Vol. 834
No. 17

Wednesday
6 December 2023

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 6 December 2023

3 pm

Prayers—read by the Lord Bishop of Worcester.

Children's Minister
Question

3.08 pm

Asked by ***Baroness D'Souza***

To ask His Majesty's Government what further consideration they have given to the appointment of a Children's Minister at Cabinet level to coordinate cross-departmental Government programmes concerning the welfare of children.

Lord Gascoigne (Con): My Lords, the Government are committed to placing the best interests of children at the centre of policy and decision-making. The Secretary of State for Education has a statutory duty to promote the well-being of children in England. The needs of children are generally best met through services, with one area of focus overseen by the relevant department. For those with multiple, overlapping needs, systems and programmes are put in place to enable join-up.

Baroness D'Souza (CB): My Lords, I thank the Minister for his response. The welfare of children, from formal education to special needs, diet, care and protection, is covered by many different government and non-ministerial departments and agencies. We have to assume that much of this necessary work exists in silos, with few genuine joined-up initiatives. Children's needs can and do fall into the gaps, and no one department might have the clout to fund and implement broad cross-cutting programmes. There is therefore an urgent need to insist on child welfare in all policy development, and a cross-departmental child health and welfare strategy. This is why a Cabinet Minister solely there to champion the cause of children at all levels and in many different ways is vital. Does the Minister agree?

Lord Gascoigne (Con): I am grateful to the noble Baroness for once again raising this issue of welfare and the support of children in this country. I recognise that she may not agree with what I have to say, but I ask respectfully that she bear with me on this. Although the Secretary of State for Education has a statutory duty to promote the well-being of children in England, the Secretary of State is not the only person with an interest. Speaking from my own personal experience, the support of children and crucially the network around a child goes far beyond any one person and department. Every department has a role to play in the welfare of a child and in supporting families to provide an environment where children can thrive. That is why, for example, the Government introduced the family test, to think about how policy can impact on family life and relationships. I assure the noble Baroness that the Government take the welfare and support of young people as a priority. Just quickly, there are a number of examples I can give. The £2 million—

Noble Lords: Oh!

Lord Gascoigne (Con): Fine, I will give way.

Baroness Armstrong of Hill Top (Lab): My Lords, I know the Minister is new, so he does not understand that we have asked Questions similar to this one time and again but end up getting the same waffle. The reality is that thousands of children are now seeing their welfare at risk. In his department, we read about a primary school where 80% of the children are in families that are homeless. Does he think that that is acceptable this Christmas?

Lord Gascoigne (Con): I thank the noble Baroness for the point that she makes but, with respect, I absolutely disagree on the point that she is trying to get at. The Government have continued to work towards our target of building new homes. We have increased the local housing allowance to the 30th percentile of market rents from April. We introduced an amendment to the Social Housing (Regulation) Bill that requires the Secretary of State to ensure that it addresses hazards such as damp in social houses.

I never got the chance to finish the point that I wanted to make. Describing the general support that the Government are giving is not waffle, as the noble Baroness said. We spend around £276 billion through the welfare system; we will spend £8 billion on free hours in early education by 2027-28; and we are introducing family hubs in 87 local authorities, bringing services and support together. There are a number of other examples that I look forward to giving during this Question.

Lord Greenhalgh (Con): My Lords, does my noble friend the Minister accept that of course we want to see the best for children irrespective of our political parties, but the Cabinet table is rather small and that the balkanisation of responsibilities does not necessarily lend itself to the best interests of children? Does he accept that, as well as central government, there are people in this House who have served with distinction in regional government, like himself at City Hall, where we cared for children, and—dare I say it?—in the municipal setting as well? Let us recognise that creating a Minister for Children is not the only answer.

Lord Gascoigne (Con): I thank my noble friend for the point that he is making, and I fundamentally agree. Although some do not seem to be agreeing with the points I am trying to make, the fundamental point is that there is cross-government work including the child protection ministerial group, there is support with work between local authorities and DLUHC, DHSC and the NHS, and mental health support and family hubs are being provided. As I said, there are many other examples that I would love to talk through.

Lord Storey (LD): My Lords, the UNICEF report that has been published shows that the UK is the only country that has seen a 20% increase in child poverty.

[LORD STOREY]
We need someone in government who actually cares about children and protects their interests. Yes, we have a Children's Commissioner, but their powers are often limited and the Government do not respond to what they say.

Lord Gascoigne (Con): I am afraid I have to disagree with the noble Lord because the Government have done a huge amount. Yet again, I am able to give many examples, one of which is £276 billion through the welfare system by 2023. We have raised the living wage and the local housing allowance, and in 2021 there were 1.7 million fewer people in absolute poverty, including 400,000 fewer children.

Baroness Twycross (Lab): My Lords, the recent PISA results show that more UK children feel scared or hungry or unhappy in school than their international counterparts. With persistent absence levels continuing to rise, what more will the Government do to ensure that they are promoting the well-being of children and young people in schools?

Lord Gascoigne (Con): I am grateful to the noble Baroness's point to also get a chance to highlight that the PISA statistics show that England has risen—but it may not necessarily be the case in other parts of the country. In terms of general support for the education system, again I think it is important to talk about the support given in the early years. There is general childcare support but, I understand, early years foundation stage profile results published last week show an increase in the proportion of five year-olds achieving a good level, even during the Covid years.

Baroness Butler-Sloss (CB): My Lords, as the Minister will know from yesterday's questions on children in hotels, 5,000 children have not had safeguarding while they have been in hotels. Is that not a very good example of whichever government department not caring for a large number of unaccompanied children? Is it not time to have a Children's Minister at whatever level?

Lord Gascoigne (Con): I thank the noble and learned Baroness for her point. Forgive me that I did not get the chance to address her question yesterday, but it is worth making the point that there were safeguarding steps in place for children in hotels and we could not detain those unaccompanied asylum seekers. In terms of general support, as I say, I am more than happy to ream through some of the statistics that have already been debated.

Baroness Altmann (Con): My Lords, I am delighted to see my noble friend on the Front Bench and I know he cares deeply about the welfare of children, as do we all on these Benches. This is not an easy area. I apologise to the House that I will not be able to speak in the debate tomorrow, which is really important to so many of us. What cross-departmental measures are in place for safeguarding children? I think we all recognise in this House that it is one of the most important areas for the welfare of children.

Lord Gascoigne (Con): I thank my noble friend for that question and the interest in this very challenging and distressing area. She is absolutely right that the cross-government child protection ministerial group is already in existence which brings government departments together. It is important that we tackle issues including exploitation, serious violence, sexual abuse and domestic abuse, among other things.

Baroness Lister of Burtersett (Lab): My Lords, despite the Minister's attempt at soothing reassurances, five of the largest children's charities recently argued that

"It is unacceptable that … too many children are not safe, healthy, happy and do not have equal access to opportunities".

What is the Government's response to their call for a new, serious cross-government approach to decision-making

"that places children's interests, wishes and outcomes at its heart, involving children and young people every step of the way"?

Lord Gascoigne (Con): I appreciate that earlier I may have been accused by some noble Lords of repeating myself, but I feel that I may have to repeat myself because I think it is worth making a point. We have provided funding to 2 million pupils for free school meals, which is an almost 10% increase in cash terms for core spending power for local authorities. She asked about examples of cross-government working. There are cross-government examples already, not to mention the child protection ministerial group. We work with DHSC and many other departments to tackle this very important issue.

House of Lords Appointments Commission

Question

3.19 pm

Asked by ***Lord Grocott***

To ask His Majesty's Government whether they have any plans to review the functions of the House of Lords Appointments Commission.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, the House of Lords Appointments Commission recommends individuals for appointment as non-party political life Peers. It also vets nominations for life Peers, including those nominated by the UK political parties, to ensure the highest standards of propriety. The Government are grateful for the important work it does but have no plans to review its function. I take this opportunity to thank the noble Lord, Lord Bew, and to welcome the new chair, the noble Baroness, Lady Deech.

Lord Grocott (Lab): My Lords, as the Minister said, the House of Lords Commission vets candidates for life Peer positions, but it does not vet at all candidates in hereditary Peers by-elections, which the House may know that I am opposed to. Does the Minister agree that this should be a level playing field and that hereditary Peers candidates should be treated and vetted in exactly the same way as life Peers candidates?

Secondly, on the composition of the Lords, which has changed substantially in recent years, I put it to the Minister that there are now nearly 100 more Conservative Peers than Labour Peers in this House. This is by far the largest Government majority over the Official Opposition since the 1999 Act. Should not the Lords Commission publish an annual report on changes in composition during the year, so as to shed some light on the appointments process, which clearly has been abused in recent years?

Baroness Neville-Rolfe (Con): First, on the question of hereditaries—a subject on which I know the noble Lord, Lord Grocott, is a great expert, with his various Bills—the truth is that the hereditary arrangements involve a by-election process that was established as part of the deal on House of Lords reform in the 1990s. It would clash with the by-election process to introduce a vetting system for hereditaries—but in any event I see that as part of House of Lords reform and we have made it clear that there are no plans for piecemeal reform.

On the issue of numbers, I have more sympathy. It is true, however, that although the Conservatives now have a lot more Peers than Labour, we still do not win all our votes and we still only have 34% of Peers, partly because of the number of Cross-Bench Peers that we now have. I think the numbers are well known and well understood; of course, if the House of Lords Commission wants to publish them, that is very much up to it. But I do have some sympathy on the point in relation to numbers.

Lord Wallace of Saltaire (LD): My Lords—

Lord Cormack (Con): My Lords—

The Earl of Courtown (Con): My Lords, can we hear from the noble Lord, Lord Wallace of Saltaire? There is plenty of time for my noble friend.

Lord Wallace of Saltaire (LD):: Could the Minister consider changing the status of the House of Lords Commission? There has been a range of reports from think tanks and committees in the other place which have suggested that what we need to do to these bodies, which are in effect constitutional guardians—the Committee on Standards in Public Life, ACOBA, the Independent Adviser on Ministers' Interests and others—is to put them in statutory form so they are able to stand up to Prime Ministers who do not wish to observe the conventions of public life, as Boris Johnson so clearly did not. Is this part of the Government's agenda?

Baroness Neville-Rolfe (Con): I do not see it that way. We are very glad we have a new chair of HOLAC, but we should be wary of giving even greater powers to bodies, however great and good, which are not necessarily democratically elected. That is why Prime Ministers and leaders of both parties put forward candidates.

Lord Cormack (Con): My Lords, if the Government truly believe that this is a self-regulating House, which we all take great pride in, why do they not allow a free vote on the subject of a statutory appointments commission —a commission that will consider every Prime Ministerial nomination but will be able to pronounce on its totality?

Baroness Neville-Rolfe (Con): As I think I have already made clear, the Government have no plans to change the status of the House of Lords Appointments Commission. It is an independent, non-departmental public body, and the Government always consider its advice very carefully. But, as I said, the Prime Minister is democratically accountable, and in our view appointments should not be determined by an unelected body.

Baroness Smith of Basildon (Lab): My Lords, when I listen to the noble Baroness, I always have a smile on my face—but I do not think that is the reaction she intends me to have. When she talks about not wanting piecemeal reform, what she is really saying is that she will do absolutely nothing. This House welcomes new Members, even when they are overwhelmingly Conservative, but I want to bring her back to the numbers. After 13 years of a Labour Government, we had 24 more Peers than the Conservative Party. After 13 years of a Conservative Government there are 100 more Conservative Peers than Labour Peers.

The central point about HOLAC is that all Members of this House are treated equally, except when it comes to the vetting process. I do not in any way want to take away the Prime Minister's authority to appoint, but I hope that he would have some respect for this House as well. Would it not be just a minor tweak to suggest that HOLAC also look at the suitability of candidates for this House, to ensure that they are willing to come here and play a full role in the work of your Lordships' House, as everybody here does?

Baroness Neville-Rolfe (Con): One further statistic is that the Conservatives won 56% of the seats at the last election and we still have only 34% of the seats in this House. As to the noble Baroness's point about suitability, constitutionally and legally it is for the Prime Minister to make recommendations to the sovereign on new Peers. He is head of an elected Government, not a member of an arm's-length body. Of course, he places great weight on the advice of HOLAC, but he remains of the view that it should remain focused on vetting for propriety. It is for him, and for future Prime Ministers, to think about suitability and bring the right mixture of Lords on to these Benches, so that the conduct of business, which is a mixture of public life and politics, continues well.

Lord Cromwell (CB): My Lords, speaking for myself—although I suspect many other hereditaries would agree—I agree with the noble Lord, Lord Grocott, on this, at least: we have nothing to fear from a HOLAC vetting process and I think it entirely appropriate that we should all go through it.

Baroness Neville-Rolfe (Con): Hereditaries are subject to a good deal of questioning during the by-election process, which is laid down by the Standing Orders of the House, and we have no plans to change the vetting

[Baroness Neville-Rolfe]
of hereditary Peers. Of course, they play a very important part in this House, on the Front Benches and right across it, bringing different aspects to our work in the public interest.

Lord Winston (Lab): My Lords, this House regards itself as, and is proud to be, an expert House. Will the noble Baroness tell us how many professional scientists and doctors have been appointed to it in the last two years?

Baroness Neville-Rolfe (Con): I think that will require me to write the noble Lord a letter. Obviously, this is important; the sense of his comment is that we do have a wide range of expertise. Indeed, in the modern world, as we have made clear right across the public sector, it is important to have more experts and more scientists to assist in the public interest.

Lord Forsyth of Drumlean (Con): My Lords, looking at these Benches, does my noble friend not think it is extraordinarily ironic for the Liberals to complain about appointments to this House, given their numbers here and the numbers they achieved at the general election?

Baroness Neville-Rolfe (Con): On this occasion I am very glad to agree with my noble friend.

Baroness Symons of Vernham Dean (Lab): My Lords, does the Minister accept that the situation of hereditary Peers is sexually discriminatory? Titles still go first to a son, and if there is no son they go to a collateral branch. That is in itself sexually discriminatory and I cannot see how she can possibly argue against that.

Baroness Neville-Rolfe (Con): I return to the point that the hereditary element, which plays a great part in this House—we should not decry that—has a by-election process that was part of a House of Lords reform package. There will no doubt be reform in the future, and the nature of hereditary Peers may or may not be considered. We had one Private Member's Bill last Session on this very issue, but I see it as a slightly separate point from the work of HOLAC.

Home-ownership Rates

Question

3.29 pm

Asked by ***Lord Naseby***

To ask His Majesty's Government what proposals they have to reverse the trend of falling rates of owner-occupation among the 25-34 age group.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Penn) (Con): My Lords, the Government have a range of schemes to help people into home ownership, including First Homes, shared ownership and the mortgage guarantee scheme. We have raised stamp duty thresholds so that, for properties up to £425,000, first-time buyers pay no stamp duty and, for properties up to £625,000, they pay only 5% on the amount above the £425,000 threshold. We remain committed to making home ownership a reality for as many young people as possible.

Lord Naseby (Con): I thank my noble friend for the Answer but, frankly, it is not working, is it? If home ownership is so fundamental to this age group, surely we should be more generous. First, we should remove stamp duty. Secondly, there should be a savings scheme so that people can save for a proper deposit in relation to the market price level. Thirdly, tax relief should be what it used to be, when I and others in this House bought our first houses, on the whole of the mortgage. Finally—I am quite prepared to help my noble friend on this—let us approach the mortgage lenders so that, when somebody starts on a mortgage, there is a discount from the mortgage lender in the first few years.

Baroness Penn (Con): My noble friend puts forward a number of approaches to tackling this problem. I agree on a great many of them; that is why, as I pointed out in my Answer, we have cut stamp duty for first-time buyers. We also have a savings scheme in place to help people with their deposits, because we know that is another barrier. The lifetime ISA applies a 25% government bonus to the savings that people put into that scheme. As for working with mortgage lenders, we have the mortgage guarantee scheme, which looks to expand the availability of 95% mortgages in the market, and we have worked closely with lenders in the current market to ensure that those who struggle to pay their mortgages are properly supported.

Baroness Taylor of Stevenage (Lab): My Lords, by abandoning the housing targets, the Government have made home ownership for young people an ever more distant dream. Hard-working young people are increasingly priced out of their areas, squeezed by rents and having their ambition to buy a house taken from them. Can I urge the Minister to reinstate housebuilding targets and to consider a new, more comprehensive mortgage guarantee scheme?

Baroness Penn (Con): My Lords, since 2010, more than 2.5 million additional homes have been delivered and, since 2018, we have had four of the highest annual rates of housing supply of the last 30 years. We are building more homes, because increasing supply is fundamental to helping more people on to the housing ladder—but there is more to do. We have our new affordable homes programme, which will deliver even more affordable homes to buy and for rent to help people on to the housing ladder.

Lord Young of Cookham (Con): My Lords, further to my noble friend Lord Naseby's Question, I point out that average house prices in London are now 13 times average earnings, and multiples have gone up throughout the country. As a result, many people have to rent, even though they would prefer to be home buyers, because they cannot afford the deposit. Many now pay more in rent than they would on a mortgage.

Therefore, in addition to the schemes mentioned by my noble friend the Minister, do we not need some more ambitious schemes to enable more of these people to achieve their ambition of home ownership?

Baroness Penn (Con): My Lords, the Government completely recognise the issue that my noble friend has set out. The mortgage guarantee scheme is relatively new; it opened in April 2021 and was recently extended to June 2025. It extends the availability of 95% mortgages, which helps with that deposit issue because it reduces the amount that people need to save for their deposits. More than 39,000 households have been helped through that scheme already, and I expect many more to be helped in future. To give a sense of scale on the lifetime ISA and its predecessor—the Help to Buy ISA, our other main scheme to help with saving for deposits—I say that under the Help to Buy ISA we supported over 550,000 property completions, so these are not insignificant support schemes to help people in these areas.

The Lord Bishop of Manchester: My Lords, in cities such as mine of Manchester and Salford, in terms of home ownership, many people in this age group aspire to an apartment yet, however many years we are on from the Grenfell fire disaster, too many properties still remain unmortgageable. I am grateful to the noble Lord, Lord Greenhalgh, for the support he has given to campaigners over the years, yet still people cannot get a property because they cannot get a mortgage on it. When will the Government put an end to this scandal?

Baroness Penn (Con): Let me reassure the right reverend Prelate that we continue to make progress on the cladding issue. It has gone on for too long; we have made significant changes to the legislation and other measures to address it, and we will continue to work until everyone in that position has the resolution they need.

Baroness Thornhill (LD): My Lords, shared ownership is promoted by the Government and is designed to be a pathway to getting a secure home and a foot on the property ladder. Does the Minister agree with me and the HomeOwners Alliance that this is proving a very complex and confusing financial model, with several significant drawbacks. The Government are increasing the funding for this type of tenure, but what are they doing to analyse these shortcomings, not only to quantify them but to rise to the challenge of meeting them so that more people can access a home through this method?

Baroness Penn (Con): My Lords, the noble Baroness is right that shared ownership represents an important part of our affordable homes programme and is an important part of helping first-time buyers, particularly younger first-time buyers, on to the housing ladder. We conduct extensive evaluations of our affordable homes programme and will always seek to learn what we can do to improve those schemes, including the users' experience of them and whether their complexity creates problems further down the line. We will always look at improving where we can.

Lord Brooke of Alverthorpe (Lab): My Lords—

Lord Jackson of Peterborough (Con): My Lords, my noble friend Lord Naseby is undoubtedly right that the mortgage market is broken. Do we not also need fundamentally to look at the planning system as well as fiscal incentives via the Treasury, particularly for small and medium-sized builders that were wiped out in the financial crisis of 2008, so that urban extensions and new garden towns and villages can be delivered to provide much-needed residential accommodation for young working families and young people generally?

Baroness Penn (Con): My noble friend is absolutely right that planning is key. Many measures in the Levelling-up and Regeneration Act are targeted at supporting the planning system. We also had announcements at the Autumn Statement about improving the efficiency of the planning system and putting more resources into it. My noble friend is also right about small and medium-sized builders; part of the key to supporting them is ensuring that, when we have more difficult market conditions, we continue that supply chain and increase supplies. For example, the affordable homes programme can provide an important role in making sure that builders do not go out of business in tougher conditions.

Lord Brooke of Alverthorpe (Lab): My Lords—

Lord Best (CB): My Lords, in the longer term it would clearly make homes more affordable for first-time buyers if there were enough homes to go round and current acute shortages were eased. In the short term, does the noble Baroness agree that it is ridiculous that so many young people pay more in rent to private landlords than they would pay for a mortgage to secure a home of their own if only they could persuade the banks and building societies to lend more sensibly? If she agrees, will the Government look at extending the new and useful mortgage guarantee scheme to reassure lenders and at the DWP's support for mortgage interest scheme, which needs to be a benefit and not a loan, to pick up those rare cases where there are serious arrears?

Baroness Penn (Con): My Lords, I have good news for the noble Lord on the first point. The mortgage guarantee scheme has been extended to June 2025 to allow more 95% mortgages to be available to first-time buyers. We have also made changes on support for mortgage interest. Since April, we have allowed those on universal credit to apply for a support for mortgage interest loan after three months rather than nine. However, it is right that it remains a loan rather than a grant in these circumstances.

Lord Brooke of Alverthorpe (Lab): My Lords, may I finally get in with a question? The noble Lord, Lord Naseby, mentioned the benefit of complete full relief on all mortgage interest that many of us had when we were purchasing. Why cannot young people have that?

Baroness Penn (Con): My Lords, we consider all different routes to supporting young people into the housing market. One drawback may be that support is less targeted at those who face the greatest affordability

[Baroness Penn]
challenges when getting into the housing market. We have sought to refine in our programmes over the years where we can get the biggest impact for the investment that we are making on behalf of the taxpayer.

Climate Change: Phasing Out Fossil Fuels

Question

3.40 pm

Asked by ***Baroness Boycott***

To ask His Majesty's Government what assessment they have made of the comments by the COP28 President that there is "no science" to suggest that phasing out fossil fuels will limit global warming to 1.5 degrees.

Baroness Boycott (CB): In begging leave to ask the Question standing in my name on the Order Paper, I declare my relevant interests.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, the Intergovernmental Panel on Climate Change, which represents the best available science, is clear that minimal use of unabated fossil fuels is a critical part of limiting warming to 1.5 degrees centigrade.

Baroness Boycott (CB): My Lords, is it still the Government's view that we need to phase out fossil fuels? A lot of the debate is between "phase down" and "phase out", so I would welcome the Minister's clarity on that point. UNEP, the United Nations Environment Programme, estimates that the world is planning to produce more than double the amount of fossil fuels in 2030 than is consistent with a pathway that has any hope of staying on 1.5 degrees. It also concludes that the UK is showing no evidence of actively winding down our oil and gas production. Given that it will do nothing to help consumers domestically and that we should lead by example, as we always say we are doing, will the Government reconsider their decision to continue licensing new fields, particularly the approval of Rosebank?

