrain from making public statements that damage that confidence.

In recent years, Attorneys-General have been appointed with less legal experience than was previously the case. We recommended that codification of law officers' duties would improve confidence in their role, and that the Ministerial Code and the *Cabinet Manual* be amended to clearly define those duties, including identifying which are subject to collective responsibility and which should be conducted independently of government. Given the differing conceptions of the rule of law and the duties of the Lord Chancellor and the law officers that have politically resonated in recent years, can the Minister say whether, in the updating of the *Cabinet Manual* currently being undertaken, it will be amended to define clearly the duties of the law officers? I beg to move.

*2.38 pm*

**Lord Garnier (Con):** My Lords, I am delighted to follow the noble Baroness, Lady Drake, and thank her not only for her comprehensive opening remarks and for the committee's report but for inviting me to give evidence to the committee last year. It is a very balanced report which, if I am right, underlines the importance within our constitution of the roles of both the Lord Chancellor and the law officers in protecting the rule of law. The noble Baroness was entirely right to remind us of the recent occasions when that has broken down. I am also delighted to see the noble Lord, Lord Hennessey, in his place, because it means we can benefit from his wisdom this afternoon, and also because, I hope, it suggests that his health has been restored to him. I look forward to hearing from my noble friend the Minister and from other noble Lords speaking this afternoon.

At the risk of doing something unusual, I will talk about myself. I am by no means the only lawyer here, but I believe I am the only person here who can claim membership of the former Solicitors-General club. Long ago, an Attorney-General said that being Attorney-General was the worst job in government and being Solicitor-General was the best. Both have their upsides and downsides, but I have a certain pride that I held an office in the 21st century that was held in the 18th century by my direct ancestor William de Grey. I have inherited his gout but not his intellect: he had what we nowadays call a stellar chancery commercial practice at the Bar and, although in his final years his hands were riddled with gout, preventing him from holding a quill, he was able to give extempore judgments as Lord Chief Justice after long and complex trials that stand the test of time to this day.

Shortly after my appointment in 2010, I was showing off to the then Lord Chief Justice, the noble and learned Lord, Lord Judge, that de Grey had been successively Solicitor-General and Attorney-General from 1763 to 1771, under five Prime Ministers. After that, I told him, de Grey became Lord Chief Justice of the Common Pleas. The noble and learned Lord smiled engagingly and gently reminded me that some apparent precedents are easily distinguished upon their facts.

Before I return to the subject of law officers, I agree with the current Lord Chief Justice, the noble and learned Lord, Lord Burnett of Maldon, who said earlier this week at Mansion House—reflecting some of the remarks made by the noble Baroness, Lady Drake, a moment ago—that:

"It is my belief that a Lord Chancellor's primary interest should lie in nurturing the long-term health of the Courts and Tribunals, the legal system and the independence of the judiciary".

If I had my way, I would return to the Lord Chancellor's duties doing the things that the noble and learned Lord mentioned. Some would say that the ship carrying that sort of Lord Chancellor has sailed, never to return. I disagree. If it can be changed in one way, it can be changed in another way.

Government departments are frequently repurposed. It simply requires the political will to do it. I would release the Lord Chancellor from the prisons portfolio and the expenditure responsibilities that go with being Secretary of State for Justice, save those connected with the administration of justice. The Lord Chancellor does not need to be an elderly lawyer devoid of ambition; our current Lord Chancellor is, after all, young—at least from where I am looking—but by no means the youngest there has been. He is a very able lawyer, bright and enterprising, and a member of the former Solicitors-General club. Whoever it is, they should be someone with sufficient calibre and character to hold their own in and be listened to with respect by the

Cabinet—and someone who does not feel the need to ring up Downing Street for permission to support the judiciary. Elizabeth Truss's response to the committee, as cited by the noble Baroness a moment ago, was inadequate. I agree with the assessment of the noble Baroness of what one needs in a Lord Chancellor.

In my evidence to the Constitution Committee last year, I said that one of the things I have worried about over the last several years is that the fellowship of lawyers and Members of Parliament, between the judiciary and the Government and the judiciary and Parliament, has gone. We no longer speak the same language. When I took one of the many recent Lord Chancellors to dinner in my inn, they felt like they were going into a foreign country. Not so very long ago, the Lord Chancellor not only would have known most of the people there but would have appointed many of the judges in the room. There was a shared constitutional understanding about their separate roles: the role of Parliament, the role of the Executive and the role of lawyers and the judiciary. That has gone.

It is a great pity, and it discourages members of the Bar and solicitors from entering public life. By that I mean not just those who have law degrees or those who are called to the Bar or admitted as solicitors or advocates in Scotland; I mean those with High Court and appellate practices, men and women of standing within the legal professions who command the respect, if not always the agreement, of the judges they appear before. These people are discouraged from coming into the House of Commons. Why give up a good practice? Why swap all that for the likely inability to continue your practice and, associated with that, the public obloquy that goes with being a Member of Parliament in an era of social media? I know plenty of people much younger than me who would make excellent Members of Parliament, excellent Ministers and excellent law officers, but they will not come anywhere near Parliament because they see it as poison. The consequence is that, although we may from time to time find lawyers of sufficient experience fit to be law officers, it is becoming increasingly difficult.

I was lucky enough to have a London-based practice, which required me to travel no further than the Royal Courts of Justice on the Strand, so I could maintain it to a reasonable level while a Member of Parliament. However, for a criminal barrister with a circuit practice, nowadays it is either Parliament or practice but not both. In 1992, when I first got in, the Whips kindly told me that I could not have two passports: I was either at the Bar or I was a Member of Parliament. I ignored them. But when, for example, my noble friend Lord Clarke of Nottingham was first in the House of Commons, he was in court in Birmingham during the day and in the Commons in the evenings. My late noble and learned friend Lord Rawlinson of Ewell told me that, when he entered the House of Commons in 1955, he was told by the Whips that he was not expected to be present until late afternoon and that, if he did come in, it would be assumed that he had no practice.

More than 40 years ago, Lord Rawlinson, a former Solicitor-General and Attorney-General, led me in a very long libel action that gave us plenty of time to get to know each other. He told me that, when he was appointed Solicitor-General in 1962, the then Prime Minister, Harold Macmillan, said, "Remember, you are the last of the Crown officers who remains a Member of the House of Commons". He then gave him a learned seminar on the history and constitutional role of the law officers. It was made clear that, as Solicitor-General, his first duty was to the Crown, his second was to Parliament and his third—and it was only third—was to the Government of which he was a member. He was told that the Attorney-General is the principal agent for enforcing legal rights and is required to intervene when the public interest, not the Government's interest, is affected. Sir Hartley Shawcross, one of the great Attorney-Generals, said that

> "although the Attorney-General is a member of the government he has certain duties which he cannot abdicate in connection with the administration of the law, especially the criminal law".

Of course, along with the DPP, the Crown Prosecution Service and other prosecution agencies such as the Serious Fraud Office, the Attorney-General and the Solicitor-General are responsible for criminal prosecutions as part of their quasi-judicial, independent role. Although Dominic Grieve and I made a point of going to court, for example to prosecute in contempt cases and to appear in criminal appeals that had nothing whatever to do with the Government or in the European Court of Human Rights and the European Court of Justice to represent the United Kingdom, we wished that we could have done so more often. I think that we appeared in court a good deal more than both our immediate predecessors and those who came after us.

More recently, the law officers have appeared in court only rarely and most often in unduly lenient appeals, but this was an important part of our duties that had nothing whatever to do with our political existence. Neither of us found it difficult to separate ourselves into our respective functions as politically aware but apolitical law officers on the one hand and party-political Members of Parliament on the other. Having a foot in both camps made us more useful advocates and advisers in a way that a Civil Service lawyer could not be.

Mr Cameron appointed me Solicitor-General in 2010 during a three-minute telephone call. Had he had the time to think about it, I am sure that he would have agreed with Macmillan. I certainly tried to keep Harold Macmillan's advice to Peter Rawlinson in the forefront of my mind when I was Solicitor-General.

To many Ministers and Members of Parliament, the law officers are either mysterious, barely known creatures or an inconvenient reminder that the law of the land applies to them. Like lawyers in private practice, law officers cannot talk in detail about their work, which is confidential to their client—the Government. However, nor should they just say "no"; they should try to be imaginative and help the Government navigate through their difficulties. Their power, if they have any at all, lies in speaking truth unto power and in resignation. The law officers are more like submarines than the ships of the line in the Cabinet: you know that they are down there somewhere, unseen and unheard, quietly going about their business patrolling the murky waters of Whitehall, but, if they surface and their

[Lord Garnier]
concerns or disagreements with the Government become known to the wider world, either the Government are in trouble or they are.

It is the fate of the law officers, if they behave as law officers and restrain themselves from making excessively political speeches, to be seen by their parliamentary colleagues as part of some mysterious priesthood, out of touch with the cut and thrust of political controversy. Their offices are off Central Lobby, well away from those of the departmental Ministers behind the Speaker's Chair, and they cannot show off about their work because it is largely confidential. However, they are not vestal virgins or Trappist monks. They are active constituency MPs or legislators in one House or the other.

**Lord Davies of Gower (Con):** Can I ask the noble and learned Lord to bring his speech to a close?

**Lord Garnier (Con):** I am just doing precisely that. The law officers have party-political allegiances and accept collective government responsibility. Their offices and that of the Lord Chancellor are not bad because they are old; they are old because they are good. So long as we can encourage good lawyers from all parties and all three jurisdictions to come into Parliament—as we actively should—these offices should remain to serve our constitution. Let us therefore work tirelessly to restore that fellowship between the law and Parliament, which has been lost, and do both institutions a favour.

*2.50 pm*

**Lord Thomas of Gresford (LD):** My Lords, what a delight it is to see the noble Lord, Lord Hennessy, in his place. I have followed his wise counsel on many occasions, and it is great to see him back—not least because he was a very effective member of the Constitution Committee, even though he was at the other end of a television link.

As a member of the Constitution Committee, I first express my thanks to the noble Baroness, Lady Drake, for her calm, careful and considerate chairmanship of the committee, on this issue as on others. I am grateful to the clerk, John Turner, and his team for their invaluable work in putting the thoughts of the committee together in a compelling report.

I want to focus my remarks upon unfinished business: the dual role embodied in the one person of Lord Chancellor and Secretary of State for Justice. I am pleased to find myself again on the same side as the noble and learned Lord, Lord Garnier. This issue was very firmly kicked into the long grass by the Constitution Committee. In paragraph 186 of the report, we concluded that the advantages of separating the two roles were not clear and that we were not in favour of making changes at this point in time, having regard to the burdens inherent in any major machinery of government change. However, we recommended that a new Government, or a Prime Minister embarking on a reorganisation of government, might wish to consider or at least contemplate removing responsibility for prisons from the Lord Chancellor's remit.

I do not think anyone on the committee wished to resurrect the Lord Chancellor of old as Speaker of this House or as head of the judiciary controlling the appointment of judges. His department had its problems in that regard in the old days. I met an old friend and colleague of mine a week ago. We took silk on the same day in 1979. Some years later, he discovered that, according to his personal but secret file in the department of the Lord Chancellor, he had fought eight general elections as a Liberal candidate, which was not really an advantage for judicial preferment. Unfortunately, his press cuttings had been mixed up with mine. It was not, in those pre-digital days, a perfect system.

Things changed in 2003 when the Lord Chancellor's Department became the Department for Constitutional Affairs. In 2006, the appointment of judges became the responsibility of a new Judicial Appointments Commission. The Department for Constitutional Affairs morphed into the Ministry of Justice in 2007 and took over responsibility for prisons from the Home Office. Thus, the administration of courts, its staff and its estates merged with the administration of prisons.

In a speech on 24 May last, on the occasion of the swearing in of the latest Lord Chancellor—the excellent and able Alex Chalk—the Lord Chief Justice, the noble and learned Lord, Lord Burnett of Maldon, who has been quoted already many times, said:

> "The functions of Lord Chancellor in a modern age might be thought enough to keep a minister fully occupied. The original concept of a Department for Constitutional Affairs did just that. But then along came prisons, bringing with it an obvious potential conflict of interest and problems themselves enough to consume the energies of a superhuman. That marriage may not have been made in heaven. When political breathing space allows, the time may well have come for the role of Lord Chancellor to be looked at again".

The reason given by a number of witnesses to the Constitution Committee in the course of this inquiry for maintaining the joint responsibilities for courts and prisons in the hands of one Minister was that, unless the Lord Chancellor were given a significant spending department, he or she would have no clout in the struggle for funds from the Treasury. I defer to the experience of the former Lord Chancellors who appeared before us, but the fact is that both the court system and the prison system, which do need money, are starved of resources. I can put it no better than the noble and learned Lord, Lord Clarke of Nottingham, who told us in his evidence:

> "The present Lord Chancellor has the misfortune of presiding over a department both the large chunks of which are in a pretty dire state—worse than I can recall for years ... In both these particular cases, you have a really dire problem of trying to get resources applied to tackling the problem against a background of economic crisis when the public finances are in a dire state".

The noble and learned Lord, Lord Clarke, was nevertheless the advocate of no change, as was Mr David Gauke, on the basis of the "clout" reasoning, but having "clout" has not prevented the criminal Bar going on strike for lack of funds, the ceiling of the court in Hereford's magnificent Shirehall collapsing or the general crumbling of our famous Assize Courts and indeed more modern courts. Nor has it prevented the shortcomings in staff, of which I have often spoken, in the large and modern Berwyn prison near Wrexham, my home town. Alex Chalk opened the new Fosse Way prison in Leicestershire two weeks ago as part of the Government's £4 billion programme to create 20,000 new prison places. He had clout enough to lock

people away—I mean, he is part of a Tory Government—but increasing room for prisoners must surely impact on sentencing policies and the courts: build it, and they will come.

Meanwhile, the Chief Inspector of Probation, Mr Justin Russell, wrote in his 2023 report on serious fraud offences:

"It is very concerning that assessments for the risk of harm a person on probation may pose remain inaccurate, incorrect, or incomplete. It is clear that reduced staffing levels within local services continue to have an impact on the quality of work we are seeing, both in these serious further offence reviews and the findings from our local inspections. Once again, I call on HMPPS to ensure services have the staff they need in order to manage every person on probation actively and effectively to monitor any risk of reoffending".

Rehabilitation is not a priority compared with building prisons. On bread-and-butter issues, today we learned that the MoJ missed a statutory deadline by six months for dealing with intestate estates, in a time of inflation.

To my mind, certainly as to the mind of the noble and learned Lord, Lord Garnier, and others, the role of the Lord Chancellor is not to be a nuts-and-bolts mechanic but, as we have described in the report, to be the guardian of the rule of law: the one person of experience, judgment and standing who can say to a Prime Minister, "No, your policy is unlawful". What we have seen under this Government is unlawful Prorogation, the unlawful United Kingdom Internal Market Act and now the Illegal Migration Bill, described yesterday by the United Nations High Commissioner for Refugees, Volker Türk, as

"contrary to prohibitions of refoulement and collective expulsions, rights to due process, to family and private life, and the principle of best interests of children".

That is the current unlawful way in which this Government act.

The Lord Chancellor is now a diminished figure. It is not surprising. The noble and learned Lord, Lord Burnett, pointed out that Alex Chalk is the seventh Lord Chancellor he has served alongside in his six years as Lord Chief Justice. There have been 13 Lord Chancellors in the 20 years since 2003. Before then, there had been 13 Lord Chancellors in 64 years. In former days, it was a final destination job to close a distinguished career. Now it is but a stepping stone, with its independent role of guardian of the rule of law marred by hopes of preferment to a more important Ministry.

So, there it is in the long grass. I hope a new Government will recognise, as the noble and learned Lord, Lord Burnett, said, that the administration of justice is one of the building blocks of society, and that courts and prisons each require the focused energies of a single Minister to tackle their separate problems.

*3 pm*

**Lord Howell of Guildford (Con):** My Lords, I join other noble Lords in congratulating the noble Baroness, Lady Drake, on her skilled chairmanship of the sessions of the committee that gave birth to this report. It was not an easy task at all. I also echo strongly the words of welcome to the noble Lord, Lord Hennessy. It is marvellous to see him again. Although we have both long since been rotated off the committee, we worked together on earlier reports. That was a real honour and a pleasure, and something to keep in my memory. I greatly look forward to what he has to say in a few moments.

My contribution will focus not so much on the role of the Lord Chancellor and the law officers in upholding the rule of law—on which we have already heard some wise words—as on the first section of the report, which interestingly analyses what the rule of law really means today, and to what that rule extends.

First, I add briefly my agreement with the report's finding that the Lord Chancellor must be a massively credible figure and the pillar not only in advising the Cabinet what is or is not constitutional and robustly defending the judiciary but in ensuring that no one is above the law and that it applies equally to both rulers and the ruled. That fundamental point seems to have escaped the comprehension, for instance, of the autocrats in today's world, particularly the Chinese leaders, who often assert indignantly that of course the law applies to the people—but not to the leaders of the Government or the all-powerful Chinese Communist Party. That is the big geopolitical dilemma we all face.