Lord Callanan (Con): It is our policy to phase out the unabated use of fossil fuels. On the second question, even with the granting of any new licences, UK oil and gas production will continue to decline at a faster rate than most other productive fields in the world.

Lord Teverson (LD): My Lords, I very much welcome that the Government have sent a number of Ministers to COP 28. I am sorry that the noble Lord the Minister is not there to put the UK's views forward. Does he realise that the good will we are building up there was undermined by the many announcements on climate change made a couple of months ago? They take away from our international leadership. When will Downing Street understand that its announcements on climate change made domestically for political purposes are heard internationally and undermine that reputation, not least with the industrial investors we need for the future?

Lord Callanan (Con): I thank the noble Lord for his good wishes, but I am very happy to be in the House answering noble Lords' questions rather than being in Dubai. Two members of my department have been there. I do not recognise the picture the noble Lord presents. I regularly meet international investors; we have one of the largest investment flows of green finance into the UK of any industrialised country and one of the largest in Europe. Our sectors—solar, offshore wind, hydrogen and CCUS—are all benefiting from enormous flows of inward investment, which we welcome. The Global Investment Summit a couple of weeks ago saw a further £30 billion of commitments, so I am afraid the noble Lord is just wrong.

Baroness Blackstone (Lab): My Lords, last week at COP the Prime Minister said the UK is

"delivering on the historic Glasgow deal to end deforestation".

When will the relevant regulations under the Environment Act be laid? It is now two years since it received Royal Assent, since when the EU has agreed more ambitious rules on deforestation. I hope the Minister will say that the regulations are imminent.

Lord Callanan (Con): The responsibility belongs in a different department so I am not sure of the exact date of the regulations the noble Baroness refers to, but I will certainly write to her on that.

Lord Bellingham (Con): My Lords, will the Minister find time today to remind the House of the extent of the UK's progress on the route to net zero? I think we are 58% of the way there, compared with France at 40% and Germany at about 48%. Can he confirm those figures, which put the UK in a really strong position and put the Prime Minister's recent remarks in context? Can he also say something about his views on carbon capture and storage, and whether he feels it has an important role in the reduction of greenhouse gases?

Lord Callanan (Con): I do not need to find the time to do it, because my noble friend has just done it. Our record is an excellent one. We decarbonised faster than any other G7 nation between 1990 and 2021, cutting our emissions by around 48%. We were the first major economy to set a net-zero target in law. I am grateful to my noble friend for reminding us of those key facts. He is also right to talk about carbon capture, usage and storage, another area in which the UK has fantastic potential. We have already committed £20 billion of expenditure on CCUS. We have announced the first two industrial clusters and we are powering ahead with negotiations with those clusters. We hope to make some final investment decisions on that by quarter 3 next year.

Baroness Uddin (Non-Afl): My Lords, I congratulate the noble Baroness, Lady Boycott, on her Question. Will the Minister take this opportunity to congratulate Harry Acheampong, the interim Prime Minister of the Children's Parliament, who addressed the hangout in Dubai and talked about climate change and water security, including for Ghana, supported by the Darwin200 conservation project, as well as raising funds for the Kenya water project at Obama school?

Lord Callanan (Con): I am sorry to disappoint the noble Baroness, but I have not seen those particular remarks. I am sure they were excellent, and I will certainly take the trouble to have a look at them.

Baroness Blake of Leeds (Lab): My Lords, earlier this month it was revealed that the UK has fallen behind when it comes to attracting investment in renewables, slipping to seventh behind the US, Germany and others. This was a direct result of what EY described as the "diminishing of green policies". Can the Minister tell us whether the Government have made any assessment of the impact of this on jobs and investment in the UK? How do the Government expect to encourage investment in green industries when they are pursuing climate delaying tactics at home?

Lord Callanan (Con): We are not pursuing climate delaying tactics. Our legally binding net-zero commitment and carbon budget remain exactly the same. I do not know whether the noble Baroness was listening to the answer I gave to the noble Lord, Lord Teverson, but we are attracting record amounts of inward investment. At the Global Investment Summit, a whole range of inward investors promised considerable new funding in the order of £30 billion to all these exciting new industries, in which the UK is a world and European leader.

Baroness Sheehan (LD): My Lords, in his COP 28 speech, the Prime Minister referenced the 48% reduction in UK territorial emissions, but he did not refer to the consumption emissions related to goods made outside the UK. One tool for addressing emissions leakage is via effective carbon pricing, so can the Minister tell the House when the Government will publish their response to their consultation on measures to mitigate carbon leakage, including via a carbon border adjustment mechanism?

Lord Callanan (Con): The noble Baroness highlights an important matter. We consulted on this in the summer. We are currently doing the work to consider all the implications of carbon leakage measures, including CBAM, which we are looking at closely. We will have more to say on that very shortly.

Baroness Hayman (CB): My Lords, I declare my interests as set out in the register. There was reference earlier to imminent decisions. Can I press the Minister on the question of the Energy Charter Treaty, which he answered last week? When will we know the Government's decision on this? Will it be, as I hope, to withdraw from the treaty?

Lord Callanan (Con): I have certainly heard what the noble Baroness has to say on this. I cannot go any further than what I said last week. As soon as I have some further news, I will be sure to update her.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, as the Minister knows from last week, I was inclined to agree with the noble Lord, Lord Teverson, that it is good for Ministers to go out to Dubai. But then I heard that there are 90,000 delegates there—nearly twice as many as there were in Glasgow, all flying in. It will be the same next year, the year after that and the year after that. Why can this COP not be held virtually?

Lord Callanan (Con): I think there is considerable sympathy for the noble Lord's point of view. I went to the COP in Glasgow. Unlike the Greens, I went by rail.

Noble Lords: Oh!

Lord Callanan (Con): Where are the Greens when you want them? It occurred to me that a few hundred people were doing all the important negotiations, while the other 30,000 were talking about them. I will let the noble Lord draw his own conclusions on that.

Lord Kamall (Con): I am sure my noble friend the Minister will agree that we cannot just stop fossil fuels at the moment if we want to have a modern, digital economy with high-speed electric rail. How long do the Government envisage the continuous use of fossil fuels as we transition to a fully net-zero economy?

Lord Callanan (Con): My noble friend makes an extremely good point. We are in a transition, so our use of fossil fuels will clearly decline. Even the Climate Change Committee has recognised that, in a net-zero scenario, we may still use about 20% of the quantities of gas that we use now—albeit abated with carbon capture, usage and storage. Fossil fuels will still have a use, but we need to treat them responsibly and to slowly phase out their use as we transition to net zero. My noble friend makes an important point that we should bear in mind.

Status of Workers Bill [HL]

First Reading

3.51 pm

A Bill to make provision for the creation of a single status for workers by amending the meaning of "employee", "worker", "employer" and related expressions in the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996 and cognate legislation; and for connected purposes.

The Bill was introduced by Lord Hendy, read a first time and ordered to be printed.

Disestablishment of the Church of England Bill [HL]

First Reading

3.51 pm

A Bill to disestablish the Church of England; to make provision for the protection of freedom of religion or belief; and for connected purposes.

The Bill was introduced by Lord Scriven, read a first time and ordered to be printed.

Data Protection and Digital Information Bill

First Reading

3.52 pm

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

Victims and Prisoners Bill

First Reading

3.53 pm

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

Business of the House

Motion on Standing Orders

3.53 pm

Moved by ***Lord True***

That Standing Order 44 (*No two stages of a Bill to be taken on one day*) be dispensed with on Tuesday 12 December to enable the National Insurance Contributions (Reduction in Rates) Bill to be taken through its remaining stages that day and that, in accordance with Standing Order 47 (*Amendments on Third Reading*), amendments shall not be moved on Third Reading.

The Lord Privy Seal (Lord True) (Con): My Lords, although this is a formal Motion, I think that it would be helpful to the House for me to outline the arrangements for the National Insurance Contributions (Reduction in Rates) Bill, which will be taken on 12 December as agreed by the usual channels.

The Bill has been introduced and noble Lords can now sign up for Second Reading in the usual way. Noble Lords can also table amendments for Committee ahead of Second Reading and should do so by contacting the Public Bill Office, again in the usual way. The deadline for amendments will be one hour after the conclusion of Second Reading on Tuesday.

If amendments have been tabled, once all the necessary documents are ready, the House will move into Committee and amendments will be debated and decided in the normal way. If no amendments are tabled, I would expect all further stages to be taken formally. If it is necessary to have further stages, the Deputy Chief Whip will update the House on Tuesday as to the arrangements. I am particularly grateful to the usual channels for their practical and constructive approach to this Bill.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, there appears to be a mistake in the title of the Bill. Should it not be entitled, "Preparation for a General Election Bill"?

Noble Lords: Oh!

Lord True (Con): My Lords, I thought that question had strayed from the House of Commons, so I was not planning to give it an answer.

Lord Sikka (Lab): My Lords, I am not sure whether this is the appropriate place to ask some questions about the way we do business in this House, but I will try. The brief background to my point is this: ever since BHS's demise in 2016, the Government have promised legislation that has not materialised. Then, on 19 July 2023, the Government published a draft statutory instrument, the Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023. It was scheduled to be debated in this House on 17 October, as per the business papers. However, the afternoon before, the Government issued a press release stating that the proposed legislation had been withdrawn. The next day's business papers in this House, on 17 October, said that the Department of Business and Trade had withdrawn the regulations that were due to be debated on that day. No other statement was made to this House. Can the Minister explain why no statement was made to the House when the announced legislation was withdrawn? I am sure he would agree that press releases are no substitute for Statements and Questions in Parliament. Will he now ensure that the relevant Minister comes to this House to make a Statement about this withdrawn legislation and take the appropriate questions?

Lord True (Con): My Lords, many thousands of statutory instruments are tabled in draft every year under every Government. It is not usual to make a Statement in Parliament on rescheduling statutory instruments. In relation to these draft regulations—I am grateful to the noble Lord for giving me notice on the subject about which he was concerned—the department had carried out a call for evidence to inform a review of existing non-financial reporting. This highlighted strong support from both UK business and investors for existing company reporting to be simplified and streamlined. The Government therefore decided that it would be better to consider the reporting measures contained in the draft regulations alongside wider reforms to deliver a more targeted and effective corporate reporting framework. I know that the noble Lord is a great enthusiast for laying regulations on business, which does, in fact, destroy jobs in the end, but there is a wider review going on. I hope that the noble Lord will accept that explanation.

Lord Kennedy of Southwark (Lab Co-op): My Lords, getting back to the Motion before us, can I just confirm that this was agreed by the usual channels? I am very happy that it was. The process has been used before with very similar legislation. I am grateful to the Leader of the House for setting out how the process will work next week. This Bill will put money in people's pockets. We support it and I hope that we can agree the Motion.

Lord True (Con): I am very grateful for that.

Motion agreed.

Gaza: Humanitarian Situation

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 4 December.

"A tragedy is unfolding in the Middle East. Israel has suffered the worst terror attack in its history, and Palestinian civilians are experiencing a devastating and growing humanitarian crisis. As the Foreign Secretary made clear, last week's agreement was a crucial step towards providing relief to the families of the hostages and addressing the humanitarian emergency in Gaza. This pause has provided an opportunity to ensure that much greater volumes of food, fuel and other lifesaving aid can enter Gaza.

On 24 November, the British Government announced a further £30 million-worth of humanitarian assistance, tripling our existing aid budget for the Occupied Palestinian Territories this financial year and bringing it to a total of £60 million. During the pause, the fourth UK aircraft, carrying 23 tonnes of humanitarian aid for Gaza, arrived in Egypt, bringing the total amount of UK humanitarian aid provided by British aircraft to 74 tonnes. That aid is now being dispersed to the United Nations to support critical food, water, health, shelter and protection needs in Gaza, and to pre-position emergency supplies in the region. We are also actively exploring other aid routes, including by sea.

The pause that ended last week was a crucial step towards providing relief to the families of the hostages and addressing the humanitarian crisis in Gaza. We have said repeatedly that we would like to see an extension. UK humanitarian funding will continue to support trusted partners to provide humanitarian assistance, and negotiate humanitarian access, in Gaza. The UK will continue, in conjunction with our international partners, to advocate internationally on humanitarian priorities. These include respect for international humanitarian law, the need for fuel, humanitarian access, humanitarian pauses and an increase in the types of assistance. We are urgently exploring all diplomatic options to increase that, including urging Israel to open other existing land borders, such as Kerem Shalom.

We welcome the intensive international co-operation, including efforts from Qatar and the USA, which led to the agreement, and we thank partners for their continued work. We remain committed to making progress towards a two-state solution.

Britain's long-standing position on the Middle East peace process is clear: we support a negotiated settlement leading to a safe and secure Israel living alongside a viable and sovereign Palestinian state. The UK will continue to work with all partners in the region to reach a long-term political solution that enables both Israelis and Palestinians to live in peace."

3.58 pm

Lord Collins of Highbury (Lab): My Lords, as each day passes, the need for a return to a cessation of hostilities becomes more urgent, in order to secure the release of hostages, address the humanitarian crisis and begin the process towards a political solution. Rising numbers of Gazans are being internally displaced in the current process of urging civilians to evacuate to so-called safe zones—which is, as a Minister put it, kettling people together—apart from the huge personal tragedies for families and communities.

Can the Minister say what assessment his department has made of the impact this displacement will have on levels of infectious diseases, and how would we be able to support the people in those circumstances? Separately, given the increase in violence against Palestinians in the West Bank, which I know the noble Lord has witnessed, as have I personally, will the UK follow the US lead in placing visa bans on the settlers responsible for this violence?

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I assure the noble Lord that I think we all agree with him that we want to see conditions prevailing that allow humanitarian aid, which is continuing, notwithstanding the continuation of the conflict, but at levels that ensure at least some sense of hope and sustenance for the people in Gaza. The number of Palestinian civilians who have suffered as a result of this conflict is immense. Although we have supported and recognised the right of Israel in light of the terror attacks, it is clear that the humanitarian suffering is immense. Too many children and vulnerable people have died—some of the figures are eye-watering.

On the humanitarian crisis, I agree with the noble Lord, and we are working very closely with UN agencies, including the World Health Organization, which is very seized of this issue. Hospitals' ability to sustain their operational capacity is extremely limited; I think the World Health Organization said today that it is working in the south at about 300% in terms of its capacity limits. We are not only focusing on ensuring that the support gets through the Rafah border; as the noble Lord knows, through both private and public briefings I have given to him, we are also working to ensure that the Kerem Shalom operation can be restored. In that regard, the Prime Minister spoke to Prime Minister Netanyahu yesterday and my noble friend the Foreign Secretary is currently in Washington and will be engaging on all aspects of this crisis.

On the issue of the hostages, I am travelling to Qatar again this weekend, because that provides the first important cornerstone in bringing a resolution to this conflict.

The noble Lord referred to the West Bank violence. The Foreign Secretary made clear when he travelled to Israel—noble Lords will have noticed this in public statements as well—the importance of not just stopping settler violence but holding those responsible to account. We note the action taken by the US, and I am sure that will be part of the conversations my noble friend has with the Secretary of State in Washington.

Lord Purvis of Tweed (LD): My Lords, the humanitarian catastrophe in Gaza now has 15,250 civilian casualties, 70% of whom are women and children, and the news today is that 600,000 people have been told to move. However, where is the Government's assessment of where it is safe for them to move to?

[Lord Purvis of Tweed]
Turning to the appeal from the World Food Programme, it says that only one-third of stocks have been replenished. Why have His Majesty's Government not increased humanitarian support to the Occupied Palestinian Territories from two weeks ago, which currently stands at less than a quarter compared with pre-ODA cut levels?

With regard to the West Bank, we now know that 244 civilians have been killed, 65 of them children. What is the cause of the delay in the UK moving now to ensure that there is no impunity? We want to make sure that there are no extremists in Gaza at the end of this conflict but equally, there should be no impunity for those who are conducting extremist activities in the West Bank against civilians. Why is there a delay in removing visa waiver access for them?

Lord Ahmad of Wimbledon (Con): On the noble Lord's last question, I think I have answered that. Of course, I will not speculate on what actions we may or may not take but my noble friend the Foreign Secretary's statements on the issue of accountability have been very clear. On humanitarian support, the noble Lord will also recognise that we have increased our support, particularly through UNRWA, and we are working directly with those on the ground, including international agencies. Our current support is now up to £60 million, and we will continue to review what further support is needed. We are working directly not just with other UN agencies but with those on the ground, including key partners such as Egypt—Qatar also has an active operation—to ensure that we get the right support through to the right people.

On the issue of people within Gaza being displaced, I of course note what the noble Lord said. I agree with him, and that is why we have made it very clear that safe zones and protected areas is a key question for Israel to answer. We have seen in history that safe zones are not something that the UK has supported, nor continues to. We need a sustainable sense of these hostilities coming to an end—the creation of those conditions—and we are working to that end.

The Lord Bishop of St Albans: My Lords—

Lord Robathan (Con): My Lords—

Baroness Warsi (Con): My Lords—

Noble Lords: Bishop!

The Lord Bishop of St Albans: My Lords, the Office of the Prosecutor of the ICC has called for the collection of evidence where there are alleged violations of international law. What are His Majesty's Government doing to help with the collection of any such evidence?

Lord Ahmad of Wimbledon (Con): My Lords, I am aware of the prosecutor's visit to both Ramallah and Israel. We are strong supporters of the International Criminal Court. He will make his appropriate determinations, and it is important we allow him the space and opportunity to do his job effectively.

Lord Robathan (Con): My Lords—

Baroness Warsi (Con): My Lords—

The Lord Privy Seal (Lord True) (Con): My Lords, I hesitate to arbitrate between my noble friends. I think it might be usual to hear first from that Bench, and then I hope there is also time for my other noble friend.

Baroness Warsi (Con): I am grateful. I pay tribute to what the Minister has been doing throughout this crisis. I know he has spent much personal capital on making sure that people are discussing these incredibly difficult matters, and that it has been personally traumatic for shim. The whole House values and appreciates what he has been doing. I want to follow up the questions from the two Front Benches. What consequences follow from settler violence? What consequences follow for those individual settlers, but also for Ministers in the Israeli Government who have supported this violence, not just through their rhetoric but through the provision of arms? Is the Minister going to be brave and bold enough to say at the Dispatch Box that either we have little political say with the Israeli Government, or we are saying it and they are not listening?

Lord Ahmad of Wimbledon (Con): My Lords, as my noble friend will know from her own experience, it is important that we make public statements and private representations, and we are doing that to Israel. While we support Israel as an ally and friend; the other side of the coin is that we can give quite candid messages, and I assure my noble friend that we are doing just that.

The issue of accountability is well recognised, and I alluded to the response and visit of my noble friend the Foreign Secretary on that issue. As I said in answer to an earlier question, he is currently in the US, and we are aware of the actions it has taken.

I heard my noble friend's earlier question, so perhaps I can answer that at the same time. In anything, we have to be very measured in our diplomacy, but giving in to blackmail or threats is not the way of any British Government.

Lord Wigley (PC): My Lords, does the Minister accept that in the first week of October, there was massive sympathy with the Israeli people and their suffering, in light of the outrageous activities of Hamas? Does he also accept that when people see, night after night, the slaughter going on in Gaza, there is every danger of losing the battle for international understanding and sympathy—of winning the battle but losing the war? Can that message please get through?

Lord Ahmad of Wimbledon (Con): As for the first part of the noble Lord's question, the attacks that took place on 7 October were abhorrent, and that is why we welcome the universal condemnation of those acts, irrespective of who you are, where you are and what faith you follow. Let us be very clear: Hamas itself does not represent the best interest of the Palestinians. It certainly does not represent the interests of a faith that I know other noble Lords follow, or indeed any

faith or belief. Nothing sanctions the acts of terrorism committed by Hamas. Equally, I know, both personally and in my professional capacity, that we are seeing many innocent Palestinians lose their lives, including vulnerable women and children. The Government and my noble friend the Foreign Secretary are seized of this, and we are engaging in shuttle diplomacy with all partners. Israel is a friend, and I refer to my response to my noble friend Lady Warsi: a friend means you can support that friend and ally with them, as we have done, yet equally land those messages that others perhaps cannot to ensure we see a pathway to peace in this process.

Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels)

Motion to Approve

4.10 pm

Moved by ***Lord Johnson of Lainston***

That the draft Code of Practice laid before the House on 13 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): My Lords, I beg to move that the draft Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels), as laid before the House on 13 November 2023, be approved. This code of practice, which I will refer to as the code for the remainder of this debate, provides important clarity on how trade unions can meet the legal requirement in the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Strikes (Minimum Service Levels) Act 2023.

As noble Lords are aware, the 2023 Act enables regulations to be made specifying minimum service levels and the services they apply to. Where minimum service level regulations are in force, if a trade union gives the employer notice of a strike action, the employer can issue a work notice to the trade union ahead of the strike identifying the persons who are required to work and the work they are required to carry out to secure the minimum service level for that strike period. Trade unions should then take reasonable steps to ensure that their members who are identified in a work notice comply with that notice and do not take strike action during the periods in which they are required by the work notice to work.

During the passage of the Strikes (Minimum Service Levels) Bill, the Government committed to bringing forward a statutory code of practice to provide more detail on the reasonable steps that trade unions should take. In accordance with the 1992 Act, the Secretary of State consulted with ACAS on the draft statutory code and, on 25 August, published a draft code, enabling trade unions, employers and other interested parties to contribute their views. Careful consideration was given to those views and, as a result, important changes were made to the draft code. An updated draft code was laid in Parliament on 13 November.

Alongside the code, we have supplemented the more detailed provisions of the Act on work notices by publishing non-statutory guidance for employers—that is important—setting out the steps for employers to take. These include engaging with trade unions and workers when developing the process, consulting with the trade unions on the numbers required to work and the work they must do, and having regard to their views before issuing the work notice and notifying the workers.

The code before the House today sets out four reasonable steps that trade unions should take to meet the legal requirement under Section 234E of the 1992 Act. Although the code itself does not impose legal obligations, it is admissible in evidence and taken into account where a court or tribunal considers it relevant.