All this begs the key question for us, which the report bravely faces in its first few pages, of what exactly the rule of law means and, especially, what it means in an international context, where other parties outside our national judicial space may not be playing quite the same game as we are. As one witness to the committee's inquiry put it,

"One person's legal nicety is another person's rule of law".

Other witnesses talked about the rule of law as a "protean"—presumably meaning "evolving"—concept, or, in one case, as being "somewhat nebulous". There is also the dilemma, put to us by several very senior legal figures as witnesses, that when it comes to what some deem our international legal obligations, Parliament can legislate to the contrary, and since the will of Parliament is the law of the land, it must take precedence in the enforcement of the law in the courts.

The gospel to which many legal minds seem to return in untangling this dilemma—and to which the report itself returns—is the opinion of the late Lord Bingham, whose views get a whole half-page box in the report. Tom Bingham was pretty unequivocal about the rule of law applying just as much in the international legal order as in national domestic law. Others were more doubtful about that and that identity, arguing that international law raises quite different and changing issues. Personally, I share their doubts perhaps a little more strongly than the report consensus does.

It seems obvious to me that where one side in an international agreement or treaty is a foreign power or institution which then bends or even flouts the spirit of the agreement or treaty, or interprets it in unexpected ways, the other side—meaning us—has every right to alter its stance. Where dispute machinery exists, as in Article 16 of the EU withdrawal treaty, plainly, that should be the first port of call. That is obvious. The Vienna convention on treaties—which does not get much of a mention—makes allowance for this, in Article 60 and possibly Article 62 as well, if the dispute machinery fails to get a constructive and satisfying consequence, or in some cases is simply disregarded, as, for example, the Chinese nowadays often do.

[Lord Howell of Guildford]

In these circumstances, it seems to me that a unilateral response, even if temporary, to a unilateral move by another party may well be justified. Frankly, I am sorry that we did not go deeper into those kinds of circumstances. Moves by the UK Government such as the famous—some claim notorious—two clauses tacked on to the internal market Act, which were deemed to be in breach of UK treaty obligations, seemed to be assumed from the start to be "legal sins" rather than moves in an unfolding and wider drama. I know that that will not have the support or agreement of many colleagues. This all requires more careful thought before rushing to judgment.

The report both begins and ends its summary by emphasising the vital link between upholding the rule of law and the whole health of our modern democracy. That means being open-eyed and honest not only about the unfolding meaning of the rule of law but about our liberal democracy and how in the digital age it is evolving rapidly in response to the revolutionary change in the way people and institutions relate—indeed in all relationships, from the humblest, the family, up to the highest level of international exchange.

Democracy is not in decline, but it is certainly under attack. We must attend to what Alexis de Tocqueville called "the errors of democracy" if our rule of law is robustly to uphold democracy's health as a better performer than the authoritarian alternatives. That is surely better than just standing by and letting democracy's obvious errors and weaknesses grow or complacently assuming that it all works fine and needs no defence or adaptation.

Warning against that dangerous tendency is one more major task for a truly influential Lord Chancellor at the heart of the Government and the Cabinet but also at the heart of our independent judicial system—he or she is the bedrock—but that is clearly a task for another day and, maybe, another report.

*3.07 pm*

**Lord Hennessy of Nympsfield (CB):** My Lords, I thank noble Lords for their welcome back; it is an undiluted pleasure to be with you all again. It is funny what one misses. There is serious business, of course, but being a Member of this House is the most agreeable form of adult education the world has ever seen, and when it comes to providing weapons-grade gossip, it has no equal in any Parliament that I have ever come across.

Any nation that wishes to claim for itself the much-prized title of an open society has to meet, nourish and cherish a hierarchy of needs. Right at the top are the rule of law and regular elections conducted in a free and fair manner. In our country, so seriously do we take the rule of law that we keep a man or woman at every Cabinet table to incarnate it and to defend it through thick and thin in the person of the Lord Chancellor. As my noble friend Lady Drake has emphasised already, no other principle has a shop steward in the room to represent it at Cabinet meetings. If a Lord Chancellor fails in his or her duty of care, especially the defence of the independence of the judiciary, we feel, rightly, seriously let down at best and truly alarmed at worst.

Of all the senior posts in the Administration, the lord chancellorship must at times be a real short-straw draw of a job, for there will be occasions when your colleagues are itching to cut a corner, awash on a dopamine high or flushed with the righteousness that can befall those who think they have a special insight into the minds of the British people, unlike those tenacious human rights lawyers or the bewigged Inns of Court-polished smoothies sitting on the judicial benches nitpicking away at or, even worse, sabotaging the mandates of elected Ministers. I parody of course, but not entirely, for the Lord Chancellor lives by the light of an oath solemnly sworn, an oath for all seasons, with an overriding duty of speaking truth unto power in every circumstance.

The last great service Tom Bingham, the late Lord Bingham of Cornhill, did for us was to author a classic work on the rule of law in 2010. It was as if he stood at our shoulders as your Lordships' Constitution Committee went about its work on the inquiry we are discussing this afternoon. Witness after witness praised it as the modern template for a rule of law country. For me, Lord Bingham's thoughts and words help to explain why a society that lives by the rule of law is utterly different from one that does not. Perhaps my favourite passage in his book is the section where he cites the best-known encapsulation of the principle delivered by Thomas Fuller in 1733:

> "Be you never so high, the law is above you".

Lord Bingham wrote,

> "If you maltreat a penguin in London Zoo, you do not escape prosecution even if you are the Archbishop of Canterbury".

In case of any of your Lordships may have misheard what I have just said, I am not suggesting that any Archbishop of Canterbury, living or dead, has ever had such an encounter with a penguin, and nor, I am sure, did Lord Bingham.

The rule of law is a principle for all of us to live by, all of the time. As the noble Lord, Lord Finkelstein, put it on BBC Radio 4 on 11 June this year,

> "the rule of law depends on enormous universal acceptance".

People in political and public life need a string of rule of law alarm bells strung around their cortex. Somewhere in the minds of everyone engaged in the professions of Government, and the law in particular, there needs to be a bell tower ready to peal out a tocsin of warning when the rim of the rule of law is being approached by some new policy, plan of action or draft statute. Such a capacity should become innate, a crucial and permanent part of their political consciousness. For living up to the conventions and probities of the British system of government is very much a state of mind, given the absence of a formal written constitution. That is why we have various codes, ministerial and Civil Service, and the Nolan principles of public life. That is why we have Lord Chancellor's oath, and that is why we need a Prime Minister's oath as an aide to keeping all of the decencies and conventions alive and flourishing—but that is a subject for another day.

*3.12 pm*

**Lord Sandhurst (Con):** My Lords, it is a true pleasure to follow my friend the noble Lord, Lord Hennessy, who, like me, is a Bencher of Middle Temple. I declare

my interest in the register, as chair of research for the Society of Conservative Lawyers, and I welcome this committee's thoughtful report.

Historically, as we have heard, the Lord Chancellor and law officers have had special responsibilities. Lord Chancellors have had a special role in ensuring that their Cabinet colleagues adhere to the role of law. They sit in Cabinet; the Attorney-General, on the other hand, is not a member but attends Cabinet. The Government website describes the Attorney-General as the "chief legal adviser to the Crown". That carries a heavy responsibility.

We are fortunate that the current Lord Chancellor has been a serious practitioner. He will properly understand the judges' role in our unwritten constitution and the need to defend them against ill-considered abuse and commentary. As we know, sadly that entirely passed the notice of one of his non-legal predecessors. But we cannot undo the past. Today, there are many fewer serious lawyer politicians in either House, so there is a practical reason why it may be hard to appoint a lawyer as Lord Chancellor and Secretary of State for Justice. The committee and the outgoing Lord Chief Justice have suggested that prisons might be removed from the portfolio. I do not suggest that is a bad idea, but I am not convinced it will necessarily help with the problems with which we are truly concerned. It is not only because what would be left would be a small department. Put simply, it will not restore the authority of old. We need to look elsewhere for a parliamentarian to protect the rule of law, and we must do so.

We do not have a written constitution. We rely on the Crown in Parliament as the Executive, together with Parliament itself and the judiciary, each knowing where each stands and its respective role and, importantly, that each must not overstep the lines. Each of these three actors must observe their invisible boundaries. Recent events have stretched that understanding to their limit. I need only refer to the decision to advise the late Queen to prorogue Parliament. It is not the point whether the Supreme Court was right in strict constitutional theory to hold the prorogation unlawful. What is plain is that the Executive, the Crown, sought by fiat to render Parliament impotent. I ask noble Lords to think of this: if throughout the Supreme Court judgment, one substituted for the words "Prime Minister" the words "King James I" or "King Charles I", would the court's critics still find the decision questionable? This constitutional gambling was followed by the internal markets Bill. That led to the resignation of a distinguished Lord Advocate, my noble and learned friend Lord Keen, who was here a moment ago.

It is clear that the Executive must be constrained from overstepping important boundaries. These things matter; politicians must understand that. Our constitution and Parliament are not playthings for Prime Ministers. I do not have a complete answer, but it will not lie just in future Lord Chancellors, notwithstanding their statutory duty. If they do not properly understand our constitution, in the way that decent lawyers do, as some have not in the past, how can they attempt effectively to uphold the relevant law? So, it is with the law officers that our protections must rest. Here, I interject a personal note. James Mansfield, my four-times-great-grandfather, was like my noble and learned friend Lord Garnier, Solicitor General and later Chief Justice of the Common Pleas. He was also one of those who represented Somerset, the slave, and achieved his freedom—so he knew something about the rule of law and proper principles.

First, I agree with the committee that the concept of a "respectable legal argument" needs firming up. It is one thing for the Government to litigate a case in the English courts, having been advised that the prospects are weak—that is not improper—but how low should Government be free to go? They are not an amoral, commercial client. Nor are they necessarily wrong to act when the advice given by an Attorney General is that a proposed step might breach a treaty—and I emphasise "might". While legal advice should ordinarily remain confidential and privileged, in matters of international law the Attorney General's determination on the lawfulness of government action in relation to a treaty can provide an important legal constraint—or not, as the case may be.

Importantly, because advice on such an issue will not be tested in the courts—at least not till long after the event; it is not like advice which leads to one going into litigation. So the Attorney-General must be particularly mindful of the solemn and constitutional duty to advise on such questions objectively and impartially and, in my view, free to explain that decision to Parliament, which has a legitimate interest if a treaty is, or may have been, broken. Indeed, I suggest that the Attorney-General should be obliged to confirm to Parliament that the advice was given that this was not a deliberate knowing breach of treaty. Furthermore, and perhaps even more seriously, when it comes to going to war, government should act only if it is confident that this is the right course. Our Armed Forces, and in particular their commanders, must be confident that, in case of armed conflict, they are not in the wrong.

To conclude, I will make some points in summary form. As my noble and learned friend Lord Garnier just explained, law officers must be Members of one or other House of Parliament and answerable to it. They should be well-established practitioners. We can look at provisions such as seven years' or 10 years' practice; I will not go into the detail now.

To strengthen their role, the statutory duty currently imposed on the Lord Chancellor to defend the rule of law should be extended to the law officers, and the oath taken on appointment updated to reflect this situation. The law officers should also have to appear once a year before the Justice Committee of the House of Commons. The current powers given to a departmental Select Committee to send for persons should in this respect be put on a statutory footing of compulsion.

Next, an Attorney-General, while of course continuing to attend Cabinet, should not be a member of the Cabinet—there must be that element of detachment—nor should they be a member of a Cabinet committee that is not clearly related to legal or criminal justice issues. They should not be a pure politician.

Finally, law officers should not engage in media briefings on a range of government issues. Given the short time available, I leave things there.

*3.21 pm*

**Lord Norton of Louth (Con):** My Lords, I very much welcome this considered report, building as it does on earlier reports of the committee, not just on the role of the Lord Chancellor and the office of Attorney-General but on other constitutional issues, to which I shall refer. The report is thorough and balanced.

None of these commendations applies to the Government's response, which no speaker so far has mentioned; there may be a reason for that. It is, regrettably, not untypical of some of the government responses we have had to committee reports. Where the report entails no action on the part of government, the Government agree with it; where there is a recommendation for change, the Government either disagree or deflect responsibility elsewhere. Indeed, the Government's response reminds me of an episode of "Father Ted" in which Father Jack is coached to respond to difficult questions by saying, "That would be an ecumenical matter". In the Government's response, the equivalent is, "That would be a matter for the Prime Minister". The response says:

"Ministerial appointments are a matter for the Prime Minister",

and

"These, along with tenure … are all matters for the Prime Minister",

at paragraph 9. Paragraph 13 says:

"It is ultimately the Prime Minister who has overall responsibility for the constitution".

Paragraph 14 says that

"it is entirely for the Prime Minister to determine where constitutional responsibilities should sit".

Paragraph 16 says:

"Decisions around Law Officer appointments are for the Prime Minister",

and paragraph 22 says:

"Amendment of the Ministerial Code … is a matter for the Prime Minister".

The Prime Minister, then, has ultimate responsibility. The Government say, at paragraph 12, that they see greater strength

"in having a number of senior Ministerial leads on discrete constitutional matters, all answerable to the Prime Minister".

That position is stated but no justification is offered for it. Indeed, the Government now appear to have departed from it. Last month, I tabled a Question asking

"which member of the Cabinet has overall responsibility for constitutional affairs and upholding the constitution".

My noble friend Lady Neville-Rolfe replied on 26 June:

"The Deputy Prime Minister holds ministerial responsibility for constitutional policy, with support on matters relating to the constitution from a wider ministerial team within the Cabinet Office and across Government".

So there is now a senior Minister, other than the Prime Minister, with responsibility, which is to be welcomed. The Government have departed from the position they took in March.

The only problem is that I cannot find anywhere on the public record, other than in my noble friend's Answer, the fact that the Deputy Prime Minister has responsibility for the constitution. It is not in his list of responsibilities on the Government's website. It is obviously not in the *List of Ministerial Responsibilities*, which has not been updated since December. Last week, in answer to another Question of mine, my noble friend Lady Neville-Rolfe said that the updated list

"will be published before the summer recess".

Perhaps my noble and learned friend Lord Bellamy can confirm that it will appear in the updated list.

It would also be valuable to hear from my noble and learned friend which Ministers comprise the wider ministerial team within the Cabinet Office and across government that supports the Deputy Prime Minister. In the December *List of Ministerial Responsibilities,* only three Ministers—all of them junior, including my noble and learned friend Lord Bellamy—have the constitution listed among their responsibilities.

Attempting to locate responsibility within government for dealing with constitutional issues is a task that has variously been undertaken by the Constitution Committee. I very much endorse its recommendations in this report, which are designed to enhance the position of the Lord Chancellor as the upholder of constitutional propriety within government. I also therefore endorse much of what other speakers, not least the noble Lord, Lord Hennessy, have said.

As the report recognises, the shift is as much to do with culture as with law and regulation. This entails, as we have heard, ensuring that we have a senior figure who has the qualities detailed by the committee and—this is equally important and has been stressed—is widely recognised within Parliament and the legal profession and beyond as having those qualities. It is imperative that there is a dedicated Minister with the responsibility not only for upholding constitutional propriety but for actively promoting the values of the constitution.

The Prime Minister is now the Minister for the Union; that establishes the importance of the union, but a Prime Minister does not have time to focus consistently on it. As I and the Constitution Committee have argued before, the Government need to be on the front foot in making the case for the union. We have to stress the benefits of coming together as one United Kingdom and not simply be on the back foot, responding to demands from different devolved bodies for more powers. We need to stop treating devolved parts of the union on a grace and favour basis.

John Major was the last Conservative Prime Minister to put the integrity of the constitution at the forefront of government thinking. His successors have been tied up with dealing with specific constitutional as well as economic and other issues. There has been no serious thinking about the constitution as a constitution.

I see merit not only in having a senior Cabinet Minister with responsibility for the constitution but in the Lord Chancellor being that Minister. Giving the task to the Deputy Prime Minister is a step forward—it means that a senior Minister has that dedicated responsibility—but not all Prime Ministers accord the title of Deputy Prime Minister to one of their colleagues, and it is a title and not a post. Oliver Dowden's posts are Secretary of State for the Cabinet Office and Chancellor of the Duchy of Lancaster.

Giving responsibility to a different chancellor—the Lord Chancellor—not only ensures consistency but places it with a Minister who has or should have standing appropriate to the task and who will ideally be in post for some time. It provides a dedicated voice in a way that the Prime Minister cannot usually provide. The Lord Chancellor can ensure that other Ministers respect and are alert to the values of our constitution and the need to uphold them. Otherwise, there is the danger of those values being overlooked by Ministers as they address their departmental responsibilities and the Prime Minister addresses other crucial issues facing government.