First, trade unions should identify workers who are its members in a work notice. Secondly, trade unions should send an individual communication, known as a compliance notice, to each member identified in a work notice to advise them not to strike during the periods in which they are required by the work notice to work as well as to encourage them to comply with the work notice. Thirdly, trade unions should instruct picket supervisors to use reasonable endeavours to ensure that picketers avoid, so far as is reasonably practicable, trying to persuade members who are identified in the work notice not to cross the picket line at times when they are required by the work notice to work. Finally, once a work notice is received by the union, trade unions should ensure that they do not do other things that undermine the steps they take to meet the reasonable steps requirement.

It is worth noting that the code being debated today reflects much of the feedback that we received in the consultation on the earlier draft. For example, the updated code no longer includes a step requiring trade unions to communicate with their wider membership who are called to strike. The Government have changed the language so that it no longer requires those on the picket line to encourage individuals identified in a work notice to attend work. Instead, it now makes clear that those on the picket should simply refrain from encouraging those identified on a work notice to strike where they are aware that this is the case.

Having explained the background to the code, I will now turn to the fatal and regret amendments that have been laid on this code by the noble Lord, Lord Collins of Highbury, and the noble Baroness, Lady Bennett of Manor Castle. I will start with the fatal amendment, much of the content of which was more properly for debate during the passage of the Bill. I have no intention of re-running the debates on the Act which Parliament passed earlier this year, but I do want to remind noble Lords of why it was brought forward.

4.15 pm

The Government firmly believe that the ability to strike is an important part of industrial relations in the UK, but this must be proportionate. Over the past year, there has been significant disruption, with massive impacts on the public. Since August 2022, 4.5 million days have been lost due to labour disputes. As a result, people have been unable to access key services that they rely on. For example, 1.1 million appointments

[Lord Johnson of Lainston]
have been rescheduled by acute NHS trusts due to strike action, and nearly one in five people reported having their travel plans disrupted by rail strikes. When you start adding on the impact of strikes in schools and other key areas it becomes clear why the Government had to take action.

It is, of course, this legislation and not the code, which is often discussed, that introduced the requirement for trade unions to take reasonable steps. During the passage of the Bill, noble Lords on the Benches opposite repeatedly criticised the fact that trade unions would not, without further guidance, know what this means in practice. Indeed, both the TUC and the Joint Committee on Human Rights asked for greater clarity on what the Government considered this to mean. This is exactly what this code provides. It should help not only to avoid expensive litigation by giving unions clarity on their obligation but to protect them from the very liabilities that the noble Baroness raises in her fatal amendment. Without the code, the duty on trade unions still exists, but there is much greater uncertainty for trade unions over what it means.

Additionally, I reiterate the points made by the Government during the passage of the Bill that we are confident that the Strikes (Minimum Service Levels) Act is compatible with our international obligations, including the European Convention on Human Rights, and that minimum service levels can be a proportionate means of achieving the balance between the ability of workers to strike and the rights of the public to access certain services. Minimum service levels do not remove the ability of strikes to take place. They simply seek to ensure that there is a balance between the ability to strike with the rights and freedoms of the public. This code, by providing much greater legal clarity for trade unions, further supports compliance with Article 11. As set out during the passage of the Bill, most major European countries, including France, Spain and Italy, have had a minimum service level regime in place for many years. Even the ILO recognises that they can be an appropriate mechanism to balance the rights of the public with unions and their members.

I call on all noble Lords to reject the regret amendment that has been tabled by the noble Lord, Lord Collins. We are confident that the draft code is within the scope of the 1992 Act as amended by the Strikes (Minimum Service Levels) Act 2023. Section 234E and amended Section 219 are clear that a union that fails to take reasonable steps to ensure that all members identified in the work notice comply with the notice will lose its protection from certain liabilities in tort. The Government therefore consider that a code of practice that sets out the reasonable steps a union should take is within the scope of the Act. Furthermore, Section 203 of the 1992 Act provides that the Secretary of State may issue a code of practice containing such practical guidance as he or she thinks fit for the purpose of promoting the improvement of industrial relations.

I want to respond to a point raised by the Secondary Legislation Scrutiny Committee regarding the time until implementation and to thank it for its considerations and its report on the code. The Government believe that there is sufficient time for employers and unions to get to grips with the practical implementation of the strikes Act. Trade unions and other stakeholders were consulted on the draft code in August and have been able to see the updated code since it was laid in Parliament on 13 November. They have therefore had sufficient notice of the contents of the code and sufficient time to prepare before it is expected to come into effect. Delaying commencement of the code would delay minimum service levels being implemented, meaning that strikes could continue to have disproportionate and harmful impacts on the lives and livelihoods of the general public for longer.

The code under consideration in the Chamber today has been designed to address the concerns raised in this House and the repeated requests for clarity by providing assurance for trade unions on the reasonable streps that they should take. If this code is approved by Parliament, it will be issued and brought into effect by the Secretary of State in accordance with the procedure set out in Section 204 of the 1992 Act. The Government's intention is for the code to be in effect before regulations implementing minimum service levels come into force. To achieve this, the Government are planning for the code to come into effect very shortly after the commencement order relating to it is laid. I hope that your Lordships will support this code. I beg to move.

Lord Collins of Highbury (Lab): My Lords, this House, by quite large majorities, gave the elected Chamber the opportunity to think again on this legislation—and, unusually, more than once. The reason, quite simply, is that no one really knows what this law will mean. Trade unions do not know what reasonable steps they will need to take to protect the right to strike. Even Ministers —and I am glad to see the noble Lord, Lord Callanan, in the Chamber—could not make up their mind on what it means. Kevin Hollinrake, the Minister, told the Commons on 22 May 2023:

"The reality is that nobody will be sacked as a result of the legislation".—[*Official Report*, Commons, 22/5/23; col. 103.]

That is what he told the elected Chamber. However, the noble Lord, Lord Callanan, told this House that workers who receive a work notice will lose protection from dismissal. The code states that the compliance notice should contain a comment stating that the two notices should be received from the employer and that if the member receives both, they

"must carry out the work during the strike or could be subject to disciplinary proceedings which could include dismissal".

The Minister talked of minimum service levels in Europe. Nobody is against minimum service levels; when it comes to life and limb, they are essential. But in every European country, they work and are applied because they are determined by voluntary agreement. People consent and co-operate; as soon as you remove that consent, you are in trouble. That is why so many employers are so against what the Government are proposing.

We remain very clear in our view that the Strikes (Minimum Service Levels) Act is fundamentally unworkable and places undue limitations on an individual's freedom of association. Let me be very clear to the noble Baroness, Lady Bennett of Manor Castle; the only democratic way to get rid of this bad legislation is to campaign for a Labour Government.

We have promised to repeal this legislation when we get into government, and we stand by that pledge. I am sure the noble Baroness will agree that the implementation of that pledge should not be frustrated by an unelected Chamber.

As the noble Lord, Lord Callanan, knows very well, it was only late in the day that the Government committed to a statutory code of practice. That was because this House scrutinised that legislation and pushed this Government into trying to make it clearer what the reasonable steps should be for a trade union. It was this House that resulted in that change, and I am glad the Government heard and responded.

Of course, as the noble Lord said, following consultation, the Government did make some changes to the draft code; they have removed the requirements to communicate with the wider membership, as he says, and the duty on a picket supervisor has changed from a positive one to attend work to a negative one of ensuring that picketers avoid trying to persuade members on a work notice not to work.

However, the code imposes significant new duties on trade unions well beyond the scope of the Act, rather than simply providing guidance about the law. It also places trade unions in the position of policing members on behalf of an employer, acting with the authority of the state. The code contains nine—I repeat, nine—separate pieces of information that unions should include in a compliance notice, with those named in the work notice clearly and conspicuously.

The fact is that the code fails miserably to explain the legal issues with necessary accuracy. It states that unions are advised to tell members that they should receive from the employer a statement that the member is an identified worker who must comply with the notice given to the union. But, as the noble Lord said, there is no obligation under the Act for an employer to communicate with the workers named in the work notice. They need do so only if they want to keep open the option of dismissing them for not attending work.

What we do know—I will be very brief on this point—is that the slightest transgression in an industrial action ballot can lead to some employers seeking injunctions, even though the practical effect of that transgression is nil, so there is a concern that any deviation from the template contained in the code will invite legal challenges from some employers. As the TUC said in its excellent briefing, that would almost certainly lead some employers to seek to legally challenge unions. I hope the Minister will respond to that. Does he agree with that point of view? Does he think that such satellite litigation will aid the resolution of industrial disputes? Can he really explain the rationale for including a pro forma template on top of the guidance contained in paragraph 26?

Unfortunately, and sadly, that is not the only way in which the code could instigate a legal challenge. There are plenty of areas in the code that appear to allow for challenges, and that is something that we really need to think about. It comes back to the Minister's original point on Report, which was that it will be for the courts to decide what is a reasonable step. Everyone in this House thought, "That isn't really appropriate. Is that going to lead to the settlement of disputes? Clearly not".

One of the letters that the Secretary of State has had was from the Joint Committee on Human Rights. I hope the Minister will address its letter of 24 November today. It raised a number of issues on the code, stating that it

"does nothing to reduce the impact of minimum service levels imposed through Regulations on trade unions, requiring them to actively encourage their own members to break their own strike".

I hope the Minister will address today the four specific questions posed to the Secretary of State on the impact on Article 11 workers' rights of these regulations.

The fact is that, as my amendment states, the code and the associated regulations will exacerbate conflict in the workplace. The code contains so much uncertainty that we are sure to see more legal action, which I am confident will entrench and prolong disputes, thereby causing more harm to workers, employers and, just as importantly, the public.

Amendment to the Motion

Moved by ***Baroness Bennett of Manor Castle***

As an amendment to the motion in the name of Lord Johnson of Lainston, to leave out all the words after "that" and to insert "this House declines to approve the draft Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) because it exposes trade unions to liability of up to £1 million, makes trade unions act as enforcement agents on behalf of employers and His Majesty's Government, reduces the rights of workers to withdraw their labour, introduces legal uncertainty, and breaches international labour commitments.

Baroness Bennett of Manor Castle (GP): My Lords, the House is colloquially calling this a "fatal amendment". I know there are many people watching this debate who may not regularly watch your Lordships' House, so I will define it as saying, "This House declines to approve the draft code of practice". That is what is happening here.

In speaking to my amendment, I am picking up the baton on this subject from my noble friend Lady Jones of Moulsecoomb, who worked on the legislation. She is currently enjoying an extremely well-earned short break. That is a right to decide not to come to work that Members of your Lordships' House can exercise with total freedom but which these regulations, the code and the legislation behind them seek to deny to millions of workers.

4.30 pm

My noble friend made powerful speeches on the irony of a Government who have eviscerated public services, handed them over to the untender mercies of hedge funds and investment managers, and suddenly decided that there should be a minimum service level when workers exercise their right to strike, which might turn out to be higher than the service level that you get on normal days. That is why I have put down this fatal amendment, and those that follow. I am told by expert lawyers that there is a high likelihood that the law, this code of practice and the subsequent regulations are incompatible with Article 11 of the

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European Convention on Human Rights, which concerns the right to freedom of association. I note also that your Lordships' House sought extensively to amend what is now the Strikes (Minimum Service Levels) Act, which shows noble Lords' concerns. This is another chance for your Lordships' House to act.

I considered putting down only one fatal amendment, as a sample for the whole, but I felt that that would be inadequate for the range of concerns and fundamental issues before the House. It is important that your Lordships know some of the reaction to the code of practice and the subsequent regulations. The British Medical Association said:

"We strongly call on parliamentarians to oppose the code of practice and the MSIs".

The Royal College of Nursing said:

"The imposition of the proposed code of practice, which underpins the process for the serving of work notices on nursing staff, would mark an alarming abuse of state power".

Remember, I am quoting the Royal College of Nursing here. It went on:

"Parliament must reject the code of practice, which seeks to make trade unions responsible for breaking their own strikes. The vote on the adoption of the code of practice is a de facto vote on the freedom of working people to withdraw their labour".

I am sure that many noble Lords have also seen the extensive briefing from the TUC. In addressing the points made by the Minister about why we should not throw this out because it has already been passed, the TUC said:

"Significant legal grey areas remain meaning that workers and employers will be uncertain where they stand".

My understanding is that, if your Lordships' House does not support my fatal amendment today, within days—at most, weeks—all this terribly unclear, complicated situation will be in practice. Can the Minister confirm that in his response?

There is widespread agreement that these regulations are in breach of international law and UK legal standards, and that they breach the Government's own promise to the Commons. I will not go over the same ground as the noble Lord, Lord Collins, but, as he said, Minister Hollinrake promised that no one will face the sack as a result—although that is not what the code of practice says.

I have already had quite a few people question whether your Lordships' House can follow a fatal amendment. Some 110 fatal amendments have been put forward since 1950; indeed, Labour's Front Bench successfully defeated the Government using this process here in this House in 2012. In the Strathclyde Review in 2015—I can see some Members of your Lordships' House who are vastly more expert on it than I am—the Parliamentary Secretary, John Penrose, described the Lords' role in rejecting statutory instruments, saying:

"It also does not reject statutory instruments, save in exceptional circumstances".

I suggest that noble Lords listen to the BMA, the RCN and the TUC, as well as the legal concerns expressed by our own Secondary Legislation Scrutiny Committee.

Furthermore, let us look to the report by the Joint Committee on Conventions, in which the Clerk of the Parliament says:

"There is no generally accepted convention restricting the powers of the Lords on secondary legislation".

The report also noted that not blocking SIs has been described as more of a political agreement between Labour and the Conservatives than a constitutional convention, and has not been accepted by the Lib Dems or the Cross-Benchers. The committee set out examples of where it would be appropriate for the Lords to reject statutory instruments or a code such as this. There are situations in which it is consistent both with the Lords' role in Parliament as a revising Chamber and with Parliament's role in relation to delegated legislation for the Lords to threaten to defeat an SI; an example it gave is when the parent Bill is a skeleton Bill and the provisions of the SI are of the sort more normally found in primary legislation.

The Lords Delegated Powers Committee described the Bill—now this Act—as a skeleton Bill. I note that the Labour regret amendment says that it goes beyond the scope of the Act. The noble Lord, Lord Collins, suggested that your Lordships' House should back his regret amendment, which—let us be clear—has no practical impact. It means that we will see this code of practice and the subsequent SIs come into effect on the basis that, in something like a year's time, a Labour Government would reverse the legislation. A week is a long time in politics; who knows where we might be in a year's time? Even more pressingly, what kind of damage might be done to the structures of our unions—the people who represent our workers—in that year? What will be left in a year's time to restore?

From my four years in your Lordships' House, I know how regret and fatal amendments usually go—I have seen it all too often—but, if we are not going to take a stand now, when will we? I will wait to see what others indicate and whether there will be enough of a body in your Lordships' House to call a vote on my amendment. I have to act to act within the limits of the power available to me but I know—like the five Tolpuddle Martyrs sailing off for seven years of penal servitude under the obscure and disreputable Unlawful Oaths Act 1797—that the wheel of history turns eventually. One of the martyrs, George Loveless, wrote this as he was sentenced:

"We raise the watchword, liberty. We will, we will, we will be free!"

Many thousands of people continued bravely to work for the freedom of those martyrs and the rights that they espoused in their absence, eventually winning the men's freedom. They then won the right to withdraw their labour, thought now to be definitively established. That people should have hope is crucial—it matters—which is one more reason why I put down these fatal amendments. We know that there is significant, strong opposition to these regulations, and a determination to stand firm. If others will not ensure that there is parliamentary expression of that, let me say for the record in *Hansard* that the Green Party will step up to the plate.

Lord Fox (LD): My Lords—

The Deputy Speaker (Lord Geddes) (Con): I was so fascinated by the noble Baroness's speech.

Lord Fox (LD): I apologise to the Deputy Speaker for stepping up too soon.

I thank the Minister for describing the first on the menu of the four statutory instruments we will be tasting today. I think that he was yet the ascend the rickety stairs of ministerial responsibility when the noble Lord, Lord Collins, the noble Baroness, Lady Jones—when she was among us—and I were debating the substantive nature of this Bill, so we welcome him to this tiny corner of legislation. It is a shame that the noble Lord, Lord Callanan, has now left as I thought he was overseeing the realisation of his creature; of course, it was the noble Lord, Lord Callanan, with whom we debated. Actually, the Minister did not miss a lot of the substance of the legislation because, as the noble Lord, Lord Collins, pointed out, there was not a great deal of substance in the enabling Bill. It is these statutory instruments that we will see today that begin to put the soft tissue on to the skeleton of that Bill.

There are four instruments, but we are looking in particular at the one aimed at tying the unions up in procedural knots. It is laying legal traps by which they can be caught out, with potentially existential sanctions. None of us enjoys the effects of public sector strikes—the Minister described those effects today. Swathes of society are inconvenienced and, in the case of the health service, it is much worse than an inconvenience. It behoves any Government to create the conditions for ending strikes as soon as possible, but this legislation does not create those conditions. As we heard from the noble Lord, Lord Collins, it creates heat and friction and makes settlement less likely. For the benefit of this Minister, I will repeat what I said while we were debating the Bill: disputes end only when the relevant parties sit down, talk and negotiate. It is for Governments to act to maximise the opportunity of those negotiations, rather than turn one party on the other.

I will concentrate on the operational faults of this statutory instrument, because therein lie the traps for unions. It really begs the question of how reasonable the code's "reasonable steps" are? Unions must ensure that their members comply with the employer's work notices. A work notice, as we have heard, is essentially a list of names associated to tasks for that particular service. Its purpose is to seek to deliver an agreed level of service—a handed-down level of service from government to the employer to the union. To comply, the union must first filter out the non-union members from that list and then take "reasonable steps" to ensure that its members do not honour that strike—a strike that the union itself has legitimately and legally called. To do this, the unions are likely to have extremely tight deadlines—deliberately unreasonable deadlines, I suggest.

Employers have only to provide a work notice seven days before a strike commences. That notice—the list—can be further amended, leaving only three days for the union to contact its members. That is not three working days, just three days, so it could include Saturday and Sunday. We have seen the pro forma; this communication must encourage them to pass through the union's picket lines and go to work. I remind your Lordships, including those of us who were at the debate, that picket lines and picketing were never mentioned in the original discussion.

To go back to the procedural difficulties, some disputes are small and involve few union members. But the nature of the industries covered by the Act means that disputes are likely to be countrywide and involve tens of thousands of employees, maybe more, so I ask the Minister: is it a reasonable step to ask a union to track down and contact 20,000 people in three days, perhaps over a weekend? How does he expect that contact to be made? Will it be by email? He may be surprised to know that not everybody has email, and further surprised to find out that not everybody hands over their email address to their union. Will it be put on a postcard? I suggest that the postal service may not get it there in time.

There are serious impediments to the taking of these reasonable steps—or possibly unreasonable steps—but let us say that the union succeeds in crossing these hurdles and navigating its way through the minefield set out in this statutory instrument. Can the Minister confirm that the union is therefore indemnified from prosecution if some or all of its members still choose to ignore its advice and honour the strike? What is the legal position of the union? The point raised by the noble Lord, Lord Collins, about how we prove that the steps were reasonable still remains but, in negotiating those reasonable steps, can the Minister confirm that the union is then indemnified?

One would expect the TUC to be critical of this legislation, as it is, but what about ACAS, the Advisory, Conciliation and Arbitration Service, which is the expert at putting people around a table and trying to solve these problems? It too expressed reservations and asked why—I have relayed this to the Minister—if the reasonable steps for unions are set out in detail, similar steps are not set out for employers. Why are similar steps not also set out for the Secretary of State in his or her dealings on these issues? For example, what is to stop the employers overstating the number of persons reasonably necessary to provide the minimum service level mandated by the Secretary of State? Those are not my questions but ACAS's. At the moment, as far as I can see, there is nothing to stop them. How would the union challenge that, given the time available and the current state of the code?

4.45 pm

There are further practical impediments and deep flaws in this legislation, which we debated ad infinitum when the Bill was before your Lordships' House. We sent it back to the other place with our comments several times, and I am afraid that we were unsuccessful in substantially changing it. It comes down to one central illiberalism. During the debate in the Commons, as we have heard, the Minister repeatedly denied from the Dispatch Box that any worker would get sacked for going on strike. Here, the noble Lord, Lord Callanan, was more nuanced and said that their protections would be removed. Can the Minister front up and explain which statement is true? Will no employees be sacked or, as the noble Lord, Lord Callanan, said, will they lose their protections and therefore be likely to be sacked?

If the noble Lord, Lord Collins, decides to move his regret amendment, we will take the TUC's advice and support His Majesty's loyal Opposition.

Baroness Noakes (Con): My Lords, I completely understand that the Benches opposite did not much like this legislation when it went through your Lordships'

[Baroness Noakes]

House, as we have heard today, but it is the law of the land and has been passed by both Houses of Parliament. It seems churlish to hold out against a document that is only trying to help unions comply with its provisions.

The noble Baroness, Lady Bennett of Manor Castle, and the noble Lord, Lord Collins of Highbury, have listed a number of reasons for the code of practice to be rejected or regretted, as the case may be. I suggest that these reasons do not stack up. I refer to the reasons as specified in their amendments, as opposed to the broader political speeches that we have heard.

The amendment from the noble Lord, Lord Collins, says that the code of practice

"imposes significant new duties on trade unions".

It does not. Paragraph 7 says:

"This Code imposes no legal obligations".

It is just guidance. It therefore does not go beyond the scope of the 2023 Act, as the noble Lord's amendment alleges. Put simply, his amendment is inaccurate. It acknowledges that the intention of the guidance is to "provide … clarification to unions", but then complains that there are "significant areas of uncertainty". Guidance, by its nature, will never be exhaustive. He seems to be calling for absolutely certain rules and not guidance, but this is guidance. Much will depend at the end of the day on the circumstances, and the courts—not the Government—will determine whether a union has taken appropriate legal steps to stay within the law.

The noble Baroness, Lady Bennett, did not go through her list of complaints when she spoke to her amendment, but I believe it is similarly misplaced. Her amendment says that the guidance can lead to fines on trade unions or make them into "enforcement agents". She also complains that the draft guidance reduces workers' rights. The guidance simply cannot do these things—it is just guidance.

The complaints of the noble Baroness might be more accurately targeted at the minimum service levels legislation itself, as we discussed earlier. That is now the law of the land. It is not the time to redebate those issues, which took up so much of your Lordships' time in the last Session.

Lastly, the noble Baroness's amendment says that the guidance somehow "breaches international labour commitments", which, again, as guidance, it cannot do. Our obligations under the ILO conventions do not prohibit us from setting minimum service levels and certainly do not prohibit us from issuing guidance. I hope—though without much hope at all—that neither of the noble Lords will be pressing their amendments, as they really do not make sense.

Lord Cromwell (CB): My Lords, good grief, how did it come to this? I come at this at a slightly different angle as a businessperson, and I know that the Minister has much business experience. However, in business, a great deal of time and study goes into how to motivate people to work productively. I find it difficult—and I wonder if I could ask the Minister whether he shares my view—that passing a law that in effect forces people to work is hardly the way to go about things, and is, in fact, a sign of failure. It is certainly a sign of regret.

Baroness O'Grady of Upper Holloway (Lab): My Lords, I rise to support the amendment standing in the name of my noble friend Lord Collins, and to join him in reminding the House that Labour will repeal this toxic legislation that would turn the clock back on mature industrial relations and workplace justice in this country.

First, I relay my thanks to the Minister, the noble Lord, Lord Offord, for taking the time to meet with me yesterday. Our discussion touched on the P&O Ferries scandal. I confirmed that, after those unlawful mass sackings, no one was prosecuted and there have been no government sanctions against either the firm or the owner. Compare and contrast that with the proposals that we have before us today. This House rightly raised the alarm about the risks of a skeleton Bill railroaded through without proper scrutiny or parliamentary accountability and without proper regard for our international obligations.

Sadly, this legislation was never about good policy-making; rather, it is about an unpopular Government trying to shift the blame for their own failings on to decent public servants and punishing trade unions which exist to defend them. Ministers say they are standing up for public service users, but those claims ring hollow. During the recent wave of strike action, polls showed public sympathy with the strikers and exasperation with Ministers' high-handed, slow and chaotic approach to resolving these disputes. Now, the OBR is forecasting an unprecedented two-decade squeeze on real pay by 2028, and the Autumn Statement heralds another round of deep austerity cuts for many public services. That is why the Government are railroading through this bad legislation. They have no intention of addressing the causes of discontent; the objective is to crush it.

The code of practice is just the latest manifestation of contempt for the rights and freedoms of ordinary working people. The code sets out so-called "reasonable steps" that unions must take to comply. However, there is nothing reasonable about the code's ridiculous requirements and deadlines for identification, state interference in what an independent union must communicate with its own members, new demands on picket supervisors when the strikes Act did not even mention picketing or imposing draconian sanctions on staff and unions. Rather, the code enables employers, no doubt under pressure from Ministers, to disregard democratic strike ballot, drag unions into court, attack union funds, strip away automatic protection against unfair dismissal and ban strikes by the back door.

On the day that the former Prime Minister, Boris Johnson, professes gratitude to healthcare workers and other public servants for protecting people through the pandemic, this is their reward. In drawing up this code, Ministers ignored the advice of Select Committees of this House, trade unions who opposed the strikes Act, employers who never wanted it, the RPC, which red-rated it, the UN's labour arm—the ILO—and even the UK's widely respected industrial relations body, ACAS.

I have two questions for the Minister. First, the Government fund ACAS with taxpayers' hard-earned cash to promote good industrial relations and provide real-world expertise. However, ACAS's long list of

sensible proposals for substantive amendments to this code were rejected. Can the Minister tell us why? In what area of good industrial relations practice have this Government proved to be more expert than ACAS?

Secondly, the code spells out that an individual worker who disobeys a work notice will lose automatic protection against unfair dismissal and, if unions are deemed to have failed to have taken the so-called reasonable steps, all striking workers lose that automatic protection. However, the code says absolutely nothing about what positive rights NHS staff, rail staff and other dedicated key workers would then have in those circumstances. This is quite an oversight. If, as a result of the legislation, workers individually or en masse are sacked, precisely what would their rights be and why does the code fail to set this out?

Lord Hendy (Lab): My Lords, I declare my interests as in the register and that I am a member of the Delegated Powers and Regulatory Reform Committee.

Of the many points that I would like to make, I will restrict myself to four. First, having spent 46 years of professional practice largely involved in the legal consequences of industrial relations disputes, I find it offensive that the Act and the code of practice compel trade unions to serve the interests of employers in undermining their right, guaranteed by all relevant international law and hence diminishing the only bargaining power our 34 million workforce have, to enhance the terms and conditions on which they sell their labour.

Secondly, in November 2021 the Delegated Powers and Regulatory Reform Committee published *Democracy Denied?* and the Secondary Legislation Scrutiny Committee published *Government by Diktat*. Your Lordships will recall the two principles underlying those reports. First, primary legislation should conform to the principles of parliamentary sovereignty, the rule of law and the accountability of the Executive to Parliament. Secondly, the threshold between primary and delegated legislation should be founded on the principle that the principal aspects of policy should be in the Bill and only detailed implementation should be left to secondary legislation. These principles were debated in this House on 6 January 2022 and 12 January 2023. The House clearly and strongly endorsed them. I understood that the then Leader of the House did not dissent from them. Yet this legislation failed both principles.

In its consideration of the Bill, the Delegated Powers Committee, in its 27th report, criticised the Bill's granting of a Henry VIII power to the Secretary of State to set minimum service levels by regulations. We said:

"This is a Bill that deals with minimum service levels during strikes. Yet there is nothing in the Bill saying what those minimum service levels are. We shall only know when Ministers make regulations after the Bill is enacted. This is small comfort to Parliament, which is considering the matter right now".

5 pm

How right we were. Now, 10 months after the introduction of the Bill and four months after it became law, we find out, too late to debate or amend them, what the minimum service levels are to be. We now discover that the Act will remove many workers' right to strike altogether. That means that three-quarters of the Border Force, 100% of ambulance drivers and call handlers, and signallers on priority routes are barred from striking between six in the morning and 10 at night. If the House had known those levels when we debated the Bill, amendments could have been debated, and some clauses might not have stood part. This irregular mode of legislating has cheated the House of those opportunities. I find that unacceptable.

My third point emphasises the second. The Act is being used as a device to amend the law on picketing, not by amending the statutory provisions that regulate picketing—Sections 220 and 220A of the 1992 Act—but by imposing on trade unions the duty to take "reasonable steps" to ensure that all members of a union who are identified in the work notice comply with the notice. This sidesteps the need for need for primary legislation; what the Delegated Powers Committee calls "disguised legislation" is deployed. The Code of Practice requires that picket supervisors must be instructed by the union

"to use reasonable endeavours to ensure that picketers avoid, so far as reasonably practicable, trying to persuade members who are identified on the work notice not to cross the picket line".

In consequence, the law on picketing is changed. A failure, even a negligent failure, to so instruct even one picket supervisor—for example, at any one of the hundreds of picket lines in the recent RMT dispute—to use such "reasonable endeavours", which is a phrase that is undefined in the Act, may expose the union to injunctions and damages claims in respect of the whole strike, and all strikers may lose automatic unfair dismissal protection. The omission of this picketing restriction from the Bill, to prevent parliamentary scrutiny and amendment, will be viewed by some as legislation by deception.

My fourth point is to draw the attention of the House to the fact that this Bill contravenes the rule of law. The right to strike is protected by Convention 87 of the International Labour Organization, ratified by the UK as long ago as 1948. The right to strike is not unlimited and, as has been said, the ILO has made it clear that minimum service levels are permissible in essential services, but subject only to certain conditions. I shall mention three.

First, the maintenance of minimum service levels in strikes is permissible only in services that are "essential". Railways are not so considered by the ILO.

Secondly, the ILO requires dialogue between trade unions and employers to set the level of the minimum service. The Act, however, excludes dialogue between those parties in setting the level. The Minister alone does that.

Thirdly, once the level is set, the ILO requires the employer and the union to negotiate an agreement about how the service level will be fulfilled in the particular firm or service. In the event of a failure to agree, there must be an established independent adjudication process by the courts or agreed independent arbitrators. The Act fails in that respect as well.

Given that so many workers will lose the right to strike altogether, there is a fourth point to make. Where workers are barred legitimately from exercising the right to strike—for example, in the military—the ILO holds that, where collective bargaining fails to reach agreement, there must be access to speedy, binding,

[Lord Hendy]
impartial and independent arbitration. The proposed non-binding conciliation that the Government have mentioned does not meet that threshold. As none of those conditions are met by the Act, there is a clear breach of ILO Convention 87. That is not the end of it, because Articles 387(2) and 399(5) of the trade and co-operation agreement require the UK not to weaken or reduce ILO fundamental standards below the levels in place at the end of the transition period.

I mention in passing that Article 6.4 of the European Social Charter, Article 8.1(d) of the International Covenant on Economic, Social and Cultural Rights, and Article 11 of the European Convention on Human Rights all protect the right to strike and are guided by the ILO jurisprudence on it, all of which were ratified by the UK.

For those reasons, among many others that my noble friends have and will articulate, I shall vote for the fatal amendment and, in case that fails, the regret amendment.

Lord Sikka (Lab): My Lords, it is a pleasure to follow my noble friend Lord Hendy. I will ask the Minister to clarify a few things.

My noble friend already quoted some of paragraph 33 of the Code of Practice, which requires the picket supervisors or other trade union officials

"to use reasonable endeavours to ensure that picketers avoid … trying to persuade members who are identified on the work notice not to cross the picket line".

However, the next paragraph states:

"Unions are not required to notify the picket supervisor of the names of union members identified in the work notice".

So how exactly would they know who to stop? Will they have to wear strange hats, ties or jackets or some other way of identifying themselves? Those two paragraphs contradict each other.

That is not the only contradiction in the statutory instruments. Workers are being subjected to laws that do not apply to the withdrawal of capital, so the Government are not being even-handed at all. Companies can close facilities and sack workers without notice and without any vote by any stakeholder. Last year, P&O Ferries unlawfully sacked 800 people. The then Prime Minister openly said that that was unlawful. The chief executive of P&O Ferries came to a parliamentary committee and said that they knowingly broke the law, but no action whatever was taken. The Government are not even specifying the minimum levels of service for any government departments, monopoly service providers or companies. There are no minimum levels of service even for Ministers to answer Questions.

Why are the Government so anti-worker and one-sided? I am reminded of a great quote: "When tyranny becomes law, resistance becomes a duty". I too shall vote for the fatal amendment and, if that fails, the regret amendment.

Lord Thomas of Cwmgiedd (CB): Notices are often fraught with peril, so I want to know from the Minister what the employer is required to do when giving a notice. What is specified as to his means of communication? Is the means of communication employed by the employer to be communicated to the trade union, so that the trade union has some idea of what the employer thought was a means of bringing it to the attention of the employee? If this is to work, there must be a reasonable degree of co-operation.

Lord Johnson of Lainston (Con): My Lords, I greatly thank all noble Lords who participated in this debate. I hope to clarify some key points, which are well labelled on the Government's website and in the code.

I begin by thanking my noble friend Lady Noakes for her comments. This is a code, not a law. The whole point about this code is to enable unions to know how they can safely operate once they have taken reasonable steps to ensure that minimum service levels have been applied. The noble Lord, Lord Cromwell, mentioned that I came from a business background. He is correct and, from my point of view, this will provide welcome clarity to enable us to operate effectively. It does not impose anything or any type of activity: it simply makes recommendations. If you look at the concepts such as the template, that is the recommended template. It is not necessarily the template by which unions will have to operate. I would have thought that it would be very helpful for unions to have a template construction in that way to enable them to feel safe when they are communicating with their members.

I wish to raise something that I consider most valuable when debating this point and this code. Minimum service levels, as operated by the Act and structured by a useful guide such as this code, really—in my view and in the view of the Government—should be the last resort. The noble and learned Lord, Lord Thomas, made apparent the crucial point that it is through collaboration with employers, businesses and unions that we will have strong relations. The noble Lord, Lord Fox, also made that point. The timelines imposed by the Act and referred to in the code are quite short, but are designed to fit within the strike legislation, enabling a 14-day announcement of a strike, a seven-day turnaround for the work notices, and then further days to refine that.

The theory is that the employer and the unions will have done a great deal of work to prepare for the scenario so that effective work notices can be issued. It is not unreasonable for an employer and a union to be expected to collaborate very closely to ensure that this process can be as smooth as possible. At no point does this code, in any way, derogate the right to strike. It gives vital clarity on the relationship between the union and the employer. It actually goes further than that: it protects the rights of unions and the rights of the union members, so that they know where they stand.

A number of noble Lords raised points about reasonable steps, and they are just that. This has been quite well clarified by previous discussions in the sense that, so long as the union can prove that it has taken reasonable steps to ensure that the work notices are properly served and communication has taken place and that workers are not prevented from attending a work site, it can consider itself relatively safe when it comes to the process that may be placed on it in the courts by an employer. That is the whole point of the code: to make the unions feel safer and to ensure that an act around a strike can be properly orchestrated.

In conclusion, I ask for the support of this House. What we are discussing here is a code that will enable a great degree of welcome clarity and was called for by all sides on this debate. There have been a number of consultations to which the Government have responded, making changes to the code to bring to bear some of the very sensible points that were raised to ensure that it is reasonable, practical, fair and clear. It balances the unions' and individuals' rights to withhold their labour, while crucially providing minimum service levels so that the public can go about their business and the economy can sustain itself.

Baroness Bennett of Manor Castle (GP): My Lords, we have had a very strong debate. I do not think the Minister answered my direct question about when, if your Lordships' House allows this through, it will come into operation. Perhaps he could answer that now.

Lord Johnson of Lainston (Con): I said at the beginning of my opening remarks that it will come into effect once it has been laid, so in the next three days.

Baroness Bennett of Manor Castle (GP): I thank the Minister for that information: it is useful for the world to know that we will be facing this situation in three days' time.

We have had a useful debate: this code of practice and all these statutory instruments that we are debating today have been very thoroughly critiqued. The noble Lord, Lord Hendy, made a powerful statement about the way in which the UK is, yet again, placing itself beyond the international pale in terms of norms and legal standards.

5.15 pm

I thought the comment from the noble Lord, Lord Sikka, about employers being held to minimum legal standards was very powerful—the water companies come to mind. I thank the noble and learned Lord, Lord Thoms of Cwmgiedd, for helping to highlight the real, considerable uncertainties here. I also thank the noble Lord, Lord Cromwell, for making an important point about the practicality of this. The noble Baroness, Lady O'Grady, pointed out the concerns that the Advisory, Conciliation and Arbitration Service has about this code of practice. ACAS has indeed suggested that the code is likely to widen the scope for disagreement and dispute, introducing additional flashpoints. Maybe that was the Government's point; the noble Lord, Lord Cromwell, was clearly concerned about it. I have to commend the noble Lord, Lord Fox, on his powerful evisceration. One phrase that stuck in mind was that the central illiberal element of this code of practice is that people can be sacked. Saying this is a "central illiberalism" rightly suggests that there are other illiberalisms in this code of practice.

However—and I feel that I need to explain this to the many people watching this outside your Lordships' House who are not familiar with the practices of the House—for a vote to be called, it needs two Tellers and, half way through the vote, people in the Chamber to shout for the vote to continue. We have heard clearly indicated that the Labour Front Bench does not support the amendment that would throw out this code of practice. The Liberal Democrat Front Bench has not supported this. I do not have the indications that would allow me to put this amendment to a vote at this time. Your Lordships' House might like to ponder what judgments will be made about the position that puts us in, as a representative House, but I find myself with no option but to beg leave to withdraw the amendment.

Baroness Bennett of Manor Castle's amendment to the Motion withdrawn.

Amendment to the Motion

Moved by ***Lord Collins of Highbury***

As an amendment to the motion in the name of Lord Johnson of Lainston, at end to insert "but that this House regrets that the draft Code of Practice imposes significant new duties on trade unions, beyond the scope of the Strikes (Minimum Service Levels) Act 2023; could exacerbate conflict in the workplace; and despite its intention to provide additional clarification to unions, still contains significant areas of uncertainty."

Lord Collins of Highbury (Lab): That is the first time I have heard this House described as representative. I am not going to prolong the discussion. The noble Lord, Lord Cromwell, is absolutely right in that the essence of this is: what in practice is going to work? That is why most employers object to this code. It is a statutory code, unlike the one on the employer, which can be used against trade unions when a rogue employer might see that it is of benefit to take a legal case. Therefore, I beg to move my amendment and test the opinion of the House.

5.18 pm

Division on Lord Collins of Highbury's amendment to the Motion

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Lord Collins of Highbury's amendment to the Motion agreed.

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5.31 pm

Motion, as amended, agreed.

Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023

Motion to Approve

5.32 pm

Moved by ***Lord Markham***

That the draft Regulations laid before the House on 7 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): My Lords, I thank noble Lords for their attendance today at this important debate. I am sure of course that my speech will convince at least three of your Lordships to come the other way.

I pay tribute to the Secondary Legislation Scrutiny Committee for its third report of Session 2023-24, which considered this statutory instrument. I thank the noble Baronesses, Lady Merron and Lady Bennett, for their amendments in relation to today's debate. I hope I will be able to address these topics and the questions from Members today.

During strike action, our utmost priority is to protect the lives and health of the public. Minimum service levels will give the public much-needed reassurance that vital ambulance services will continue through strike action, ensuring that NHS employers can provide life-saving services when the public needs them most. During this year's strike action, some unions, including ambulance unions, have put in place voluntary arrangements for covering essential services, but those arrangements are entirely dependent on good will from unions and staff. Even where they are in place, as they were for the ambulance strikes, there is uncertainty and inconsistency across the country, creating an unnecessary risk to patient safety.

I am pleased that we are debating this secondary legislation, which is necessary to enable NHS ambulance trusts to implement minimum service levels for ambulance services during industrial action. Informed by responses to our public consultation, we have set out the MSL to ensure that employers can issue a work notice to provide that all calls about a person with a life-threatening condition, or where there is no reasonable clinical alternative to an ambulance response, receive a response as they normally would on a non-strike day. The regulations also provide for an MSL in respect of healthcare professional response requests, inter-facility transfer services requests and non-emergency patient transport services.

The MSL we have is broadly in line with the services provided on a voluntary basis by most unions when there was strike action in ambulance services last winter. We do not want to restrict individuals' ability to strike more than necessary. The unions recognised that these services needed to continue then, and by introducing this legislation we are providing a safety net so that the public can be assured that these essential services would continue in any future strike action.

The responsibility for determining staffing levels on both strike and non-strike days remains with clinical leaders at local level. These regulations do not set a minimum level of service generally. Instead, they set a level of service that will allow NHS employers to issue work notices so that, for the services caught by the regulations, the same level of care can be provided to patients as if it was a non-strike day. These regulations do not set a higher level of service than they would have on a non-strike day.

Our Government do recognise that these regulations will restrict ambulance workers' ability to strike. That is why we have committed to engage in conciliation in the event of national disputes over ambulances in the future, if unions agree that this would be helpful. This is a significant and appropriate commitment; it recognises that we are restricting some workers' ability to strike so that we can safeguard the public's right to life and health. We hope NHS employers will do the same for local disputes, and strongly encourage them to do so.

While the territorial extent of these regulations is England, Scotland and Wales, the territorial application of this instrument is limited to England. Employment rights and duties and industrial relations are reserved to Westminster for Scotland and Wales. However, health services are largely devolved and the responsibility for delivering health services in Scotland and Wales falls to the respective Governments. We none the less stand ready to support the Scottish and Welsh Governments should they wish to introduce MSLs, and we have already reached out to offer our assistance.

I now turn to the amendments which have been tabled to these regulations by the noble Baronesses, Lady Merron and Lady Bennett of Manor Castle.

[Lord Markham]
I will start with the regret amendment—that the regulations contain detail that was not in primary legislation.

The Government are grateful to the Delegated Powers and Regulatory Reform Committee for its consideration of the Strikes (Minimum Service Levels) Act 2023 during its passage. In its report, the committee commented that the Act did not contain detail on what the minimum levels of service for the relevant sectors were. As discussed during the debates on the Act that Parliament passed earlier this year, the Act establishes the legal framework that enables these regulations. Each sector where minimum service levels can be brought has its own complexities, and it is right that government enables relevant employers, employees, trade unions and their members, as well as members of the public who are affected by this legislation, to contribute to the relevant consultation and have their say on minimum service levels. It is therefore appropriate that these regulations contain the specific details on how the MSL will affect the relevant service, given that the detail was not present in the Act.

With regard to these regulations, the Department for Health and Social Care undertook a public consultation and additional workshops with key interest groups. The responses and feedback we received from employers, trade unions, charities and other representative groups have informed the drafting of these regulations.

I now turn to the second aspect of the amendment from the noble Baroness, Lady Merron—that the regulations do not reflect the policy positions taken by the Government in their response to the consultation. I have taken from the amendment put forward by the noble Baroness that she was referring to the fact that we were clear in our consultation response, and will continue to be clear, that, if employers are confident that the minimum service levels can be met without issuing work notices, they need not do so. This is implicit in the primary legislation itself—employers have a power to issue work notices, not an obligation to do so. The purpose of these regulations is to provide early certainty for employers about what level of service is to be provided, and a safety net for trusts and reassurance to the public that vital emergency services will be there when they need them. Although, in the main, appropriate derogations were provided by ambulance service unions last winter, our experience of strike action in different parts of the NHS this year has shown that we cannot rely on the good will of unions to provide appropriate derogations.

I now turn to the potential for the regulations to be burdensome. The department is currently considering whether further guidance is needed for employers and trade unions in the health sector to help with implementation of the regulations. This is in addition to the work undertaken by the Department for Business and Trade to publish work notice guidance and a code of practice that provides practical guidance on the implementation of minimum service levels for employers and trade unions. The Government have also committed to working with employers and trade unions to improve and strengthen the process of agreeing voluntary derogations. The department is currently scoping options on how best to take this work forward.

I now turn to the fatal amendment, which claims that the regulations will

"expose trade unions to liability of up to £1 million".

I agree with the comments of my noble friend Lord Johnson, who spoke earlier today on the Department for Business and Trade's code of practice. These regulations, however, are not where this £1 million liability comes from. The code will provide greater clarity to trade unions and employers which should help avoid expensive litigation. The code will also protect unions from the very liabilities that the noble Baroness raises in her fatal amendment.

I wish to address the suggestion that these regulations make trade unions enforcement agents of NHS employers and His Majesty's Government. I wholeheartedly disagree with this suggestion. Naturally, on a strike day, NHS employers will ask staff who have been named in a work notice to comply with that work notice. It is the Government's view that it is right and proportionate that there is some limited obligation on trade unions to help ensure that the minimum service level is achieved during a strike.

I must reassure your Lordships that these regulations are not at all about straining industrial relations between employers, trade unions and the Government in the NHS. These regulations would help create certainty and clarify expectations between NHS employers and trade unions regarding the level of cover available to the public on strike days. This greater clarity can only be beneficial for the relationships between trade unions and NHS employers. I therefore call on all noble Lords to reject this fatal amendment.