I will not go through all the recommendations in the report. However, the report is like other reports from the committee: an extremely valuable and important study, which highlights the need for a body to address constitutional issues. The report merited a more substantive response, both in length and substance, from government. I look forward to my noble and learned friend the Minister providing such a response.

**Lord Davies of Gower (Con):** The next speaker will be my noble friend Lord Cormack.

*3.29 pm*

**Lord Cormack (Con):** I am slightly taken by surprise to be speaking now.

Like others, I begin by saying that this is the one thing that unites us all. I am absolutely delighted that my friend the noble Lord, Lord Hennessy, is here today; he made a typically concise, precise and witty speech, and we long for him to make more.

For me, one of the key remarks of the noble Baroness, Lady Drake, who began the debate with a very measured and compelling speech, was about a previous Lord Chancellor—who has been referred to several times, but named, I think, only twice—communicating thoughts by tweet. Does not that say it all? Does not that illustrate why my noble and learned friend Lord Garnier talked about many able lawyers regarding Parliament as poison and not feeling able to follow a vocation in public service, as he most notably has done?

I take a slightly more worried view of the state of the constitution and democracy than my noble friend Lord Howell, for whom I have enormous respect and whom I first met at a Conservative Party conference in Lincolnshire as long ago as 1962. I believe that our democracy and constitution stand at a crossroads. One of the reasons for that is the subject we are discussing today: the role of the Lord Chancellor and the Justice Secretary following the abolition of the old role of Lord Chancellor and the creation of a new department which is perpetually—it almost has to be—under tension.

Prisons are very important, but they are a highly political subject. One has to think only of the debates in which I took part in another place, in which I strongly opposed the privatisation of prisons. There is of course a role for someone—call him the Justice Secretary, if you like, but I would not—in charge of prisons. It is a very important role, because we have consistently failed with our prisons; they are not, for the most part, places of rehabilitation, but rather colleges of crime.

For me, the Lord Chancellor should be one of the two ultimate Ministers. My noble friend Lord Norton, in a very thoughtful speech, talked about the Prime Minister having all these responsibilities. I believe that ultimate responsibilities, following the most solemn oath taken by any politician in our country, should rest with the Lord Chancellor. I believe that he should be a lawyer, and that it is important that he is learned in the law. I also believe that he should be, so far as it is possible, an apolitical and undivisive figure. At the end of the day, we all depend on the observance of the rule of law, and that should be the ultimate responsibility of the Lord Chancellor. So, while I of course welcome, applaud and pay genuine tribute to this report, I believe that the committee should have gone a step further and recommended the division of responsibility.

My noble friend Lord Sandhurst said that you cannot undo the past. Sadly, you cannot, but you can atone for it. I thought that, in his remarks, he coined the most wonderful oxymoron that I have heard in many a year when he talked about a "pure politician". However, it is important that whoever is Lord Chancellor is as close to a pure politician as you can be, in the sense that he should be devoid of the acrimony and infighting of party politics.

Infinite damage has been done to our country by a neglect of the Tom Bingham principles—what a marvellous little handbook that is. I had the great good fortune to know Tom Bingham well. I worked closely with him on the Royal Commission on Historical Manuscripts, where he was chairman and I was the senior commissioner. He really nailed it in that book. However, we cannot get away from unfortunate recent events: the illegal Prorogation of Parliament and that extraordinary moment in the other place when the Secretary of State for Northern Ireland stood at the Dispatch Box and said that the Bill would go against the international rule of law, but only a little bit. It reminded me of a marvellous scene in one of the books of my childhood, *Mr Midshipman Easy* by Captain Marryat, which some noble Lords may remember. In that wonderful Victorian moral tale, a maid gave birth to a child outside wedlock. Her excuse was, "It was only a little one". You cannot get away with that when you are talking about the rule of law.

I always feel uncomfortable when I talk, as I did in the House the other day, about the abrogation of an international treaty by China over Hong Kong. We cannot give lectures unless we are in a position to say, "We do not do that". We will get nearer to not doing that in the future if we have a Lord Chancellor who is outside the realm of party politics to a large degree, a member of the Government but an ultimate member, as I said, and one who can indeed step aside and be looked up to.

In his time on the Woolsack, Lord Mackay of Clashfern was looked up to. Yes, he took the Conservative whip, but was he a creature of a Conservative Government? No, he was not. He was an ultimate Minister. We much miss him. We need someone cast in that mould in the future, and I very much hope that that is what we will get.

I am delighted to have had the chance to listen to some fascinating speeches and to take part in this debate. I very much hope that, when my noble and

[Lord Cormack]
learned friend Lord Bellamy comes to reply, he will be able to give us some comfort and encouragement that the Government really are going to produce an answer very different from, and much more comprehensive and more precise than, the one from which my noble friend Lord Norton quoted so tellingly.

*3.39 pm*

**Lord Wallace of Saltaire (LD):** My Lords, I vividly remember the evening in which the news filtered through that the office of Lord Chancellor had been abolished. Lord Onslow dashed into the Lords to demand that we immediately suspend other proceedings until the Government gave us an answer as to what the implications of that were. The Government have not yet given us a full answer as to the implications of that, and here we are, many years later, discussing what sort of role we want the half-Lord Chancellor that we still have to play.

I am not a lawyer, although I spent three years in the United States teaching the American constitution when I was a graduate assistant in an American university. Like others, on the one occasion that my wife and I attended a formal event at one of the Inns of Court, we were certainly treated as outsiders and incomers. Those who recognised us kept asking us, "What are you doing here?" We had to explain that, although we were not in any sense lawyers, we had, as junior lecturers at the University of Manchester, regularly gone to the pub with a junior lecturer in law, who was then called Brenda Hoggett, and had retained that friendship over a long period.

There are three elements in this report and the debate. First, there is the importance of the rule of law as a guiding principle in government; the allocation of responsibility for safeguarding that principle; and, behind that, a wider issue of who is responsible for defending the conventions of our constitution, which have been so easily disregarded in the chaos of the last six or seven years. Secondly, there is the question of the combination of the role of the Lord Chancellor and the Ministry of Justice. The third, which is a little different, is the role of the law officers: the Attorney-General and the Solicitor-General.

Should we regard the experience of the last six or seven years, with its chaotic roundabouts of ministerial reshuffles, the bending of conventions and disregard for the principles of the rule of law, as an exceptional and unlikely event, not to be repeated, or as a shift that now requires us to tighten constraints on executive power? I fear that we need to tighten the constraints on executive power and cannot go back to the "good chaps" period, of which the noble Lord, Lord Hennessy, wrote a wonderful obituary.

There are further questions. I am fascinated by the question of the Lord Chancellor's oath. I suspect it would be very good for the Government of this country if the Prime Minister, and perhaps a number of other senior Ministers, had to swear an oath on taking office. The Lord Chancellor should not be the only one to have to take an oath, but that is perhaps a subject for another study and another report. There is the related question of the size of the Cabinet. Some of us think that a Cabinet which has more than 30 people sitting around the table is completely ineffective and incapable of taking decisions, and ought to be reduced by at least a third. Effective Cabinet government requires really no more than 20 or 24 people around a table. Then there is the length of time in office. The extent to which ministerial reshuffles have taken place and, if one reads the press, are likely to take place again, just as Ministers are beginning to learn what their jobs are about, is one of the dysfunctional aspects of our current form of government.

The traditional Lord Chancellor's role was, of course, extremely odd: both a senior Minister and a judge, and, at the same time, the Speaker of the House of Lords. I asked myself, as I read the report, whether we need a designated protector of constitutional behaviour and the rule of the law inside the Cabinet. I am not sure. Should we need such a person, would such a constitutional guardian role be better played now by officeholders in the institutions outside the Cabinet, as part of checks on executive power? We have moved in that direction to some extent, towards institutional checks and balances, over the last 30 years, with a separate Supreme Court, the Committee on Standards in Public Life, the various codes and the Independent Adviser on Ministers' Interests. We may now need to move further.

I am attracted by the case for recreating a department of constitutional affairs and making that responsible not only for relations with the Crown dependencies but for the delicate task of relations with the devolved national Governments of Scotland, Wales and Northern Ireland. Post devolution, separate departments in Whitehall for each of these three nations are difficult to justify—three seats around the Cabinet table without much of substance to contribute to most discussions on domestic or foreign policy. Three Ministers of State, perhaps, supporting a Cabinet Minister whose focus on judicial and constitutional affairs would naturally include maintaining the delicate balance between devolved autonomy and UK oversight, might well be a great deal better.

I do not buy the "financial clout" argument for combining the judicial oversight and constitutional role with prisons and probation. The Foreign Office—the department of which I have the most experience and expertise—has always had one of the smallest budgets in Whitehall; that has not always led its Secretary of State to be marginalised in Cabinet.

The suggestion in the Government's response to the Constitution Committee's report that

"there is greater strength in having a number of senior Ministerial leads on discrete constitutional matters"

sounds like a recipe for confusion and chaos. I note, for example, that the Department for Levelling Up, Housing and Communities is now responsible for electoral law and administration, as if that were purely a matter of local concern rather than part of our constitutional procedures. For that matter, that department seems to muck about with our local and regional level of governance and democracy whenever its Secretary of State feels like it, although that is also part of, or ought to be considered part of, our constitutional structure.

There is a case for a stronger parliamentary counterbalance to the Executive in matters of constitutional importance and propriety. I am attracted by the idea I heard the other day from another noble Lord, a lawyer, for a Joint Committee of the two Houses on constitutional issues—a sort of parallel committee to the Intelligence and Security Committee in structure and status—that would act as Parliament's cross-party voice and would relate to such other constitutional guardians as the Committee on Standards in Public Life, the Independent Adviser on Ministers' Interests, the Commissioner for Public Appointments and the House of Lords Appointments Commission. Again, that is a matter for further discussion.

The Government's requirement for legal advice is separate from the question of the post of Lord Chancellor. The Government clearly need a law officer—the Attorney-General—to advise on the domestic and international legality of proposed actions, among other duties. I am not sufficiently expert to know whether one needs a Solicitor-General as well as an Attorney-General; perhaps that is one question that we ought to throw out. Certainly, we do not need both as legally trained politicians when we are in a situation, as the noble and learned Lord, Lord Garnier, remarked, where it is very difficult for good lawyers to be encouraged to join Parliament.

Perhaps we have to recognise that the definition of what an MP does has changed quite radically. Part-time MPs are no longer regarded as acceptable, either by their constituents or by other MPs—as Geoffrey Cox has discovered on occasion. That may mean that we may need to look elsewhere, either to the Lords or to appointments that may be semi-political, such as lawyers advising the Government, because we will no longer have enough people of the calibre we want in the Commons, although we may well be able to continue to appoint them to whatever we call the second Chamber in 10 to 20 years' time. Legally-expert figures who are also aware of politics are there to be found at the Bar but they do not necessarily want to commit themselves to becoming full-time, elected politicians.

After the unconstitutional shenanigans of the past six years, whatever Government emerge after the next election must embark on reforms to strengthen constitutional protections and improve the quality of governance. The Institute for Government and the Bennett Institute for Public Policy in Cambridge published just yesterday a new paper proposing a number of practical reforms and longer-term innovations that any Government who take office after the next election should consider. These are questions that I hope the Constitution Committee will continue to follow but which we should all consider in our parties, and across the parties, as we approach the next election.

*3.49 pm*

**Baroness Anderson of Stoke-on-Trent (Lab):** My Lords—or should I say "My noble and learned Lords", given the level of expertise before us? I cannot express how intimidating a group of people noble Lords are, so I ask them to bear with me.

It is genuinely a privilege to have listened to this considered and informed debate and to be able to respond on behalf of His Majesty's Opposition. I first thank my noble friend Lady Drake for her and her committee's comprehensive review into the current working of the roles of the Lord Chancellor and the law officers—the first such review undertaken for five years. Her introduction was both direct and comprehensive, and I look forward to hearing the response from the Minister to the vital questions and issues raised by my noble friend and other noble Lords.

We have heard a great deal in the course of this debate about the rationale for undertaking the inquiry in the first place. More public attention has been given to the work, impartiality and propriety of the collective Law Lords in the last two years than there had been in the decade prior. This is therefore both a timely and a valuable report from the Constitution Committee, and the Government should heed its advice if they wish to re-establish the legal conventions that have been outlined throughout this debate and have historically served the Government and our country well.

The Government's written response to the committee's report, short as it is, includes an acknowledgment of the importance of the principle of the rule of law and the roles of the Lord Chancellor and the law officers in safeguarding it. The report highlights that it is critical that Ministers act in a way that is suffused with the concept and that they consider it to have primacy over political expediency.

As highlighted by my noble friend Lady Drake and the noble Lords, Lord Howell and Lord Cormack, Lord Bingham of Cornhill previously set out that an important and accepted principle of the rule of law includes the requirement of

"compliance by the state with its obligations in international law as in national law".

The committee's report should therefore serve as a valuable reminder to the Government and to our Parliament that the Government's actions will be watched internationally as well as domestically. It is therefore somewhat disappointing that the government response to the report attempts to argue that

"reaching consensus on the precise components of the concept of the rule of law is elusive, and perceptions will therefore differ".

I may not be a lawyer, but the confusion around the essential need to always honour international agreements as a component of the rule of law seems to be a peculiar affliction of this Government alone.

The committee notes that in introducing the United Kingdom Internal Market Bill and the Northern Ireland Protocol Bill the Government twice knowingly invited Parliament to endorse a breach of the UK's international obligations. The committee warns us:

"While parliamentary sovereignty means that Parliament is able to legislate in this way, this does not alter the Government's responsibility, as the state's international representative, to ensure to the best of its ability that international obligations are adhered to. As part of this, it should refrain from knowingly inviting Parliament to legislate contrary to the UK's obligations".

In light of the Illegal Migration Bill, which is about to receive Royal Assent, will the Minister please apprise the House of how the rule-of-law principle will be upheld going forward? What discussions have taken place between the Lord Chancellor and other members of the Government concerning the country's potential breach of international agreements? To the best of the

[Baroness Anderson of Stoke-on-Trent]

Minister's knowledge, has the Lord Chancellor actively advocated for the need to honour international agreements when discussing current and forthcoming government legislation with Cabinet colleagues and the Prime Minister, especially given the Prime Minister's role, as highlighted earlier?

While we continue to explore the role of the rule of law, the committee described it as critical that Ministers understood the rule of law's key principles. The committee stated:

"The Lord Chancellor should fulfil a wider, cross-departmental, role in defending the rule of law and educating … colleagues on its importance".

Defending the judiciary promptly and publicly from unfair personal or threatening abuse is a core part of the Lord Chancellor's role. The committee also said that law officers should have

"a wider role in defending the rule of law when issues arise".

The reality, as has been the theme of many contributions to today's debate, is that the Lord Chancellor and their law officers do not just need to have the confidence of both the Government and Parliament; they need to command the respect of the wider judiciary. To do that, the very least that would be required is for law officers to publicly defend the independence of the judiciary whenever it is called into question by politicians who do not like a specific judgment. So can the Minister inform the House what discussions are being held with key stakeholders to ensure that the independence and impartiality of our nation's judiciary are defended when they are attacked in the pages of the tabloid media? Every unanswered and undefended attack on our nation's legal framework undermines public trust in fundamental institutions. Can the Minister also inform the House what steps are being taken to strengthen public trust in the rule of law?

I have one final point for the Minister. The Government remain committed to producing an updated addition of the *Cabinet Manual* before the end of Parliament. As we quickly head towards Recess and the days count down to the end of this Parliament, when can we expect sight of the updated manual? I look forward to the response from the Minister.

*3.55 pm*

**The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con):** My Lords, I first thank the noble Baroness, Lady Drake, for securing this debate, all noble Lords who have contributed to our discussions this afternoon and, in particular, the noble Baroness and the members of her committee for producing such a valuable report, which has been rightly praised today in this debate and by the Attorney-General recently in another place. It is refreshing to have a report that so carefully examines important questions, hears some very distinguished witnesses and concludes in several instances that the case for major change is not made out, albeit rightly stressing the need for vigilance and for incremental improvements in the system.

I shall first make some general observations about the concept of the rule of law, then comment briefly on the respective roles of the Lord Chancellor and the law officers and finally deal with some other points raised by noble Lords this afternoon. I first disclose, as I should, my own close involvement with the foundation of the Bingham Centre for the Rule of Law, which was established in 2010 within the British Institute of International and Comparative Law in honour of Lord Bingham. The first director of the Bingham Centre was Sir Jeffrey Jowell QC, who was appointed only a few days before Tom Bingham's untimely death. That centre, which I am glad to say continues to thrive, was set up not only to honour Lord Bingham but to better articulate, defend and promote education about the rule of law. I emphasise "education" since the co-founders, including me, saw above all a constant need to better explain and educate society in the fundamentals of the rule of law. That is a mission that we should all encompass and promote, including the Constitution Committee.