Baroness Merron (Lab): My Lords, in the previous debate, my noble friend Lord Collins ably set out why the Act, the code of practice and the associated regulations will exacerbate conflict in the workplace and do more harm than good, in this case to NHS staff in the ambulance and patient transport service, as well as to employers and the public. I will not repeat the evidenced arguments we have already heard, but I support the view that the Government has got this one in the wrong place.

Noble Lords will have heard and be well aware that Labour has promised to repeal the Strikes (Minimum Service Levels) Act when we get into government, and I reiterate that we stand by that pledge. I note the fatal amendment again tabled by the noble Baroness, Lady Bennett of Manor Castle, and I hope that she will now agree that it is not the role of an unelected Chamber to frustrate the will of the other place, but I hope that she will find it possible to agree with the comments from my noble friend Lord Collins, who said that the only democratic way to get rid of this unworkable legislation will be through the election of a Labour Government.

These regulations are marked by draconian content which does not align with the more conciliatory language in the Government's consultation response, in which there is significant emphasis on the potential for voluntary arrangements as an alternative to the issuing of work notices, to take one example. As the consultation document says:

"Instead of expecting that employers will always issue work notices to ensure"

that minimum service levels

"are met, we recognise that they may be able to secure the same level of coverage through voluntary derogations, and they can continue to agree and rely on these instead, as long as they are confident that the MSL will be met. Where employers decide that voluntary agreements are sufficient, this will give union members more flexibility on strike days; instead of either being on strike, or not, they can choose to strike but leave the picket line if needed, as they do currently".

I observe that this kind of language and its tone and content fails to be reflected in the regulations, which are highly prescriptive in their insistence on how things absolutely must be. Perhaps the Minister could explain this disconnect. Does he accept that in times of industrial unrest, it is the language of conciliation that is needed?

5.45 pm

The Government are proceeding with these regulations in the face of their own evidence about how unworkable they are and the considerable adverse reaction. It is not only noble Lords on these Benches and others who we have heard from today and on previous occasions who take issue with these regulations and this legislation. The employers' body NHS Providers has said that the plans for ambulance minimum service levels

"would add a further challenge to industrial relationships, at a time when the NHS most needs to protect them".

NHS Providers also said that minimum service levels

"will not replace the need for derogation and staff recall arrangements but will make them harder to achieve".

The NHS Confederation has made a similar case. I am sorry that the Government have not listened to this counsel.

The Government say that they propose

"to compensate for the reduction in the ability to strike by committing to engage in conciliation for disputes".

However, their impact assessment warns that:

"Introducing a commitment to engage in conciliation could result in unintended consequences and undermine effective functioning of pay and conditions collective bargaining arrangements for over 1.1 million staff on Agenda for Change".

I tabled this regret amendment as the regulations contain policy detail not included in primary legislation, and that is contrary to the recommendation of the Delegated Powers and Regulatory Reform Committee. The regulations do not reflect the policy positions taken by the Government in their response to the relevant consultation, and they go against evidence received by the Government which suggests that their implementation will be challenging. For all those reasons and many others, I beg to move.

Amendment to the Motion

Moved by ***Baroness Bennett of Manor Castle***

As an amendment to the motion in the name of Lord Markham, to leave out all the words after "that" and to insert "this House declines to approve the draft Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023 because they expose trade unions to liability of up to £1 million, make trade unions act as enforcement agents on behalf of employers and His Majesty's Government, and will add strain to industrial relationships when the National Health Service needs to protect them."

Baroness Bennett of Manor Castle (GP): My Lords, in speaking after the noble Baroness, Lady Merron, I must respectfully disagree with and indeed correct her on one point. I do not now accept that your Lordships' House does not have the responsibility, in exceptional circumstances that I have set out before, to act to stop statutory instruments that should not go through. However, your Lordships will be pleased to know that I will not rehearse all the arguments I referenced in my earlier speech.

I also correct the noble Baroness on her suggestion that there has to be a Labour Government to protect the rights of working people. We have to get rid of the Conservative Government, but other options are available. The see-saw of politics that we have had for the past century has not served this country well, and its people are increasingly aware of that fact.

I am aware of the desire to move quickly to a vote, so I will be brief, but I will pick up a point from the Minister. Again, it is important in this debate to reference the briefing from the Royal College of Nursing, which stresses that the regulations seek to make trade unions responsible for breaking their own strikes. As the Royal College of Nursing makes clear, the Government had claimed this is not about nurses, but there are nurses working for the services that we are now talking about. It seems so long ago that we were all standing on doorsteps clapping, cheering and banging pots for our nurses and other medical workers who were putting their lives on the line. Look where we are now.

The RCN briefing also makes the important point, as the Joint Committee on Human Rights noted, that the minimum service level requirements may impact more severely on certain protected groups—most obviously women in respect of nursing. This is a gendered attack on the freedom of members of the RCN. As the RCN says, and as others have said before, this whole approach makes strikes more likely, not less likely.

In a recent survey of RCN members, 83% of nursing staff said that the staffing levels on their most recent shift were not sufficient to meet the needs of patients safely and effectively. I, and I think all medical workers, strongly believe in minimum service levels. We need to have them every day, and the Government have not created a situation in which that is possible.

For the avoidance of doubt—we want to move on to other votes—I am not planning to divide the House on this but, in the meantime, to allow the debate, I beg to move.

Lord Allan of Hallam (LD): My Lords, it is good that this instrument applies only to ambulance trusts in England. That is the last time I will use the word "good" in association with this statutory instrument, but it certainly reflects a lot of feedback, particularly by the noble and learned Lord, Lord Thomas of Cwmgiedd, and others, that we had during the debate on the primary legislation, when we felt we had to remind the Government that the health service is devolved and that it was inappropriate to seek to interfere too far. It was interesting to hear the Minister say that the Government have made an offer of assistance to the Governments in Wales and Scotland in respect of giving them these wonderful minimum service levels. I would love to be a fly on the wall for those conversations, which I am sure are very short.

[Lord Allan of Hallam]

I turn to the substance of the requirements. The people running local health services are like watchmakers looking after very complex mechanisms with many different moving parts. From time to time, we work with those professionals on health and care legislation that provides tools for them to tune and improve their services. What is before us today is not such an instrument but rather reflects that the Government have decided unilaterally to give local health authority managers a hammer, because that is what the Government think they need. Yet the feedback we have had from all those who work in the National Health Service, as cited by the noble Baroness, Lady Merron, is that they clearly believe that this is the wrong tool for the job. Given that feedback, it seems quite likely that many trusts will choose not to use the powers to issue work notices. If that is the case, perhaps little harm will ultimately have been done other than wasting parliamentary time on creating the law and the regulations.

But there is a worrying scenario, which we explored during the legislative process, that was not sufficiently addressed—where trusts that do not want to issue work notices nevertheless feel compelled to use them for legal reasons. I would like the Minister to come back to this today and provide some more compelling assurances. If an ambulance trust, after the passing of these regulations, wishes not to use this mechanism but instead to negotiate voluntary agreements, as the Minister said that he would like them to do, will it truly be free to make that choice? If politicians want to urge trusts to use the hammer of work notices that they have given them, that is one thing. They can deal with the political pressure. But if, by declining to use these notices, they will expose themselves to new legal risks, that is much more problematic. Trusts may then feel that they have to use the hammer, even where they believe it will cause more damage, because they cannot risk being sued for not doing so. Can the Minister give a clear guarantee that his department has looked into this thoroughly and determined that trusts will continue to be able to use their best judgment on what will cause least harm to the communities they serve?

Where a trust has exercised its judgment not to issue work notices and things go wrong, as inevitably may happen from time to time, for a variety of reasons, we need to know that the trust will not face action either from the department or from any other third party. Absent that assurance, the safe option may be to issue the work notices, for the trust to take the hammer to the watch, whether or not it thinks it is a good idea. This is the crucial point. If we are to believe the Minister's reassuring words, that this will still create the scope for trusts to negotiate voluntary agreements and they will not have to issue these work notices, we need to know that the department has looked at this and can give us that kind of copper-bottomed guarantee, rather than simply saying it will not be a problem.

Lord Woodley (Lab): My Lords, I declare an interest as a former leader of Unite the Union, which represents ambulance workers and other NHS staff up and down our country. My noble friend Lady Merron has powerfully laid out the arguments against the draconian regulations we are considering today. I will emphasise three points in the short time that I have now.

First, these regulations are entirely unnecessary. Trade unions already agree life and limb cover during strike action—noble Lords know that. These arrangements work well, giving confidence and flexibility if workers are needed to leave the picket line to respond to emergencies. We have always done that. Central to the NHS disputes over the past year are the unsafe staffing levels due to poor pay and retention. Why are the Government so keen on minimum staffing levels on strike days but do not care what happens when staff are not striking?

Secondly, these regulations will simply poison industrial relations between employers and workers, as all the impact assessments have shown us. When you deprive somebody of their ability to strike after a ballot, how can you be surprised when this causes widespread anger and resentment? Without being able to take effective strike action, workers will of course seek new ways to put pressure on employers, including work to rule and overtime bans. With all good faith gone, disputes will drag on and become even more bitter. Forcing workers to cross their own picket lines, with unions made to take so-called reasonable steps to enforce this, is undoubtedly a recipe for disaster. Mark my words: when the first worker is sacked for refusing to cross their picket line, there will be a major escalation of industrial action. Is that what the Government really want?

Finally, these measures are just the latest in a long line of union-busting legislation from this Government. It is a disgrace that they continue to attack workers' rights when they promised an employment Bill to make Britain the best place to work in Europe. Instead, they are trying again to repeal the ban on using agency staff to break strikes, despite the High Court ruling that said it was unfair, unlawful and irrational.

In this place, we are privileged to be able to hold the Government to account and to help protect people from greed and exploitation. I urge noble Lords to stand up for the hard-pressed workers of this country, already suffering from a cost of living catastrophe not of their making, and to vote down these vindictive, destructive and, above all, counterproductive measures.

Lord Prentis of Leeds (Lab): My Lords, I speak in support of the amendment put forward by the noble Baroness, Lady Merron. As recently as 20 July this year, this House debated a report from our Public Services Committee, very aptly entitled *Emergency Healthcare: A National Emergency*. The report found the emergency healthcare workforce to be under unprecedented strain, facing significant challenges and shortages, low job satisfaction and retention rates. Ambulance staff were described as overwhelmed, fatigued and depleted. Many stated that they were suffering from work-related stress, covering for 3,000 job vacancies in the ambulance service alone.

The report concluded:

"Without concerted action to address the emergency in the system",

many of the emergency healthcare workforce

"will leave the health service".

The report is reinforced by the Government's own delivery plan for recovering emergency services, also published this year. The government plan states that this is the

"most testing time in NHS history",
which is, in its words, taking its
"toll on staff, who … work in an increasingly tough environment".
Our ambulance services are struggling to cope. If we are to restore service to the levels that we all want, never in the history of our NHS has partnership, which has thrived in our health service for more than 75 years, been more important. The Government, employers and unions should be working together to pick the emergency healthcare workforce off the ground and to improve ways of working and service delivery for the benefit of patients.

6 pm

These draft regulations on the ambulance service have the ability to undermine all that. They have the ability to escalate tensions and worsen industrial relations at the very time when there has never been a greater need for the Government to enhance social partnership working within the ambulance service.

The Government are ignoring NHS Employers, which made it clear that it did not want the legislation. As my noble friend Lady Merron pointed out, NHS Providers told the Government that it would be a further challenge to industrial relations at the very time when the NHS needs to protect them. The Government are also ignoring their own impact assessment, which showed how unworkable the statutory instrument would be. The assessment referred to stakeholders who thought that
"the issuing of work notices would be challenging and time-consuming".
It also referred to the difficulty of
"consulting with a number of unions"
and
"communicating with workers, who may disagree"—
the list goes on.

This legislation has all the hallmarks of the worst form of skeleton legislation, as criticised by our Secondary Legislation Scrutiny Committee. It was a Bill so devoid of content that it left the operation of the law to Ministers. The consultation process gave the impression to the world that the Government had recognised—even praised—the joint arrangements already in place. Now, however, the draft regulations relating to ambulance services have set the bar so high that many could not be achieved on a normal working day, let alone in the current circumstances.

It has often been said that, in this country, we have among the most draconian restrictions in the western world on workers legally withdrawing their labour. For ambulance workers, paramedics, nurses and control room staff, taking industrial action is the last resort. For many, the action taken in the past year was the first in their working lives. For many, pummelled by a pandemic and hammered by the cost of just living, it was a cry for help. Now, however, if the Government have their way, some will face the possibility of dismissal for taking lawful industrial action. Ministers of all political parties have always wanted to look tough on striking public service workers; it is par for the course. However, this legislation and these draft regulations can do so much damage without, in the words of NHS Providers,
"providing a useful alternative approach to managing service provision during periods of strike action"—
its words, not mine.

The statutory instrument on ambulances rides roughshod over all the arrangements jointly agreed in every ambulance trust to protect patient safety. It has a real ability to undermine the social partnership working built up over half a century, which is so essential if we are to implement successfully the long-awaited NHS long-term workforce plan and restore the health of our nation. It is for these reasons that I ask this House to support the amendment on ambulances and NHS transport put forward by my noble friend Lady Merron.

Lord Thomas of Cwmgiedd (CB): I thank the Minister very much and welcome the fact that, although this legislation extends to Wales and Scotland, it applies to neither of them. This is a welcome change of mind; I hope that it will be carried through in other pieces of legislation or other instruments contemplated that relate to both education and the NHS.

I want to add one further observation, if I may, in support of what the noble Baroness, Lady Merron, said. We can of course pass instruments of this kind after the Government have gone out to consult, and they can say with some force that they have had some views, but doing it that way diminishes the status of our democracy. This is the place where the debate should take place. On a contentious issue—this is very contentious—we ought to have the argument here so that people know that it is open. I very much hope that a means can be found when we get to the more contentious areas of education and staffing levels in the other aspects of the NHS—perhaps on other matters, too—so that we have a mechanism for a meaningful debate in this Chamber for the strength and the health of our democracy, which is under such pressure from some who think that their voices do not count.

Lord Rooker (Lab): My Lords, I came in today to break the habit of a lifetime—I have been in the House for more than 20 years, half of them as a Minister—because I proposed to vote against the first two Motions. I was going to support the first two fatal amendments. I felt deprived that I did not have the opportunity to do that—I am still going to make my points, mind you.

These are steps too far. I do not think that we should pussyfoot around. We know that, earlier in the year, the Government rejected the report on the Bill from the Delegated Powers Committee. There are times when this House should not simply fall into line with this Tory Government; this is one of them. I am reminded in some ways that, very sadly, we are missing today the contribution of the late Lord Judge who, earlier this year—on more than one occasion—made it clear from those Benches that we need to use the powers available to this House when we need to be firm. There were a couple of debates on it. In my view, this is such a time.

In answer to the Lib Dem Benches, we know that the health service bosses are not independent—we know that from the pay review bodies—so it is fairly obvious what will happen. I realise about the so-called conventions but they are between Labour and the Conservatives. There is no rule in the Statutory Instruments Act 1946 about not voting against a statutory instrument in either House; it is just the convention that we do not do it. We fear now that, if we do it to

[Lord Rooker]
them, they will do it to us. In fact, the Tories have done it more to Labour than Labour have to the Tories so I am not going to take any lectures about conventions from this Government, who have breached, systematically ignored and torn up many of the conventions that rule our constitution. I will not rely on the use of fatal amendments by the noble Lord, Lord Strathclyde, either.

One area will suffice as an example: electoral law. I am in favour of ID cards but the identity system was deliberately designed to reduce voting. Rees-Mogg admitted when he was the Leader of the other place that they had got it wrong: they fully intended to get fewer people in polling stations. The Government have neutered the Electoral Commission as the guardian of free and fair elections and, this past month, they changed the finances of elections, all without any consultation and with no Speaker's Conference whatever. That is part of the constitution and the conventions on the way we do things. We do not have to follow the conventions: if a thing is bad enough, vote against it.

Paragraph 41 of the Secondary Legislation Scrutiny Committee report on these regulations—this committee reports to this House, having been set up by the House to look at these issues—says:

> "The Department of Health and Social Care's … consultation document acknowledged that, during past strikes, emergency provision has been delivered through voluntary arrangements".

So why are we doing this? Why are we picking on ambulance workers? It is not needed. If there were any evidence of flagrant abuse and the voluntary system not working, believe you me, your Lordships would know about it. That is the reality. Therefore, on this one, if anybody called the vote—although it has now been denied—I would be happy to vote against the SI.

I cannot quote much from my experience. When you lose the opportunities of the other place to be in contact with constituents and with people's daily lives, it is different; it is different when you stop representing people simply because you are in this place. However, I will give one example from my personal experience. Four years ago this month, a few days before Christmas, I was carted really late one Saturday night from Hereford County Hospital, which had spent four years stopping me going over to the dark side, to Worcester Royal, to have my first chemotherapy as an in-patient. The weather was atrocious; the main roads were blocked. The driver of the ambulance said to me, "I'd better warn you now: it might be a bit rough—I've got to go down some country lanes". We passed three upturned cars due to the weather. When I got through it all, I wrote to the chief executive and said, "You'd better put a note on the chitties of those two people who looked after me in that ambulance that night". It was absolutely horrendous.

I now think that people like that who do this job cannot be trusted to deliver emergency services when there is a dispute—disputes deliberately created by the Government anyway for political reasons. The reality is that I am prepared to vote against this SI, above the others—I am not saying anything about the other two. We have evidence from our own committee that it is not needed, and I have my own bit of personal experience. I thought, "Why pick on the ambulance workers?" If there were an opportunity, I would vote against the SI; I may not have the opportunity, therefore I will obviously support the regret amendment. However, I much regret that I may not be able to vote for the fatal amendment.

Lord Hendy (Lab): My Lords—

Noble Lords: Minister!

Lord Markham (Con): I thank noble Lords. In keeping with other comments, I will be brief in my response. We genuinely see a situation where, as the noble Baroness, Lady Bennett, said, we all agree that we want minimum service levels every day. As the noble Lord, Lord Collins, said in the previous debate, no one is against minimum service levels. All we are talking about here are the tactics to how we achieve that. I also totally agree with the point made by the noble Baroness, Lady Merron, that using the language of conciliation has to be the right approach in disputes. However, all these SIs are designed to do is to provide that safety net. To address the point of the noble Lord, Lord Rooker, there have been other circumstances where there was a genuine concern that strikes would not enable those minimum service levels to be fulfilled. That is what we are talking about today.

In response to the point made by the noble Lord, Lord Allan, I agree that it will be up to the ambulance's trust, or the other trust when we come to other parts, to use its best judgment on how to achieve those minimum service levels. It is at management level, but it is then our job as the Government to hold them to account. Clearly, if during these strike actions the trust was not achieving minimum service levels, and there were certain standards which put patient safety at risk, in those circumstances I would be expected, as would any Minister, to ask the relevant trust why that was the case and perhaps to reconsider, because its judgment call did not bear fruit on that occasion. This is all about trying to give the trust part of the toolkit to ensure what we all want, which is minimum service levels. We are not compelling it; we are giving it the choice to do it. We hope that it is never needed but we believe it is an important part of the toolkit.

Baroness Bennett of Manor Castle (GP): My Lords, I note that no Tory Back-Benchers are speaking in favour of the Government in this part of the debate. I note also the comments made by the noble Lord, Lord Rooker, who came at it in a different way to how I did. The House is again and again butting against the question "If not now, when?" We have the power to act. Not acting is as much of a choice as acting is. I am sorry to disappoint the noble Lord, Lord Rooker, but I am aware of the time and the pressure to move on to more votes, so I beg leave to withdraw the amendment.

Baroness Bennett of Manor Castle's amendment to the Motion withdrawn.

Amendment to the Motion
Moved by ***Baroness Merron***

As an amendment to the motion in the name of Lord Markham, at end to insert "but that this House regrets that the draft Regulations contain policy detail that was not included in primary

legislation, contrary to the recommendation of the Delegated Powers and Regulatory Reform Committee; do not reflect the policy positions taken by the Government in its response to the relevant consultation; and go against evidence received by the Government which suggests that their implementation will be challenging."

Baroness Merron (Lab): My Lords, both in opening and responding, the Minister described these regulations as a "safety net". However, these regulations can stand a chance of being a safety net only if they are actually workable. As I and other noble Lords, as well as employers, unions and many others, have forensically set out, they are not workable.

I thank the noble and learned Lord, Lord Thomas, for his comments recognising that we are dealing with a contentious issue and that contentious issues call for meaningful debate in this Chamber. This nicely complements the point I made that, in times of industrial unrest, meaningful discussion is also needed outside the Chamber, rather than a rigid, prescriptive, one-size-fits-all, inflexible and unworkable approach, as we have in these regulations. I beg to move, and I wish to test the opinion of the House.

6.17 pm

Division on Baroness Merron's amendment to the Motion

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Motion agreed.

Strikes (Minimum Service Levels: Border Security) Regulations 2023

Motion to Approve

6.29 pm

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

That the draft Regulations laid before the House on 7 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, maintaining services at our borders is essential to our security and prosperity as a nation. We depend on skilled professionals to ensure that, 24 hours a day, 365 days a year, our borders are strong and effective. The Government assess that, in the event of strike action by those charged with securing our borders, there are significant risks to the safety of our communities. Criminals may seek to take advantage of strike action to enter our country or to move illicit commodities through our ports and airports. People smugglers may seek to exploit gaps in our patrol activity to land illegal migrants on our shores.

We are focused on making the hard but necessary long-term decisions to deliver the change the country needs to put the United Kingdom on the right path for the future. It is for this reason that the Government have decided to include border security within the scope of the Strikes (Minimum Service Levels) Act 2023. These new regulations have two purposes: to make provision for minimum service levels in relation to strikes as respect to relevant border security services and to define those relevant border security services.

The regulations set out that border security should be provided at a level that means they are no less effective than if a strike were not taking place. The regulations also set out that passport services as are necessary in the interests of national security are provided as they would be if the strike were not taking place on that day. The relevant border services that must be provided are now defined as

"the examination of persons arriving in or leaving the UK; the examination of goods imported to or exported from the UK; the examination of goods entered for exportation or brought to any place in the UK for exportation; the patrol of … ports … the sea and other waters within the seaward limits of the territorial sea adjacent to the UK; the collection and dissemination of intelligence for these purposes; the direction and control of"

those engaged in providing those services; and such passport services as may be necessary for national security reasons.