As to the fundamentals, "the rule of law" is a phrase that easily trips off the tongue, but, as the committee rightly points out, the exact extent of the concept is a matter for debate. I was somewhat relieved and pleased to hear that what I am citing is exactly what the noble Lord, Lord Hennessy, referred to, namely our 16th century friend Thomas Fuller's famous words:

"Be ye never so high, the law is above you".

That is surely the core of the matter.

In other words, the Government and all citizens, however powerful, must obey the rule of law. The law of the land is decided by Parliament or by common law and is administered in public by a judiciary that is independent, fearless and incorruptible. Decisions will be not arbitrary but authorised by law and within powers legally conferred. In the words of the judicial oath, the judges

"will do right by all manner of people"

according to law. Those judges are appointed on merit, not on political or other suspect grounds, and they have commensurate security of tenure—a most important point. The security of tenure of the judiciary is the foundation of any legal system. Of course, the orders of the court will be as fully obeyed by the Government as by any other citizen. There should be no doubt about that, even though, formally speaking, there is no coercive power of enforcement again the Crown.

So described, as a number of your Lordships have said this afternoon, the acceptance of such a system by society depends on the people's trust in and respect for the judiciary and the knowledge that the courts will not hesitate to find against the Government where necessary and that the Government will accept the ruling and not change the law without the authority of Parliament.

That is not in any sense a nebulous concept. Your Lordships, sadly, well know how many countries in the world struggle to get anywhere near that standard. Indeed, I venture to suggest that, in this core sense, the rule of law is at least as strongly entrenched in this country as anywhere else, and has historically been and still is a beacon to many. It is in the public consciousness, if you like, and the DNA. It is in the education and culture of the legal profession; the law officers; Treasury counsel and the many barristers who are part of the Attorney-General's

various panels of advisers; the Government Legal Service, including departmental lawyers; and indeed, it is fully in the minds of the mainstream public civil servants as well.

The crucial point is that all public authorities know that their acts are susceptible to legal challenge and to being subjected to close scrutiny by, if I may say so, judges of outstanding integrity and competence. Having over the years had the privilege of working in or alongside other legal systems in various parts of the world, I respectfully suggest that there are few if any countries where the Government and public authorities are so susceptible to prompt and effective legal challenge. I add—and many noble Lords have seen this unfolding over the years—that we have come a very long way in the past 50 years or so. To be personal for a moment, when I first started at the Bar, judicial review hardly existed. The Government's legal adviser consisted of one Treasury devil. Former Attorney-Generals were still on the Bench, having enjoyed the sinecure that then went with the office of a nice judicial appointment at the end of your period as a law officer.

We have come a very long way since those days in the 1940s and 1950s. The then judiciary would not have challenged the Labour Government under any circumstances—but the culture of challenge to the Government has developed and extended and is in my submission alive and well. I suggest that the organisations, structures and people I have mentioned collectively represent, or closely approximate to, the bell tower to which the noble Lord, Lord Hennessy, referred. There are enormous checks and balances in the system—one sees it every day as a Minister when submissions cross one's desk and, in every part of government, the requirement to effect the rule of law and the legal framework is in the front of mind. That is the essence of the matter.

One can debate the further content of the rule of law but it would take too long to formulate the various aspects of it, and we have the principles formulated by Lord Bingham, promoted by the committee at paragraph 33. This is not actually my signed copy of *The Rule of Law* but it is a copy, and it is a remarkable work of exploration and articulation of what we are talking about. However, whereas in this Room we are subject to a picture of the tablets of stone coming down from the mountain, the eight principles of Lord Bingham are not quite yet the eight commandments, if I may say so. They are articulations of principles that need to be debated and elaborated on as the years go by.

If I may, I shall say a few words on one of the most difficult issues, on the international law point—and it is a difficult issue. The Government entirely accept the principle that international obligations should be observed. Indeed, that principle is the cornerstone of a rules-based international order, and plainly in the interests of the United Kingdom. However, it does not follow that international obligations should be justiciable in the courts in the way that I have just described unless Parliament has said so, as the committee rightly recognises at paragraphs 52 and following, particularly as explained by the sadly late Lord Brown of Eaton-under-Heywood in the cornerstone case. There are many other cases to the same effect.

It follows that one cannot automatically treat international obligations not forming part of domestic law as having exactly the same status as if they did. We are dealing here with relations between states. As I think my noble friend Lord Howell pointed out, these are circumstances in which a Government must have a margin of appreciation and must in particular have regard to the views of the national electorate from which alone the Government derive their authorities. Difficulties on the international plane typically arise where: relations have broken down; dispute solving or treaty amendment mechanisms either do not exist or are ineffective; the exact content of the relevant international law is unclear or debatable; circumstances have fundamentally changed since the relevant obligations were entered into; or unforeseen difficulties have arisen and other state parties refuse to recognise or choose to take unreasonable advantage of those changes of circumstance. In those circumstances any Government must, as a very last resort, have the ability to have regard to the public interest, while recognising the need to act as far as possible within the recognised parameters generally accepted in international law.

If I may say so in passing, the difficulty is illustrated in particular in relation to circumstances such as the Iraq war. The then Attorney-General, the noble and learned Lord, Lord Goldsmith, advised the Government that it was a lawful exercise of the Government's power. The late Lord Bingham, in his eighth principle, disagrees with that. That is a classic example of how difficult it is sometimes to know what is right, what is wrong and where the line should be drawn in the international sphere. Sometimes Governments have to act in the national interest. That is all I will say in general terms about the concept of the rule of law and the importance of it in our constitution, which is entirely recognised by the Government.

I turn to the position of Lord Chancellor. I first suggest that the 2005 reforms have been, on the whole, astonishingly successful. The key to those reforms was the creation of the Supreme Court and the separation of the functions of the legislature, judiciary and Executive. The Lord Chancellor, as the noble Lord, Lord Wallace, pointed out, was a defiant embodiment of the rejection of the doctrine of separation of powers, combining in his own person legal, judicial and executive authority. The establishment of a separate Supreme Court and the Judicial Appointments Commission was substantial progress.

The question then is whether the current role of the Lord Chancellor is satisfactory, combining the functions of the Ministry of Justice with what is described somewhat bleakly in the 2005 Act as the Lord Chancellor's existing constitutional role in relation to the rule of law. In that context, I respectfully slightly caution against a somewhat rose-tinted view of what went on in the past. Within living memory, Lord Chancellor Viscount Kilmuir advised the Prime Minister of the time Anthony Eden that the Suez invasion was perfectly legal, in defiance of the contrary advice from the then law officers. Viscount Kilmuir then proceeded to sit as a judge so disastrously that legislation was immediately introduced to reverse his leading judgment in the case DPP v Smith. There are other examples to that effect.

[Lord Bellamy]

I remind the Committee that, although we all admire and respect Lord Mackay of Clashfern, relations between the Lord Chancellor and the legal profession broke down entirely when he attempted to introduce legal aid reforms, replacing hourly rates with fixed fees. Relations later broke down entirely between him and the then Lord Chief Justice, Lord Lane, when he successfully introduced solicitors' rights of audience in the higher courts, which Lord Lane thought was the beginning of a fascist state, remarking that insidious progress does not necessarily come with a swastika on the armband but by other routes. The history of this office is not entirely clear, and we need to bear that in mind.

The overriding conclusion to which the committee rightly came—and with which the Government entirely agree—is that what is important is not so much whether the Lord Chancellor is a lawyer or a senior legal figure but the character, intelligence, integrity and commitment of the individual concerned. The Government would not necessarily accept that it is desirable in all circumstances for the Lord Chancellor to be a lawyer. One of the most influential Lord Chancellors in recent years was my right honourable friend Michael Gove MP, who introduced a significant and long-overdue programme of digitisation of the court system. He was a highly practical Lord Chancellor who got things done and was not in any sense susceptible to a perception of capture by the legal profession. He was not at all conservative, which many senior lawyers tend to be, if I may say so with respect to the many senior lawyers in the Room. In the Government's view, it is about the character of the person rather than whether in some distant stage of the past they achieved a formal qualification which now enables them to call themselves a lawyer.

On the perfectly legitimate question of how this part of government machinery should be organised—whether the Ministry of Justice and the Lord Chancellor should have responsibility for prisons and probation as well as for the courts and other aspects—the Government respectfully agree with the committee's conclusion that the case for change is not entirely obvious, although a future Government or Prime Minister will no doubt reconsider. They are now integrated and there is a huge cost to changing political and administrative structures within government once again. There is a logic to having courts, probation and prisons together. You must have probation and prisons together because they are now integrated under one roof much more than in the past. When you have a Criminal Justice Act, it will typically deal with sentencing, prisons, court processes, rehabilitation and so forth.

There is an internal logic to doing it, but it would be for any new Prime Minister or Government to consider. With respect to the thoughtful contributions from the noble Lord, Lord Wallace of Saltaire, and other noble Lords, there is a case for considering how we do this in terms of the constitution—whether you want some external body or person and whether they are in the Cabinet or not, and what we do about the constitution in general, as the noble Lord, Lord Norton, was asking.

With an unwritten constitution, the tradition up to now has been to let it evolve. On the whole, it has evolved fairly successfully without anyone trying to sort it all out. For some, it is rather messy—but an unwritten constitution is a bit messy. The test is whether it is working well, and one should not reorganise it for theological reasons or out of tidy-mindedness; one should look very carefully for the right balance, very much bearing in mind the importance of not only the administrative efficiency of government but the best ways to protect the rule of law. In that respect, the rule of law and its associated freedoms are also protected by Parliament, the media, public debate and all sorts of other means, as well as the formal processes through which the Government take their legal advice or decide to act in any particular way.

As for strengthening the Lord Chancellor's role—if I have understood some of the points made—as someone who is a sort of general watchdog or guardian who in some sense sits on the Prime Minister's shoulder and whispers in his ear, "No, you can't possibly do that", I respectfully doubt whether that was ever genuinely the Lord Chancellor's role. In his evidence to the committee, Lord Mackay basically said—I paraphrase—"I never advised the Government. I might say to the Prime Minister that you need to take advice on it, but I couldn't, as Lord Chancellor, actually go into the detail of what the advice should be. There were occasions when I had to tell the Government that they needed to take advice, but the giving of advice is for the Law Officers and Treasury counsel, and holding the Government accountable is ultimately for the courts".

Respectfully, I wonder whether it would be a useful additional element in our constitution to have a Lord Chancellor who had no other departmental responsibility other than to act as some kind of guardian of the rule of law. I suggest that that would almost certainly be unnecessary, given the very detailed structures and processes we already have to protect the rule of law in this country.

It is perfectly true, and on behalf of the Government I would be the first to accept, that one incident some years ago involving the "enemies of the people" was unfortunate. It was very concerning to the judges involved; the noble and learned Lord, Lord Etherton, is here, listening. From a personal point of view, I have always imagined it a rather frightening—that is possibly not strong enough a word—or at least very unfortunate incident. Certainly, in those circumstances, the whole Government, as well as the Lord Chancellor specifically, need to be able to defend the judiciary.

If I may say so, our experience since suggests that, on the whole, that lesson has been learned. Noble Lords will find very muted comments from the Government on subsequent cases, whether it is the judgment of the Supreme Court in Miller 2, the recent judgment on Rwanda, and so on. We now have a completely different atmosphere. That was an unfortunate lapse, which should not happen. It would be one of the duties of the Lord Chancellor to defend the independence of the judiciary, and I am sure the present Lord Chancellor would undertake it with vigour, sincerity and integrity.

Indeed, if I may say so again, as far as I can see, the current channels of communication between the Lord Chancellor and the judiciary seem to work fairly well. The present Lord Chancellor is well aware of the importance of judicial independence and the efficient operation of the court system. The noble Baroness, Lady Drake, asked whether the Government agree with the observation of the noble and learned Lord, Lord Burnett, that the position of the Lord Chancellor and the relationship with the judiciary need further reflection. Why not have further reflection on this difficult but evolving issue? There is no reason not to continue to further reflect on these matters.

In that context, one other question that I was specifically asked was whether the updating of the *Cabinet Manual* will clarify and more clearly define the duties of the law officers. On that point, I am not able to give a full answer today. However, I can say that the Government will review *Hansard* and consider the ideas that have been raised in this debate and the drafting process in the light of the committee's report. A draft of the updated memorandum will come to the Constitution Committee and the relevant committees in the other place to consider. That matter will, I hope, be taken forward.

Of course, this becomes a little more difficult in terms of the rule of law. This is very much the case on the international plane but also domestically. Where the rubber hits the road is where the law is not entirely clear, and that is most of the time, actually. It is not the case that everything is entirely straightforward, and that is particularly so in, for example, human rights cases involving social and economic rights, as distinct from classic legal rights under contracts or criminal law. There are many cases where more than one view is tenable. I hesitate to suggest that anything is wrong with the Government's present legal approach to that difficult situation. Thinking back over one's career, one has several times lost cases that seemed totally winnable and vice versa. That is the nature of the beast; it is not a science.

Again, to comment briefly from a personal point of view on the suggestion about the Government not putting forward legislation deliberately in breach of international law, yes, there is great force in that. However, possibly the only case where that problem resulted in a legal judgment goes back to the early 1990s, when the Government came under enormous pressure from all parties to save the Cornish fishing industry from the depredations of what was seen as Spanish fishermen illicitly coming on to the British fishing register. This led to the Merchant Shipping Act, which was challenged by the then European Commission. I was led by the then Solicitor-General, and we defended it as best we could. We thought that we were entirely justified in so defending it on the basis of our legal arguments. We lost all down the line, but it raised very starkly the question of what a Government do if they must respond to their electorate on the one hand but find themselves constrained by other rules on the other hand. It is a difficult problem. I respectfully caution against any formal limitation on a Government putting forward to Parliament appropriate legislation in the circumstances.

Have I dealt with everything that I should have dealt with? Forgive me if I have left something out—I am sure that it will be drawn to my attention. Particularly on the thoughtful comments of my noble friend Lord Norton on the constitution, I say that there is scope for further reflection on that. We have the Deputy Prime Minister, and we have different answers and possibly a lack of transparency about exactly who does what. That is something for further reflection. Those are points well made.

Regarding the points made by the noble Baroness, Lady Anderson, it is not the Government's position that the Illegal Migration Bill will be in breach of our international obligations. That point has been discussed at length in the main Chamber. The independence of the judiciary is not at risk in any sense and is defended quite appropriately under the present system. As I just said, I will revert when I have further and better information on when the *Cabinet Manual* will be available.

I have done my best to cover everything, and it only remains for me to say again that the Government congratulate the committee on its report and warmly thank not only the noble Baroness, Lady Drake, but everyone who participated in this debate this afternoon.

*4.25 pm*

**Baroness Drake (Lab):** I thank the Minister for his comprehensive reply. It definitely warrants detailed reading, which I shall do. I share his aspiration to achieve wider understanding of the rule of law and our constitution—people often do not value what they have, and it is important that we bring it to their attention. As the Minister articulated, because we have so much to be proud of, it is even more important to defend it.

In recent times, we have experienced constitutional and associated governance processes being under pressure, and it would be easy to say that the problem was a one-off. But, for the Constitution Committee, we have to ask whether there is need to check whether the democratic protections and the important checks and balances lacked or had resilience under stress, as opposed to just taking at face value that it was a one-off and that everything is fine in the garden otherwise. We are resistant to just accept this as a premise for some of the things we have looked at and continue to look at.

If one takes the committee's report as a whole, it is clear that it recognised that the realities of a functioning Government need flexibility. At various points in our report, we accepted that. I was pleased to hear the Minister say that he would take back his reflections from this debate and the points that were made, particularly about clearly defining the duties of the law officers in the *Cabinet Manual*. There have been significant differing conceptions of the rule of law and the duties of the law officers that have politically resonated in recent years, and there is the public trust issue. So, if the Minister is able to take that back, that would be helpful. I understand that the *Cabinet Manual* redraft will be available in weeks—that was the phrase put to us by the Cabinet Secretary.

I thank all noble Lords who participated today. It has been an excellent debate, but, as I look across the cast before us, that is not surprising. I thank John

[Baroness Drake]

Turner, the committee clerk, and Rachel Borrell, the policy adviser, for their excellent work in helping the committee to prepare this report; it took a year and lot of work to get that definitive position in it. I also thank the press team, which managed to get what looks like a dry document out into the public space for reflection and debate. I thank all the committee members who worked hard on this for their deliberations, and I thank all those who submitted evidence. People were generous with their time and in interrogating issues with us.

I too am delighted to see the noble Lord, Lord Hennessy, in his place. He is so fondly regarded, and his reputation goes before him. I remember that he was poorly when we were preparing the evidence for this report, but he always joined remotely and would ring me to tell me the issues that he was concerned about and that he felt must be interrogated by the committee. He never lost that thread of what we had to focus on, so I thank him for that.

It has been a great debate; I have learned a lot and will reflect on what was said. I hope that between us and with the constitution, we can collectively defend what the Minister said we should be proud of.

*Motion agreed.*

*Committee adjourned at 4.29 pm.*