As the employer for Border Force and HM Passport Office, it will be the Home Office that issues work notices to trade unions during strike action. A work notice is, to recap, a notice given in writing that identifies the members of the workforce who are required to work on a strike day and the work they are required to do to deliver the levels of service as set out in the minimum service regulations. It is important to note that the Act forbids an employer, when setting a work

notice, from having regard to whether an employee is a member of a trade union or has taken part in trade union activities or used their services in the past. The trade union must then take reasonable steps to ensure that members of theirs who have been identified in a work notice do not take strike action. If the union fails to take reasonable steps, it may lose its legal protection from damages, claims and injunctions. I will return to that at the end of my speech.

The regulations stipulate that border security services can be provided only by employees of the Home Office, which will mean those who already provide border security services or the relevant passport services required in the interests of national security. This means that we will no longer need to rely on outside resource to provide cover. In the past, we have used other civil servants working elsewhere and members of the Armed Forces. We acknowledge and appreciate the efforts of those who have provided cover previously, but this cannot be a long-term solution.

We recognise that restricting the ability to strike, even in the way we are proposing, means that we need to ensure that compensatory measures are in place. The Government are therefore committing that they will agree to engage in conciliation for national disputes in relation to border security, where the relevant unions agree that this would be helpful. This is a significant and appropriate commitment that balances the ability of workers to strike with the safeguarding of our borders.

I note the amendment tabled by the noble Lord, Lord Coaker. I respectfully say that we have responded to the recommendations of the Delegated Powers and Regulatory Reform Committee. Its *27th Report of Session 2022-23*, which was published on 2 March 2023, made two recommendations on what became the Strikes (Minimum Services Levels) Act. The first was that

"the House may wish to press the Minister to provide an explanation of how the power to set minimum service levels … is likely to be exercised".

The second was that

"the House may wish to press the Minister to provide an explanation of how the power to define 'relevant services' … is likely to be exercised".

I respectfully submit that both recommendations have now been addressed through the regulations and in this debate.

I also respectfully disagree that the regulations are too prohibitive. This brings me to the Motion tabled by the noble Baroness, Lady Bennett, and to the findings of the Secondary Legislation Scrutiny Committee in its *3rd Report of the Session 2023-24*, published on 23 November 2023. As I have set out, we are bringing forward these regulations to establish a fair balance between the ability to strike and enabling people to go about their daily life in the confidence that on a strike day our borders will still be secure.

Our recent experience of industrial action saw staffing levels of around 70% to 75% being delivered by Border Force. This enabled Border Force to carry out the essential functions listed in the regulations. Our estimate of the impact on HM Passport Office is that around a dozen or so personnel may be required to work. We none the less recognise that these new measures may mean that members of staff may not be able to strike. It is for that reason that we have made a commitment regarding conciliation, and I think this commitment is significant.

Turning to the question of trade unions' liabilities, I would simply say that unions that continue to comply with trade union law are completely unaffected by this change, and therefore the issue of liability will not arise.

I call on Members of your Lordships' House to reject the amendment tabled by the noble Lord, Lord Coaker, and the Motion tabled by the noble Baroness, Lady Bennett. I beg to move.

Lord Coaker (Lab): My Lords, I thank the Minister for his introduction, although I disagree with much of it. We have heard in earlier debates from my noble friends Lady Merron and Lord Collins the general view that we have about these regulations. The law is not a substitute for proper negotiation. It is the failure of the Government to negotiate properly and reasonably with so many groups of workers that has led to this. Instead of addressing this failure of public policy, the Government have sought to undermine the right of people to take industrial action to protect their interests. Indeed, on the contrary, following the Act, regulations are put in place with huge consequences for unions and their members and workers if they fall foul of often ill-defined and ambiguous legislation. We will repeal them if we win the next election and will have no hesitation in doing so. The legislation that was outlined by the Minister to the Delegated Powers and Regulatory Reform Committee should properly have been in primary legislation, which is one of the points that the committee made and which the Minister did not answer or point out in his remarks.

I turn briefly to the regulations with respect to border security and the reasons we regret them. Can the Minister confirm that because the regulations involve employment law, they do not apply to Northern Ireland? It is important to understand what assessment the Government have made of a situation in which there was to be industrial action in Britain under these regulations but not in Northern Ireland, where, presumably, existing law applies.

Can the Minister also explain why the Explanatory Memorandum spoke—as the Minister did here—of the impacts on UK immigration, UK territorial waters and UK border security staff? He will know that the UK includes Northern Ireland but these regulations are about Britain and so do not include Northern Ireland. Can he explain why the Home Office cannot distinguish between the terminology of the UK and the terminology of Britain with respect to these regulations?

Can the Minister explain why the measures have been extended to cover HM Passport Office? This appears, whatever the Minister says, to be a last-minute addition to the legislation, going beyond the earlier indications and debates that were had with respect to the Act—hence the amendment that I have put. The impact assessment says that a small number of HM Passport Office staff—the Minister talked of 12—will be affected. Can he outline what roles that will be and whether the passport staff in Belfast, in Northern Ireland, will be affected? Presumably they will not, so

[Lord Coaker]

what will happen? When was the decision made to extend the regulations to HM Passport Office? Why were the trade unions not consulted about that change?

The border security regulations allow an employer to serve a work notice that requires border services to be

"no less effective than they would be if the strike were not taking place on that day".

—see Regulation 3(1). The very real question that results, as trade unions point out, is to what extent there is any reason for anyone to strike if it is not supposed to have any impact at all. How is that proportionate? That is why we regret these regulations before us.

The TUC points out how strict this short but powerful set of regulations with respect to border security is. The Government say that, to ensure the minimum service levels that they have outlined, this SI necessitates 70% to 75% of border staff working. How on earth is it proportionate to effectively deny three-quarters of the workforce the right to strike? How on earth is it reasonable or proportionate that, in many cases, only one in four workers in border security will have the right to strike? Hence, I tabled the regret amendment.

In many small ports, because of the minimum service levels, there will effectively be no right to strike at all. Can the Minister also explain, notwithstanding the points he has made about conciliation, what the conciliation process will involve? How will it actually work? Will there be frank and open discussions with the trade unions about it to ensure that a system is put in place that works?

The Government make considerable play of doing this in the interests of the public, but millions of trade union members are members of the public. Is the noble Lord sure that these regulations, interfering with the right to strike to such an extent, are consistent with our legal duties? Of course, we rightly praise our border staff and others for the important and crucial work that they do. However, in wage negotiations and conditions-of-service talks, they have been disappointed that this praise is not turned into acceptable offers when it comes to their pay and conditions. In those circumstances, and subject to a ballot, trade unions should have the right to strike. The proposed restrictions are not proportionate and can never replace fair and open negotiations based on mutual respect, even when that is difficult. It is for those reasons that I have tabled my amendment to the Motion.

Amendment to the Motion

Moved by ***Baroness Bennett of Manor Castle***

As an amendment to the motion in the name of Lord Sharpe of Epsom, to leave out all the words after "that" and to insert "this House declines to approve the draft Strikes (Minimum Service Levels: Border Security) Regulations 2023 because they expose trade unions to liability of up to £1 million, make trade unions act as enforcement agents on behalf of employers and His Majesty's Government, and reduce the rights of workers to withdraw their labour, and will prohibit around 75 per cent of Border Force workers from taking part in strike action."

Baroness Bennett of Manor Castle (GP): My Lords, I rise to move my fatal amendment on the border security minimum service levels regulations. I will be very brief in doing so, in the interests of progressing the business of the House, particularly given the fine balance of our numbers. I am not going to repeat all my previous statements and arguments but, for the record, that does not mean that I am in any way withdrawing any of them.

I agree with virtually everything that the noble Lord, Lord Coaker, just said about these being, in some ways, the strictest of the regulations before us today. Some 70% to 75% of staff are losing the right to strike; in many smaller places, there is effectively no right to strike. We are taking that right away from people. However, that would really be a stronger argument for my fatal amendment. In that context, the regret amendment does not really achieve anything, as I have said before. I will, however, just reflect on one comment that the Minister made, repeating statements that the Government have often made before. If the Government are committed to conciliation for national disputes, this is a kind of rhetorical question, but it is worth asking. Can the Minister confirm how he can speak for future Governments, because these are the regulations we are laying now?

Lord Fox (LD): My Lords, this is perhaps the most curious of the three statutory instruments aimed at particular sectors. I say that because it seems that the Government have chosen to pick a fight with one of the groups of public sector workers with which, to my knowledge, they do not currently have a full-blown dispute. Perhaps there is one coming; perhaps that is why Robert Jenrick has just resigned. He must know something that we do not. Given the choice of sectors, why did the Government choose to accelerate this one over other public services which are currently in trouble? It seems strange. Clearly, as other speakers have said, it is not a very long measure, and noble Lords will be happy to know that my speech will be shorter.

At the heart of this, as we heard from the noble Lord, Lord Coaker, the intent of the measure is that the strike-day service from Border Force should be no less effective than on a non-strike day, and services should cover all the areas normally running—port and airport services, passport services and so on—as the Minister has set out. I do not need to explain that when the minimum service level is no less effective than the everyday service level, that basically means almost everybody is required to go to work. In this case, the estimate from the TUC is that 70% to 75% of the employees of Border Force on a normal day will be required to attend on a strike day.

6.45 pm

If a union can legally call a strike, but must then tell three-quarters of its members to ignore that strike, this is a looking-glass world. It would be more efficient if the employer sent out un-work notices and the union informed its members which ones could actually strike; that would cut out the middleman and we could get to the result quicker. But that is not how industrial relations should work, and it is certainly not how good industrial relations have worked. If there is no dispute

in Border Force now, I cannot help thinking that this in no way improves the possibility of not having one in future.

As we have said before, these regulations effectively ban strikes in Border Force. If that was the Government's intention, they should have used primary legislation and truthfully expressed that ambition. Instead, they have deployed Ministers to dissemble as they hid behind a skeletal Bill. Once again, we will take the TUC's advice and support the noble Lord, Lord Coaker, if he chooses to move his Motion.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, further to the remarks made by the noble Lord, Lord Coaker, I understand that the Strikes (Minimum Service Levels) Act 2023 applies to England, Scotland and Wales. However, it is interesting that, while labour relations are devolved, Border Force, HM Passport Office and so on are not; they are reserved.

In light of this legislation, if it is important to the Government, how does the Minister intend to provide similar measures in Northern Ireland? How does he maintain the integrity of the single reserved agencies? How does he ensure similar terms and conditions for staff across the United Kingdom, given the restricted extent of these regulations? As he said, this is important legislation. I will be interested to hear how he can say that, on the one hand, it is a devolved matter but, on the other, Border Force, His Majesty's Passport Office and so on are not because they are reserved matters. How does the Minister deal with that?

Lord Sharpe of Epsom (Con): My Lords, I am grateful for all the contributions and will address the points that have been made. The noble Lord, Lord Coaker, has tabled a Motion to regret this statutory instrument because

"the draft Regulations contain policy detail that was not included in primary legislation contrary to the recommendation of the Delegated Powers and Regulatory Reform Committee; and … given that the impact assessment acknowledges that some workers' right to take industrial action will be affected or denied… they are too prohibitive".

I do not agree. The *27th Report of Session 2022-23* of the Delegated Powers and Regulatory Reform Committee, published on 2 March 2023, made two recommendations regarding what became the Strikes (Minimum Service Levels) Act. The first was that

"the House may wish to press the Minister to provide an explanation of how the power to set minimum service levels … is likely to be exercised",

and the second, as I have already said, is that

"the House may wish to press the Minister to provide an explanation of how the power to define 'relevant services' … is likely to be exercised".

I respectfully submit that both those recommendations have now been addressed through the regulations themselves and in this debate.

I also respectfully disagree that the regulations are too prohibitive. The Government committed to introducing statutory minimum service levels on strike days in a range of sectors, including border security. That was to establish a fair balance between the ability to strike and enabling people to go about their daily lives. The ability for staff to take strike action is an integral part of industrial relations. However, the security of our borders is something that we cannot compromise on; that is why this measure is proportionate. We must also consider the disruption caused to, and the costs incurred by, passengers and businesses that expect the essential services they pay for to be there when needed.

The noble Lord, Lord Coaker, asked me about the consultation. We are grateful to all those who responded to it. As noted in our formal response, we received 69 online questionnaires and a further nine written responses, but we consider that those who responded have a reasonable expectation of confidentiality, which is why we have not identified them.

In the consultation we ran in the summer, we made it clear that we were considering applying these regulations to Border Force and other organisations. We invited respondents to identify any organisations they thought should be in scope. Following the consultation, we considered it important to include critical passport services in the regulations. Passport services required for the purposes of national security could include, for example, identifying stolen passports and forged documents. In practice, as I said in opening, we think that we would require around a dozen employees from the Passport Office to work on a strike day, if necessary.

Our commitment on conciliation is clear. To partially answer both noble Lords' questions on Northern Ireland, there are issues in the background with Northern Ireland that we are working through. I will return to those subjects in writing.

The public rightly expect us to maintain a secure border—as I said, that is why this is proportionate—in balance with the ability of workers to strike. The Government believe that these new border security minimum service levels will do that. I hope noble Lords will join me in supporting these regulations, which I commend to the House.

Baroness Bennett of Manor Castle (GP): My Lords, I note that the Minister did not address my admittedly unanswerable question about the next Government. The news from the noble Lord, Lord Fox, might make us wonder when the next Government, or at least the next Prime Minister, might arrive. In light of the hour, I beg leave to withdraw my amendment.

Baroness Bennett of Manor Castle's amendment to the Motion withdrawn.

Amendment to the Motion

Moved by ***Lord Coaker***

As an amendment to the motion in the name of Lord Sharpe of Epsom, at end to insert "but that this House regrets that the draft Regulations contain policy detail that was not included in primary legislation, contrary to the recommendation of the Delegated Powers and Regulatory Reform Committee; and considers, given that the impact assessment acknowledges that some workers' right to take industrial action will be affected or denied, that they are too prohibitive."

Lord Coaker (Lab): My Lords, the noble Lord, Lord Sharpe, says that it is not prohibitive to stop three-quarters of a workforce from taking strike action. I leave that on the table for others to judge and come to their own conclusions about, but I think it is too prohibitive and disproportionate.

The noble Lord, Lord McCrea, raised a serious point, and it is good that the noble Lord, Lord Caine, is here. The Explanatory Memorandum to these regulations talks about the United Kingdom all the way through, yet the Act talks about the regulations applying only to England, Scotland and Wales—Britain, not the UK. Even the Minister talked about UK territorial waters and UK immigration. As the noble Lord, Lord McCrea, others in Northern Ireland and the noble Lord, Lord Caine, will tell him, you get steeped in this—you cannot talk about Britain in legislation and then include Northern Ireland. That is not acceptable.

In partially responding to this, the Minister said that he would write a letter. This is a really serious point, as it means that we cannot have answers about the Passport Office in Belfast. He made all sorts of points about immigration, trafficking, drugs, et cetera; there may be very good reasons why this does not apply to Northern Ireland, but you cannot have an Explanatory Memorandum that talks about the UK and then say that it is applicable only to England, Scotland and Wales. That is a really big failing on the Government's part. It should not happen and must not happen again. I beg leave to test the opinion of the House on my regret amendment.

6.53 pm

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Motion agreed.

Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023

Motion to Approve

7.04 pm

Moved by ***Lord Davies of Gower***

That the draft Regulations laid before the House on 7 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, these draft regulations will be made under the powers conferred by the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Strikes (Minimum Service Levels) Act 2023. The regulations will apply across Great Britain, and their purpose is to set minimum service levels for specified services that can apply during strikes affecting passenger rail services.

The minimum service levels are designed to balance the public's need to make important journeys and the impact of rail strikes on the economy with the ability of rail workers to take strike action. Since 2019, there has not been a single day without either a strike happening on the railways or mandates for strikes outstanding. The result has been many periods of disruptive strike action, with widespread consequences for passengers and the wider economy. This Government want to see an end to this disruptive strike action, but the trade unions continuing to call for it has led to these regulations being necessary.

I acknowledge the amendments to the Motion relating to this instrument. The regret amendment in the name of the noble Lord, Lord Liddle, references the views of the Delegated Powers and Regulatory Reform Committee on the detail of the policy in the Act, the retrospective element of the regulations, the fact that the impact assessment was not published at the time of laying, contractual concerns, and concerns for the ability for workers to take strike action. The fatal amendment in the name of the noble Baroness, Lady Bennett, references concerns around the impact of these regulations on the workforce and about safety, and raises concerns that the Act places undue obligations on trade unions.

In its *3rd Report of Session 2023-24*, the Secondary Legislation Scrutiny Committee noted that more information should have been provided to explain the policy decision in the Explanatory Memorandum. The committee also noted that the impact assessment was not published at the time of laying and mentioned the issuance of an initial review notice by the Regulatory Policy Committee. I will address the amendments to the Motion and the Secondary Legislation Scrutiny Committee's remarks but will turn first to the instrument under consideration today.

The Strikes (Minimum Service Levels) Act 2023 establishes a framework for the making of regulations to set minimum service levels during strikes. The Act provides that for certain sectors, including transport, the relevant Secretary of State may specify, in regulations, the relevant services and the minimum service levels that will apply. These regulations for passenger rail specify three categories of services that minimum service levels apply to, and the associated minimum service levels.

Thecategories are: category A, train operation services; category B, infrastructure services; and category C, light rail services. For category A services, the minimum service level is specified as the

"provision of the train operation services necessary to operate the equivalent of 40% of the timetabled services operating during the strike".

[Lord Davies of Gower]

With regard to category B services, the minimum service level is specified as a list of priority routes to be operated for the specified hours of 6 am to 10 pm during strike action. The priority routes are defined in the regulations and listed in the schedule to the regulations. In addition to the listed priority routes, the minimum service level also applies to any part of the network that is within a five-mile radius of the priority routes and is a loop, siding, or a line that connects the priority routes to freight terminals, stabling facilities, or depots used for rolling stock or for plant, equipment, and machinery used in providing the other infrastructure services. This is to enable trains to travel to and from berthing areas and terminals to the priority routes.

With regard to category C services, the minimum service level is specified as the provision of the train operation services and infrastructure services necessary to operate the equivalent of 40% of the timetabled services during the period of a strike for the relevant light rail system.

I now turn back to the amendments to the Motion in the name of the noble Lord, Lord Liddle, and the noble Baroness, Lady Bennett, and the recent remarks by the Secondary Legislation Scrutiny Committee to which I previously alluded. I regret that the impact assessment was not published at the time of the laying of these regulations. My department has a good track record in the quality of our impact assessments. It was the right decision to revise the impact assessment and allow the committee time to review.

Although I regret that the Regulatory Policy Committee has not yet been able to issue an opinion, it is important that noble Lords can scrutinise the impact assessment in this debate, which is why we have now published the impact assessment. The Act sets out the framework, and it was correct that these regulations set out the policy detail of passenger rail minimum service levels. Each sector being debated today has its own complexities and operates very differently. There is no one size that fits all models.

I now turn to the retrospective provisions. The disruption caused by continuous strike action puts these passenger rail regulations in a different position to other sectors. The Government have therefore taken the step of including retrospective provisions to create certainty for employers that strikes called under mandates secured before the primary legislation received Royal Assent would be in scope. This legislation is not intended to prevent workers from taking strike action. My department launched a consultation on minimum service levels for passenger rail to develop a more detailed understanding of how minimum service levels might impact on staff. This department has at every stage carefully balanced workers' continued ability to take strike action against the needs of people to make essential journeys by rail. It will be at the discretion of individual employers whether to issue work notices to deliver minimum service levels. There are no plans to compel employers to use these regulations. There is comfort in that the Act includes the safeguard that employers should not identify more persons than are reasonably necessary to deliver the minimum service level.

Finally, I turn to the fatal amendment. Tackling strikes in transport was a 2019 manifesto commitment. As we are seeing now, when the rail trade unions choose to strike, people, including doctors, nurses and teachers, experience disruption in accessing their places of work, schools and vital medical appointments. In some cases, they are unable to travel at all. If the House supports this amendment, it will be voting against protecting passengers from the disproportionate impacts of rail strikes. I beg to move.

Lord Liddle (Lab): My Lords, it is a great honour for me to speak to this Motion. It marks my return to the Labour Front Bench, which I am delighted by.

Alas, I feel a very personal interest in this matter. My father was a Carlisle railway clerk and a long-standing member of the Transport Salaried Staffs' Association. I was so steeped in Labour and trade union history when I was a student that my thesis was on railway industrial relations.

Growing up, one of the things that I learned about industrial relations, particularly on the railways, was that the right to strike was fundamental but should be used sparingly. Despite employers and employees sharing common interests, there will be conflicts of interest. Collective bargaining to resolve those conflicts will not work unless the unions have the power to strike, even if they rarely use it. That is of fundamental importance.

That power is not absolute. As my noble friend Lord Hendy said in an earlier debate, it is not untrammelled. There must be ballots and regulations on picketing and secondary action. Labour has accepted all that. Our objection to what is being proposed for the railways is that the practical effect of these minimum service levels is to eliminate the right to strike for vast numbers of railway workers—40% by some estimates.

That is correct—you have to think about it for only a second—because if you are to run any trains on the principal parts of the network, you have to keep all the staff in place necessary to keep the network safe and running. Anyone working in a signal box has to be on duty, or in a control room; station staff have to be there, because they play a vital role in ensuring passenger safety; and the permanent way teams have to be there to do their work on maintenance of the track. If that does not happen, you will be running an unsafe railway in an incredibly short time. As my noble friend Lord Coaker said in his remarks about the border staff, this is a wholly disproportionate measure in the case of the railways.

7.15 pm

I also think—one of the Cross-Benchers has said it—that the fundamental test of these sorts of regulations is whether they are likely to reduce industrial action and lead to better industrial relations. I do not believe that is the case. In fact, I think these compulsory work notices will lead to more tense and problematic industrial relations. They will encourage arbitrary behaviour by management in choosing who it should issue work notices to, and this is a serious problem. It will all be done by local managers who will think that if they choose someone they do not like for a work notice, they would lose the right to claim unfair dismissal, and that would be very serious indeed.

I also do not like the way in which the processes have been done on the regulations. Why have the Government suddenly introduced retrospective application? If that was going to be the case, it should have been on the face of the Bill. Where has all the new content about picketing come from? Why was that not on the face of the Bill? This is introducing major things by statutory instruments which have not had the proper opportunity for scrutiny and amendment. Then there is the Minister's confession about the regulatory impact assessment: it has come late and there has been no opportunity for the House to review it.

Some people may think it ironic that we are making these speeches on the day when ASLEF has called a national rail strike. I do not think this legislation would have done anything to stop the strike. What has to stop these strikes is a better government policy towards rail transport. The Government do not have to be there when the unions and the rail employers are negotiating, twisting the arms of the rail employers, as they have been. The railway faces a very challenging situation. Financially, public subsidy has gone up—not as a result, by the way, of pay going up, because pay has actually fallen in real terms in the last year or two—but the financial position is more difficult. There is a change in travel patterns, with a collapse in season ticket revenue and commuter travel following the pandemic, and there is a huge technological advance that needs to be incorporated in the way services are run. The truth is that a big agenda of reform is needed which needs to be worked through via social partnership, not through this kind of counterproductive legislation. What the industry needs is a new start and I hope that the coming—and perhaps soon coming—Labour Government will be able to give it.

Amendment to the Motion

Moved by ***Baroness Bennett of Manor Castle***

As an amendment to the motion in the name of Lord Davies of Gower, to leave out all the words after "that" and to insert "this House declines to approve the draft Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023 because they expose trade unions to liability of up to £1 million, make trade unions act as enforcement agents on behalf of employers and His Majesty's Government, are likely to prohibit more than 40 per cent of rail industry workers from taking part in strike action, and fail to ensure that rail services will be safe on strike days."

Baroness Bennett of Manor Castle (GP): I am delighted to welcome the noble Lord, Lord Liddle, back to the Labour Front Bench, as I am sure the whole House does. I agree with everything he said, except to make the point, as I did with the previous Labour Front Bench speech, that it appears to be more of an argument for my fatal amendment than for a regret amendment. I also very much agree with him about the need to change the way in which our railways are run. If we bring them back into public hands and run them for public good, not private profit, that would be a very good foundation for resetting our industrial relations in the operation of our railways.

I am not going to repeat all the points made by the noble Lord, Lord Liddle. I have one question for the Minister, raised by the TUC briefing and I have also seen it in other contexts. If there is a partial service running as required under the minimum service levels, we all know that there are likely to be significant overcrowding and safety issues. I am sure many Members of your Lordships' House picked up this piece of paper and thought, "Well, I'd love some minimum service levels on the trains I ride on non-strike days". We know how crowded trains can get when they are cancelled for other reasons. Can the Minister assure rail workers that they can continue to apply work-safe principles, and stop working if it is no longer safe for the trains to continue to run? It needs to be clear that they will not face legal consequences for making a safety decision. We do not want what are often not particularly well-paid or senior staff in a situation where they make decisions with the feeling that such consequences hang over their head. I beg to move.

Lord Snape (Lab): My Lords, my criticism of the proposed legislation is a quite simple one: it will not work. I listened to the Minister who, I have to say, went through his brief faster than any train I have been on recently. It is not a new idea. It was considered by the Thatcher Government and rejected. It was considered by the Cameron Government and rejected. It will not work. The problem is that this has been put together by lawyers who have no concept of how the railway industry actually works, or how train crews are rostered and how people are laid down for their various duties. The rostering of train crews is done at local level. The management and the local district committee—the shop stewards, if you like—sit down at every timetable change in May and December to decide the future rosters. The trade union side will obviously not sit down and discuss rostering under this minimum service level. As for choosing the name "minimum service level", what else have we had in the railway industry for some time but a minimum service level?

It is not just the Labour Party and the trade union movement that are against this. The Rail Safety and Standards Board has said that it has considerable reservations about rail safety in future. That is not an organisation that one would normally regard as particularly left wing in its outlook. What the Government are proposing will poison industrial relations within the railway industry for years to come.

I have a couple of questions for the Minister. What happens if a minimum service level driver is rostered and declines to pass through a picket line at a particular depot? Will the Minister prosecute the driver or the trade union of which he is a member? The chance of conflict because of this barmy legislation cannot be emphasised too much. I said earlier—I do not wish to detain the House—that it is not just the Labour Party against it. I commend the Minister to read a paper prepared by Nicholas Finney OBE for the Centre for Policy Studies, that well-known left-wing organisation. He attacked the whole concept because, like me, he says it will not work. Maybe he will be regarded as a destructive member of British society. He is, or was, the chairman of the Wantage Conservative association, so if someone like him feels that this legislation is impractical, the Minister really ought to look again.

[Lord Snape]

I am almost speechless at the stupidity of the Government bringing forward this legislation. I repeat that it will poison industrial relations within the railway industry for years to come, and I beseech the Minister even at this late hour to take some proper advice and not to make this into a lawyer's dream.

Baroness Randerson (LD): My Lords, I support the amendment in the name of the noble Lord, Lord Liddle. I regard these regulations as even more inappropriate than the other sets of regulations that we have just discussed, and even more clearly designed just to provoke an adverse reaction from the workers concerned.

In the previous regulations, the Government relied on the argument that the workers concerned—border security staff and ambulance staff—provide an irreplaceable service. The same is not true of railways. If the trains are not running we can usually catch a bus instead, or maybe drive. Obviously rail strikes have an economic impact, but it is not of the same order as that caused by ambulance or border staff strikes. You take away the right to strike only in extreme circumstances, and these are not extreme circumstances.

The Transport Committee in the other House, which is chaired by a Conservative MP and has a Conservative majority, has criticised these regulations and the Government's plans for the railways. It questioned whether those plans would do anything to improve relations with rail employees—I think we can more or less answer that question here. The committee questioned whether there might be unintended consequences, in that this could lead to other, more disruptive forms of industrial action, such as wildcat strikes. It also asked whether minimum service levels would lead to better service for customers than that already provided by train operating companies on strike days. It was deeply unimpressed by, and expressed its dissatisfaction with, the Government's one-sentence answer to its suggestions.

Tomorrow, as the Minister will undoubtedly be aware, is strike day on Great Western Railway. As on previous strike days, we regular travellers are informed that a minimum one-hourly service will be provided between 7 am and 7 pm. In my experience, when the company says that a train will run at a particular time, it generally adheres to that timetable—which is not always what we get on our railways these days. So a minimum service is already being provided.

Another obvious concern is that, as the noble Lord, Lord Liddle, said, rail services are extremely complex, with major impacts of one part of the service on other parts of the service, and an obvious interaction with devolved services. Providing a safe minimum service level is therefore very complex. As the Transport Committee noted, the Government have not provided the necessary detail on how they will provide the safe level of service required. In particular, the operation of signal services is so specialised that the provisions will effectively mean that individual staff will have to be specified as being required to work, if a minimum service is to be provided. In other words, those staff will have the right to strike removed from them. In effect, they will lose their rights.

This is bad legislation, badly planned—and so far, as attempted by the Government, badly implemented. I am fairly certain that it will do absolutely nothing to improve either the services for rail passengers or the situation of our train operating companies, which are fighting to provide a reasonable service in difficult circumstances.

7.30 pm

Lord Davies of Gower (Con): My Lords, I thank the noble Lords who have taken part in this debate for their consideration of these draft regulations. This is about achieving a balance between the rights of trade union members and the public's expectation of being able to travel to work or, indeed, for any other social reason. At the end of the day, transport is at the heart of our nation's success.

A number of questions have been asked, which I will try to address as briefly as I possibly can. This Government understand the difficulties imposed on the public by strikes on the passenger rail network. While it is right that workers are able to take strike action, it is a priority for the Government to protect the public and businesses from the disproportionate impact of strikes, including on people's ability to make important journeys and on their livelihoods.

The careful design of the regulations, based on evidence from the public consultation and further consultation with stakeholders, means that minimum service levels will deliver a considerable improvement in service levels and experience during strikes. The economic damage to businesses and the wider economy would also be limited, and the industry would have the flexibility it needs to ensure that the minimum service levels are deliverable. At every stage of policy development, my department has carefully balanced workers' ability to take strike action against the needs of people to make important journeys by rail, such as to get to work and to access vital services such as education and healthcare. Ensuring that this intervention is proportionate has been a central and continual consideration. Subject to parliamentary approval, we expect the regulations to come into force before the end of this year. In-scope employers would then be able to use minimum service levels for any strike action after they come into force, should they choose to do so.

I turn to some of the issues raised by the noble Lord, Lord Liddle. The Government firmly believe that the ability to strike is an important part of industrial relations in the UK, rightly protected by law, and understand that an element of disruption is inherent to any strike. But we also need to maintain a reasonable balance with the needs of the public and the impact of strikes on businesses and the wider economy. In cases where work notices are issued by employers, this policy will impact some rail workers' ability to take strike action. As such, the department has, at every stage, carefully balanced workers' ability to take strike action against the needs of people to make important journeys by rail.

Evidence provided through consultation and engagement with industry indicates that the proportion of workers needed to deliver the minimum service levels will vary by employer and job role. In critical operational roles, for example, we understand that more than 40% of staff are likely to be required to work to deliver a service level of 40% under the categories A and C of the regulations. The extent of the coverage of

priority routes under category B also means that the proportion of infrastructure workers required to deliver the infrastructure minimum service level will vary by geography.

On the safety point raised by the noble Baroness, Lady Bennett, passenger rail employers must comply with safety requirements on the railway. The regulations do not override any existing safety rules or obligations. Moreover, the regulations have been designed to fit within the existing safety frameworks, and the department has consulted with the Office of Rail and Road during development.

Where an employer decides to issue a work notice, the Act requires that the work notice identifies the persons required to work during the strike in order to secure that the levels of service are provided and to specify the work required to be carried out. Employers can identify only persons who are reasonably necessary to provide the minimum levels of service under the regulations in the work notice. We consider that this would include workers who are reasonably necessary to meet legal and contractual obligations relevant to the delivery of the minimum service level, including safety obligations.

It is therefore expected that services delivered on strike days under minimum service levels will be as safe as services delivered on strike days without the use of minimum service levels. Great Britain is a world leader in rail safety. Ensuring high standards of rail safety will always remain a top priority for this Government.

With respect to the issue raised by the noble Lord, Lord Snape, under the parent Act, trade unions must take reasonable steps to ensure that any of their members named on the work notice comply with that notice or the union will lose its legal protection from damages. Workers who take strike action despite being included on a valid work notice will lose their automatic protection from unfair dismissal. It will be for individual employers to determine whether any disciplinary action should be taken against employees for non-compliance with a work notice or legal action against a union that fails to take reasonable steps.

These regulations strike a carefully balanced and proportionate approach to mitigate the impact of strikes on the passenger rail sector for passengers and our economy. The regulations make possible a considerable improvement in the service that can be delivered during rail strikes. This will support passengers to make important journeys, including getting to work and accessing vital services, and will limit negative impacts on the economy. This is proportionately balanced with workers' ability to take strike action, ensuring that impact is felt when a trade union goes on strike but passengers can still expect a consistent, albeit lower, level of service to be provided.

Therefore, although I am sure we all hope that strike action can be avoided, implementing these regulations will provide a means of addressing the disproportionate impacts that strikes have on the public, communities, businesses and our economy when they take place.

Baroness Bennett of Manor Castle (GP): My Lords, I thank the Minister for answering our questions and for what has been the clearest, least-hedged explanation from the Government—that workers can be sacked under this legislation, which of course contradicts what was said in the other place. I am also pleased with what the Minister had to say about how safety rules override the regulations we are debating. However, I hope that the Government will make that fact very clear and publicise it to workers in the rail industry, who may face difficult situations under extreme pressure due to crowded trains and people seeking to crowd on to them, so that people are aware. I am aware of the hour so I will simply stop at this point and beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Amendment to the Motion

Moved by ***Lord Liddle***

As an amendment to the motion in the name of Lord Davies of Gower, at end to insert "but that this House regrets that the draft Regulations contain policy detail that was not included in primary legislation, contrary to the recommendation of the Delegated Powers and Regulatory Reform Committee; that their retrospective element will create uncertainty; that the impact assessment is not sufficiently robust; that it is unclear whether contractual relationships will impact the issue of work notices; and that they may prevent workers from being able to take industrial action."

Lord Liddle (Lab): My Lords, I will test the opinion of the House on the amendment standing in my name but, before that, I thank the Minister for his carefully considered reply. I did not agree with it, I am afraid; I just do not think that what is proposed is proportionate in terms of workers' right to strike. I sincerely hope that employers and companies with common sense will not try to make use of these regulations. In that spirit, I wish to test the opinion of the House.

7.38 pm

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Motion agreed.

Middle East: UK Military Deployments

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 5 December.

"Since Hamas's horrendous attack on Israel on 7 October, we have increased our military presence in the region. This is to support contingency planning, monitor the evolving situation, and be ready to react and respond. As the right honourable gentleman will know, I deployed a Royal Navy task group to the eastern Mediterranean, including RFA 'Lyme Bay' and RFA 'Argus', three Merlin helicopters and a company of Royal Marines as a contingency measure. HMS 'Diamond' is sailing through the Red Sea to provide maritime security. HMS 'Lancaster' is already in the Middle East.

This morning, I provided a Written Ministerial Statement notifying the House that unarmed military surveillance flights will begin in support of hostage rescue. The UK Government have been working with partners across the region to secure the release of hostages, including British nationals who have been kidnapped. I will move heaven and earth to bring our hostages home. The UK Ministry of Defence will conduct surveillance flights over the eastern Mediterranean,

including operating in airspace over Israel and Gaza. The surveillance aircraft will be unmanned. They do not have a combat role and will be tasked solely to locate hostages. Only information relating to hostage rescue will be passed to the relevant authorities responsible for those rescues.

The MoD is working on land, air and maritime routes to deliver urgently needed humanitarian aid. Four RAF flights carrying over 74 tonnes of aid have landed in Egypt. I am considering whether RFA 'Argus' and RFA 'Lyme Bay' can support medical and humanitarian aid provision, given that their original purpose was potentially to take non-combatants out of the area. The MoD routinely deploys significant numbers of military personnel in the wider middle east for operations such as counter-Daesh, training, maritime security and other reasons. There is currently a force laid down across the region of nearly 2,500 military personnel.

Later this week, the Chief of the Defence Staff and I are visiting sovereign base areas, the Republic of Cyprus, the Occupied Palestinian Territories and Israel. I will, of course, report back to the House after that visit. Our objectives include to demonstrate and reaffirm the UK's continued support for Israel, while continuing to press for adherence to international humanitarian law; to emphasise the importance the UK places on humanitarian aid reaching Gaza; to facilitate a deeper understanding of Israel's planned next steps in Gaza now that the current pause has ended, and activity along the northern border; and to reaffirm the United Kingdom's continued belief in a two-state solution and support for a viable and sovereign Palestinian state alongside a safe and secure Israel."

7.48 pm

Lord Coaker (Lab): My Lords, I start by wishing the noble Earl, Lord Minto, well in his important position; we all wish him well on that.

We welcomed last week's pause in fighting. Efforts continue to get much-needed aid into Gaza. We supported and welcomed the initial deployment of UK forces on 13 October; we recognise the important role that the UK plays in strengthening regional stability in the Middle East. We learned earlier this week that unarmed military surveillance will begin support for hostage rescue. How will the Government ensure that these UK surveillance flights support hostage rescue and not any military operation? In terms of UK military personnel and assets deployed to the region, what steps are we taking to ensure that they can fulfil their designated role and also be adequately protected?

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): My Lords, I thank the noble Lord for his welcome. His Majesty's Government's objectives in the short term are: first, to secure the release of the British hostages, which my right honourable friend in the other place said he

"will move heaven and earth"—[*Official Report*, Commons, 5/12/23; col. 211.]

to do; secondly, to show solidarity with Israel in defending itself against the terrorist organisation Hamas; and, thirdly, to call for humanitarian pauses exclusively to deliver emergency aid. Those are the three primary things.

The surveillance flights that have started are manned and unarmed. They are there specifically to assist in locating, identifying and removing hostages, particularly British ones. On the question of ensuring that the assets being deployed are protective, clearly, force protection is absolutely paramount in any form of military operation but, beyond that, we cannot go into any specific depth for clearly understood reasons.

Baroness Smith of Newnham (LD): My Lords, I think I welcomed the Minister to his place when he opened the King's Speech debate, but I welcome him again. The noble Lord, Lord Coaker, asked about the protection of our forces but my question is about the sustainability of deployment. It is absolutely right that we have sent a Royal Navy task force and that HMS "Diamond" is on its way—it is good to see that it is currently seaworthy—but what assessment have His Majesty's Government made about the length of potential deployments, given that forces are already quite constrained? Do we have adequate resources and troop mobilisation, and have we thought about the question of morale?

The Earl of Minto (Con): The noble Baroness makes a very good point: morale is obviously paramount. Part of ensuring the morale of His Majesty's forces is ensuring that there are sufficient forces not only to fulfil the task but to provide force protection. In this case, it is not as though any forces have been taken away from any other theatre; the noble Baroness is absolutely right that the ships that have been dispatched have come from another location. HMS "Lancaster" is already in the Gulf; HMS "Diamond" is on the way to join it; HMS "Duncan" is already operating as part of a NATO maritime task group in the Mediterranean; and the RFA "Lyme Bay" and RFA "Argus" are standing off, ready to assist wherever possible. Certainly, there are sufficient forces, and nothing has been withdrawn from anywhere else.

Lord Lancaster of Kimbolton (Con): My Lords, I am delighted to follow the noble Baroness because I can perhaps help her with an answer. I declare my interest as director reserves in the British Army. HMS "Lancaster", which I had the privilege to visit two weeks ago in Bahrain, is permanently deployed to the Gulf. It is a new model, whereby we deploy the ship for three years and rotate the crew, meaning that she can be on station for a prolonged period of time, while HMS "Diamond" is simply surged. However, that puts considerable strain on the crew because you need to double-crew HMS "Lancaster"; they have four months on and four months off. Will my noble friend the Minister look at this model for other vessels in the Royal Navy because it results in their being on station for much longer, or is it the case, as I suspect, that we simply do not have sufficient vessels to do this for a second vessel? Does it put too much strain on the naval personnel who are required to do that double-manning?

The Earl of Minto (Con): My Lords, I do not know the detail on that, so I will find out and write to my noble friend.

Lord Campbell of Pittenweem (LD): My Lords, the Minister, being a good Scot, will perhaps know the Scottish Gaelic welcome, "One hundred thousand welcomes". I am happy to join in repeating the welcome to him. He has already referred to the Royal Fleet Auxiliary, which is part of the deployment. A little further on in the Statement, the Secretary of State said:

"Four RAF flights carrying over 74 tonnes of aid have landed in Egypt. I am considering whether RFA Argus and RFA Lyme Bay can support medical and humanitarian aid provision".—[*Official Report*, Commons, 5/12/23; col. 211.]

Has that decision been taken? If not, does not the deterioration we see on a daily basis in relation to medical and humanitarian aid suggest that, if it is to be taken, it ought to be taken fairly quickly?

The Earl of Minto (Con): The noble Lord makes a good point. I am sure he knows that my right honourable friend is out in that part of the world at the moment; that is part of the conversations that are going on. The whole question of humanitarian aid is obviously uppermost in people's minds. We have already supplied more than 70 tonnes of humanitarian aid, I think, but the difficulty is getting it into Gaza, of course. The Rafah entrance point is under severe congestion and there are stockpiles of aid ready to go in. One reason why conversations are going on at the moment is to see whether any other route can be negotiated with the Israel Defence Forces and the Israeli Government to get aid into Gaza; every avenue is being looked at.

Baroness Helic (Con): My Lords, the key test in granting export licences is criterion 2C of the Strategic Export Licensing Criteria, which focuses on whether

"there is a clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law".

Can my noble friend the Minister tell the House whether criterion 2C has been considered in granting arms exports to Israel?

The Earl of Minto (Con): My Lords, on the supply of military equipment to Israel, I can assure the House that no offensive military equipment has been delivered since 7 October. We do not have an enormously large export business with the Israelis in that respect anyway; it is between £40 million and £45 million. We have provided medical equipment at their request. In relation to ensuring adherence to international humanitarian law, we continue to push at the highest level for Israel to comply with international humanitarian law. We would engage with Israel if we observed any activity to the contrary.

Lord Lancaster of Kimbolton (Con): My Lords, as we still have time, can I ask another question? When the UQ was held in the Commons, the Secretary of State said that 74 tonnes had been delivered to Egypt, I think; of course, as my noble friend has just said, that is not much good if it is not getting to Gaza. Has any of those 74 tonnes got to Gaza yet? If not, what action are we taking to ensure that they do?

The Earl of Minto (Con): As my noble friend will know, there is a great stockpile of humanitarian aid ready to go in across a whole range of things, such as wound care packs, water filters, solar panels, lights, equipment, fork-lifts, conveyor belts and lighting towers. All sorts of things are ready to go in but the challenge is getting them approved and checked. I cannot give an absolute assurance as to how much has got in; I will find out and write when I can.

Hillsborough Families Report: Government Response

Statement

7.59 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my right honourable friend the Lord Chancellor.

"With permission, Madam Deputy Speaker, I would like to make a Statement on the Government's response to Bishop James Jones's report, '*The Patronising Disposition of Unaccountable Power': A Report to Ensure the Pain and Suffering of the Hillsborough Families is Not Repeated*, and on the steps we will take to respond to the points of learning contained therein.

Bishop James has done our nation a great service and his report is an exceptional piece of work. I salute the Hillsborough families for the assiduous care they have given to help create the report and forge the response that flows from it. I had the privilege of meeting many of the families in Liverpool in June this year, alongside the former Home Secretary. I was deeply moved to hear of their experiences, and by the dignity with which they shared them, but perhaps even more affecting was their unflinching determination to make sense of the senseless and bring about change for others. That is the true mark of compassion: campaigning selflessly for change, knowing that nothing that any Government can do will bring back their loved ones or temper their grief.

The Hillsborough families have, through their determined efforts over decades, created a lasting legacy—a national legacy—that is a tribute to their loved ones. At the start of his report, Bishop James expressed his hope that

'we might be a better nation for having listened to them'.

We are, and they deserve the thanks of our nation.

I also pay tribute to those in this House who continue to campaign on behalf of the Hillsborough families and for families bereaved by other tragedies, including the Members for Garston and Halewood, Halton, Wirral South and Liverpool, West Derby. I thank former Members of the House who have given important support to the families, including Steve Rotheram and Andy Burnham. I thank Glenn Taylor for his vital work on the ongoing independent forensic pathology review.

Quite apart from its important recommendations, Bishop James's report laid bare the truly devastating experiences of those bereaved by the Hillsborough disaster on 15 April 1989. An unimaginable tragedy unfolded: 97 innocent men, women and children ultimately lost their lives; hundreds more were injured and traumatised by what they saw. But for Hillsborough's

bereaved and survivors, that terrible day was only day one of an enduring ordeal, and in the days and decades thereafter, it became clear that they suffered a double injustice. First, there was the abject failure of the police and others at the ground to protect their loved ones—failures described in Lord Justice Taylor's 1990 report as

'blunders of the first magnitude'.

Then, they faced years of unforgivable institutional defensiveness.

Secondly, the Hillsborough families and survivors suffered what can only be described as cruelty, as innocent fans were cynically blamed for their own deaths. But that, as was later to become clear, was a web of lies spun by those seeking to protect their own reputations. I emphasise that point because, although the disaster may have been more than 34 years ago, such baseless narratives inexplicably persist in some quarters today. So let me take this important opportunity to restate what is not a matter of opinion, but unassailable fact: fans attending Hillsborough stadium on 15 April 1989 bear absolutely no responsibility for the deaths and injuries that occurred. In making that statement, I echo what was said seven years ago by my right honourable friend the Member for Maidenhead at this Dispatch Box when she read out the full findings of the second inquests—namely, that 96 men, women and children were unlawfully killed.

Since then, Andrew Devine, who suffered life-changing injuries at Hillsborough, passed away on 27 July 2021, becoming the 97th fatality of the disaster. I would like to place on record my deepest sympathies to Mr Devine's family and friends, and indeed to all those who lost loved ones.

The Government's response to Bishop James's report has been a long time coming—too long. For some of that time, it was necessarily held back to avoid prejudicing the outcomes of criminal trials, but there has been delay since and I recognise that this has only compounded the pain of the Hillsborough families and survivors. The Government apologise for that.

As the House will be aware, the Government's response follows that of the police, which was published in January this year. Today, the Chief Coroner is also publishing his response, which relates to his leadership role regarding the coronial service. Collectively, these responses address the points raised by Bishop James. But this does not stop here. We will, of course, continue to listen to the families of those involved in all major incidents and to their concerns.

Bishop James's report contains 25 points of learning. While he said that he considered each to be 'vitally important', he was clear that three in particular were, to use his word, 'crucial', so let me turn to those. First, he proposed the creation of a charter for families bereaved through public tragedy. Bishop James made it clear that he wanted to

'help bring about cultural change'

through commitments to change

'related to transparency and acting in the public interest'.

It is worth reflecting that, in setting out point of learning 13 regarding the Hillsborough law, which I will come on to, Bishop James says that he has 'drawn heavily' on that law's principles in the drafting of this charter, so it is worth taking a moment to consider the charter's language. It commits signatories—the leaders of public bodies—to strive to place the public interest above the reputation of their own organisations; to approach all forms of public scrutiny, including public inquiries and inquests, with candour and in an open, honest and transparent way; and to avoid seeking to defend the indefensible.

The Deputy Prime Minister has today signed what will be known as the Hillsborough charter on behalf of the Government. Other signatories to the charter include the National Police Chiefs' Council, on behalf of all 43 police forces, the College of Policing, the Crown Prosecution Service, the National Fire Chiefs Council and others. We want this charter to become part of the culture of what it means to be a public servant in Britain, so the Deputy Prime Minister will be writing to all departments to ensure that everyone who works in government is aware of the Hillsborough charter and what it means for the way they work. A reference to the charter will also be included in the central induction to the Civil Service for all new joiners. The Hillsborough charter and Bishop James's report have also been added to the curriculum for every recruit who joins the police. The charter will now become embedded in our public life.

The second crucial point of learning from Bishop James's report is what he described as the 'pressing need' for the

'proper participation of bereaved families at inquests'.

Inquests are, first and foremost, about answering four questions: who, where, when and how an individual has died. As Bishop James highlighted, the Hillsborough families were let down by the very process that should have given them answers during the first inquests, and they then had to endure a second, ordered by my right honourable friend. At the first inquests, the families were forced to fund their own legal representation, with a single barrister between them.

We recognise that proper involvement in an inquest will, in appropriate cases, mean that bereaved families should get legal representation, especially when the state is represented. That is why changes have been made such that, had the Hillsborough tragedy happened today, the families would have been eligible for free legal aid through the exceptional case funding scheme. The Government are determined to make this process as straightforward as possible. That is why in January 2022 the Ministry of Justice removed the means test for representation in relation to ECF cases. In September 2023, the means test was removed for legal advice at inquests. We want to build on this progress, so I can announce today that we will consult on an expansion of legal aid for families bereaved through public disaster where an independent public advocate is engaged—I will come back to that—or in the aftermath of a terrorist incident.

I acknowledge that Bishop James talks broadly about the proper participation of bereaved families at inquests where the state is represented. We will seek to further understand the experiences of these individuals, and I would welcome a conversation with Bishop James on this early in the new year.

[Lord Bellamy]

We also support the principle raised in Bishop James's report that public bodies should not be able to spend 'limitless' public funds on legal representation. That is why we have for the first time set out a requirement on government departments to

'consider the number of lawyers instructed bearing in mind the commitment to support an inquisitorial approach'.

We will now go on to set out that government public bodies should publish their spend on legal representation at inquests and inquiries, reaffirming that this spend should be proportionate, and never excessive.

We have also published a set of principles to guide how public bodies should instruct lawyers at inquests. These include a requirement to approach the inquest with openness and honesty and to keep in mind that the bereaved should be at the heart of the inquest process. We will also publish guidance to set the clear expectation that central government public bodies must instruct their lawyers in accordance with the principles of the Hillsborough charter, because how those lawyers engage with the inquest process, and indeed with the bereaved families, matters.

I shall turn to the third of Bishop James's three crucial points of learning, which was was a duty of candour for police officers. As he described it, there is

'a gap in police accountability arrangements'

for officers who

'fail to cooperate fully with investigations into alleged criminal offences or misconduct'.

That is why a new offence of police corruption, applicable to police and NCA officers, was introduced in 2017, punishable by up to 14 years imprisonment. In 2020 we updated the Police (Conduct) Regulations to introduce a new duty to co-operate for individual officers during investigations and inquiries. Failure to do so can result in disciplinary sanctions, including dismissal. Last month, we introduced legislation to place an organisational duty of candour on policing. Through the Criminal Justice Bill, we will place a duty on the College of Policing to issue a code of practice for ethical policing, and for that code to include a duty of candour. This duty is designed to promote a culture of openness, honesty and transparency, and chief constables will be held to account for their forces' performance against the code. The new code of practice has been laid in Parliament today.

We want to go beyond the police to consider healthcare settings too. Indeed, I can tell the House that in response to recent concerns about openness in those settings, we will also be conducting a review into the effectiveness of the existing duty of candour for health and social care providers. The terms of reference for that have been published today.

I am aware that the Hillsborough law calls for a duty of candour on all public authorities. Since the Hillsborough disaster, a comprehensive framework of duties and obligations has developed which cover public officials and the different official proceedings, such as inquests and inquiries. First, in central government, the Civil Service Code requires civil servants to act with honesty and integrity. A breach of these codes can result in a range of potential sanctions, including dismissal. These principles sit alongside the Nolan principles providing that:

'Holders of public office should act solely in terms of the public interest'.

Secondly, the legal framework surrounding criminal investigations, statutory inquiries, inquests and most other formal proceedings requires all individuals, regardless of whether or not they are a public official, to co-operate with them. For example, there is a duty of candour in judicial review, which amounts to a duty on public authorities to lay cards 'face up on the table'. When it comes to inquiries, importantly, these carry the potential for custodial sentences—prison sentences in plain English.

Thirdly, where a public official demonstrates a lack of candour, and where it forms part of their duty as a public office holder, they can potentially be guilty of misconduct in public office, which is a criminal offence. We will keep these changes under review to ensure we achieve that culture of openness, honesty and candour, and we will not rule out taking further action if it is needed.

Today the Government respond to all 25 points of learning, but I have focused this Statement on those which Bishop James described as 'crucial'. Very meaningful progress has been made. However, we will not hesitate to go further if required. The discussions will continue, and indeed the Government have committed to another debate in the new year to ensure that dialogue progresses. I would also be happy to meet the Hillsborough families should they wish to discuss any aspect of the Government's response.

Let me turn finally to the improvements in the justice system. Bishop James has made it searingly clear that the justice system, which should have supported victims and the bereaved after the tragedy, was not set up to do so. Our response sets out the steps this Government have taken to make sure that bereaved families and survivors in the immediate aftermath of a public tragedy are guided through what can be a difficult, complicated and forbidding process. Through the Victims and Prisoners Bill, we have introduced legislation to establish an independent public advocate. Once established, the independent public advocate will be a strong voice for victims, the bereaved and whole communities affected by major incidents. The IPA will make sure those affected by major incidents know their rights, can access support services, and have their voices heard at inquests and inquiries. Its design has been informed by the very difficulties that the Hillsborough families faced and our commitment to making sure that other families do not suffer the same injustices. That can include holding public bodies to account for their commitments to abide by the Hillsborough charter. I am also grateful for the contributions of some of the families of victims of the Grenfell Tower fire and the Manchester Arena bombing, telling us what would have helped them most in the aftermath of those terrible events.

After listening to concerns of the Hillsborough families, set out so powerfully when I met them earlier this year, as well as contributions from colleagues across the House—I am looking at the right honourable Member for Garston and Halewood—I decided that we must go further by establishing a permanent independent public advocate. It is vital that the advocate can be deployed as soon as possible after disaster strikes, and that they have time in advance to be as prepared as possible. A permanent advocate will be

able to advise the Government on their response to major incidents, such as any subsequent inquiries or reviews, and will make sure the views of families are heard. They will also report independently to government about the experiences of victims and bereaved families, as well as publishing an annual report. All published reports will be laid before Parliament.

The Hillsborough families have been unrelenting in their pursuit of justice, and Bishop James has done essential work to support the families and faithfully discharged the commission by the then Home Secretary and former Prime Minister to capture their perspective so that it was not lost following the second inquest. Today is, therefore, an important day. It does not provide closure for the families, of course. As Bishop James himself wrote,

'there can be no closure to love, nor should there be for someone you have loved and lost'.

Grief is indeed a journey without a destination. But today is a milestone on that journey. It is a moment, I hope, when families will feel able to pause and take quiet pride in the enormity of what they have achieved, not for themselves but for others—for the British people. I hope they will serve to cement and strengthen the Hillsborough families' legacy—the changes they have made to benefit an entire nation—and to help ensure that never again can our people be so betrayed by the very organisations meant to protect them. I commend this Statement to the House".

8.18 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I open by thanking the noble and learned Lord for repeating the Statement. I open also by recalling that one of my oldest friend's brothers was killed at Hillsborough and my friend took part in the inquiry. The name Hillsborough stands to this day as an indictment of institutions, individuals and a culture in which transparency and accountability were absent. The events of 15 April 1989 have continued to send shockwaves through our courts, to the continuing pain of the families concerned. To say that justice delayed is justice denied would be an understatement in this context. It has now been 34 years since the fateful day. I too pay tribute to Bishop James Jones, the many campaigners inside and outside Parliament, and particularly to a number of current and former MPs who have campaigned tirelessly to establish the truth. Of course, I want to pay tribute also to the bereaved families themselves, who have achieved so much through this process.

The purpose of the Government's response must be centred on the experience of the families, just as Bishop Jones's report was, to ensure that their suffering is remembered and never repeated. It is the commitment of the Labour Party that we will work to ensure that the Government's proposals deliver justice with real meaning. We welcome the commitment to consult on expanding legal aid for families bereaved through public disaster, but there is nothing in what we have seen from the Government to date to suggest that they will go as far as is needed on requiring public authorities to act with candour and transparency.

To the public, a duty on all public bodies to be forthcoming with the truth is a basic requirement if justice is to be done in the wake of events that scar communities and change lives forever. The Hillsborough Law Now campaign, which, as the Government know, includes bereaved families who are still fighting for accountability 34 years later, has said that without an effective duty of candour in place, the risk is that reform will simply add another layer of bureaucracy to what victims have already experienced. For this very reason, more than a year ago the leader of the Opposition committed to a Hillsborough law that would, first and foremost, impose a legal duty on public institutions, public servants and officials to act in the public interest and with transparency, candour and frankness when there has been a major incident. The Labour Party sought to amend the Victims and Prisoners Bill to introduce this duty of candour during its passage through the House of Commons. This was rejected by the Government, but we will revisit this issue when the Bill passes through our House.

This issue is above party politics, but we believe that the Government's requirement for a code of ethics or charter does not go far enough. We welcome the commitment to a standing or permanent independent public advocate, but we believe the duty of candour is a vital additional piece of protection for victims' families. There may be further disasters—maybe I should say that there will be further disasters—perhaps on the scale of Hillsborough. If there is to be one legacy from this whole sorry tale, let it be that bereaved families from disasters of the future are never treated like the families of the Hillsborough victims.

Lord Addington (LD): My Lords, I thank the Minister for repeating the Statement. This was one occasion when it was actually needed. Can he convey my thanks to those on the Government Front Bench for making sure that happened? I think it was appropriate on this occasion.

We have had a response that says many good things, but there is a network of codes, charters and advocates going through—other bits of law. Anybody who has ever done campaigning work knows that if you are trying to get a good result, the gaps between those codes, charters and bits of legislation are where people catch their feet, where they are slowed down, where they fall. One law, where you know what you are dealing with, has to be easier to navigate. It is not for an experienced lawyer to turn around and say, "Oh, but it's quite simple: all you do is this, that and the next thing".

Many of the changes here are welcome. For instance, the equality of arms—the fact that government-backed bodies cannot simply throw limitless money against somebody who is trying to hold them to account, and that they will instead be supported—is something that we can welcome. But it would be easier if we had a law. That is why my Benches, along with those of the Labour Party, are in favour of having one, single unit. You have to draft it correctly, and there is always that problem, but it would give you a chance to get through and make sure you get the right result, so that somebody campaigning from the outside understands what they are doing. That is something we might have lost here. We have an experienced bunch of people who have been fighting for a long time to get through. There is a great deal of expertise in this lobby. Think of them

[Lord Addington]
when they started—how intimidated they were and how easy it would have been for them to be scared off by just the edifice of law, because that happens.

I would hope that the public advocate or somebody else will have that duty of explanation. Where is that in these codes and charters? Where is that ability to explain the law to somebody and make sure they understand? The noble and learned Lord nods his head. If we hear good news on this, we will have achieved something. How do we make sure people know how to apply what the Government have done? Because many good schemes, by Governments of all colours, have fallen down because of that. As I look around this Chamber, everybody here can probably think of an example. Can we find out what is happening there?

Also, will we continue to have access to some of the things that were used as trigger points for this action, such as the Human Rights Act and the European Convention on Human Rights? If they are removed in some change, will something else act as a trigger point for being able to act, through this apparently seamless bit of crazy paving, to enable people to make a challenge when something has gone wrong? That is an important point: how does it work, who will guide you through it? If it is not one straight road, who will guide you through the twisting paths so you can mount a challenge when something has gone wrong? That is something we need to hear soon because, if that is not clear, some of the good work that has gone on here could well be wasted.

Lord Bellamy (Con): My Lords, to respond to the points that have been made and in particular, the principal point about the need for a Hillsborough law going slightly further than the Government have gone today, I first repeat again the tributes that have been paid to the families and the fight they have had, as the noble Lord, Lord Addington, has just pointed out. I entirely accept that, first of all, this is not a party-political issue, as far as I am aware. It is not at issue that there should be a duty of candour, that public authorities should act with candour; the question is whether, in the envisaged Hillsborough law, the public accountability Bill that Bishop Jones and his report discussed, we should have that duty of candour enforced by criminal sanctions on individual public servants, or whether we should proceed, as the Government at present believe, by a non-statutory route—by the charter and by the existing codes.

I will, if I may, address what is probably the most important point to make tonight; I am sure we will return to it in the Victims and Prisoners Bill discussion when we get there. I shall briefly set out the Government's position on that point and then come to the other points made, especially by the noble Lord, Lord Addington. The first point is that the Government currently consider that the non-statutory framework of the Civil Service Code, the Code of Conduct for Special Advisers, the Ministerial Code and the Nolan principles of public life, backed by disciplinary sanctions and, if I may say so, rigorously upheld by the Government legal service and the law officers, is an effective mechanism for ensuring candour, frankness and honesty from civil servants as a framework. The Government therefore prefer to reinforce that culture of candour through the non-statutory route and the most important introduction of the Hillsborough charter, which was the primary recommendation of Bishop Jones. It was his main recommendation that there should be a charter: the duty of candour was a subsidiary one; the charter was the first one and we are introducing it.

If you introduce what I—or the Government—would describe as the blunt instrument of criminal sanctions into a situation such as this, you risk introducing a whole range of legal complexity and another layer of the need for legal advice and so forth into a situation where, in the Government's view, we already have a comprehensive framework that is now being very strongly reinforced by the Hillsborough charter. The charter is going to be signed by all relevant public bodies. It has been signed today on behalf of the Government; it is set out on page 11 of the Government's response and ensures that the public bodies in question place the public interest above their own reputation. That is particularly welcomed today by Bishop James, who says that, although it is true that the Government has fallen short of the hopes of the Hillsborough families—I think that is a reference to a Hillsborough law—the Government have made a serious and substantial response to his report that has risen above that given to other panels and inquiries. They have responded to all 25 recommendations, and Bishop James has very much welcomed the charter and the other measures that the Government have announced.

Specifically, in relation to the police, the Criminal Justice Bill will require chief officers to ensure that their organisations act with candour in official proceedings. There is, therefore, a duty of candour reinforced through law on the police. That is crucial: point of learning number 14 in the bishop's report suggested that there should be a duty of candour on the police. That is also being implemented. In addition to that, as I think the Statement said, individual officers are now under a personal duty to co-operate with investigations and inquiries as a result of changes to the police conduct regulations of 2020. That should deal with the question of the police and with Bishop James's point of learning 14.

The Government are also considering whether we should further reinforce the existing duty of candour. There is an existing duty of candour on the health service. It is regulatorily enforced; it is not enforced by criminal sanctions. There is a question, however, arising from the Lucy Letby case and other incidents as to whether that should be reinforced, and that is under review as well. So we are moving forward on many fronts. The Government will also—I hope early next year—respond to the Law Commission report on the offence of misconduct in public office, which is another possible route to achieve the protections that people are arguing about. This is a disagreement about what routes we should go down, rather than a disagreement on whether we should reinforce candour in public office.

Putting those things all together, the Government's position is that we have not yet reached the point where we should have the kind of Hillsborough law that noble Lords have just been arguing for. Again, however, as the Lord Chancellor has said in his Statement, the Government's door remains open. No door is

slammed on this point, and we will continue to reflect and take into account the comments of the families and the practical, procedural, legal and other issues that are raised.

Finally, in relation to the point made by the noble Lord, Lord Addington, on the need for families to find out how to do all this and where to go next: we can only imagine the situation that they are in. The Government's intention and hope is that the independent public advocate will play a crucial role in that respect. That will be the main source of guidance, support and help for victims' families in major disasters of the kind that gave rise to Hillsborough and other tragedies. That is the answer in principle to the point that the noble Lord was making. At this stage of the debate, those are the main points that I should be making on behalf of the Government.

8.34 pm

Lord Grantchester (Lab): I too thank the noble and learned Lord the Minister for repeating the Statement today. I join other noble Lords tonight in paying tribute to the Reverend James Jones, previously of this House, for his work on and dedication to his report. I also pay tribute to the MP for Liverpool, West Derby, mayor Steve Rotheram and mayor Andy Burnham, along with so many others, for their tireless support over many years for Liverpool families in the pursuit of justice. I also pay tribute to the Liverpool fans and their families, led by Margaret Aspinall, for their admirable behaviour throughout the many disgraceful activities of so many vested interests, especially following the despicable statements from Kelvin MacKenzie—then editor of the *Sun* national newspaper, with, at that time, 4 million readers—publishing downright lies about Liverpool supporters. To this day, you will not find the *Sun* newspaper being sold on Merseyside.

I also declare my interest, being a long-term supporter, shareholder and past director of Everton Football Club. I was at Villa Park on that fateful 15 April 1989 for the other FA Cup semi-final, Everton v Norwich City, when I and others became slowly aware of the tragedy unfolding at Hillsborough through word dispersing from fans listening to that semi-final on transistors while watching the game before them. Heads began to turn to try to see screens in boxes behind portraying the dreadful situation. At the Wembley cup final, both sets of fans chanted "Merseyside" together, rather than support for their own team.

From both sides of Stanley Park I add my remarks to those of others—that the 97 have been poorly served by the justice system. That it has taken 34 years to correct and take cognisance of all the inequities of the procedure and the way the court system has played out is extremely disappointing. The continually misleading police statements has been rotten. The unequal resources and representation of official bodies funded by the taxpayer in comparison to the resources of ordinary Liverpool families has long been recognised as iniquitous. That the Government are now looking at the extension of legal aid is to be welcomed.

I also welcome the other proposals the Government have announced today. However, it is regrettable that the Government have not gone far enough in recognising that public authorities must act under a duty of candour at all times. I have listened to and noted what the noble and learned Lord said on this tonight. Widespread discussion and understanding is indeed needed, but many consider that this should be a matter of law.

The Government's requirement for a code of ethics is still not strong enough. However, on another matter, it is important that the Government carry completely into law the office of the independent public advocate. These issues should be above party politics and football loyalties. The Government must commit to continually reflecting on what has been proposed after all these years. The Government, of whatever persuasion, must fulfil the vital promise that what happened to families by attending a football match will never happen again.

Lord Bellamy (Con): My Lords, I entirely echo the tributes paid by the noble Lord and commend him, if I may, on a dignified and memorable speech marking the important occasion tonight.

As I said a moment ago, I have tried on behalf of the Government to explain our present position. I repeat that no door is being slammed tonight. We should continue to reflect and discuss—perhaps offline, if I may use that expression—what is the best way forward. At the moment this is the Government's view but, if others can come forward and explain that there are ways in which we can and should go further, that is a discussion that we are duty-bound to have collectively, to see that we can get this as right as possible. When we get to the Victims and Prisoners Bill, we will discuss further the scope of the independent public advocate and other related issues. I thank the noble Lord very deeply for his contribution today.

Lord Coaker (Lab): My Lords, my noble friend Lord Grantchester's comments were memorable and moving. I associate myself with his tributes and praise to various elected representatives, the families of the victims and the supporters from all of Merseyside, both Liverpool and Everton and no doubt many others throughout the region. I thought his comments were very moving. I was not at the game but, as a former Nottingham MP and somebody who still lives in Nottinghamshire, the solidarity with Liverpool of Nottingham, Nottinghamshire and Nottingham Forest Football Club in light of the tragic events 34 years ago has always been a source of pride to me; my noble friend Lord Grantchester and others will know that.

We cannot have a situation in which it takes 34 years for people to get to this point. If it had not been for the bravery of the families and the way in which so many people doggedly fought for justice alongside them against the state, they would not have had any semblance of justice at all. We have already heard from my noble friend Lord Grantchester that there is hope that the Government will be made to go further. Hillsborough is the focus today but the Minister also mentioned Grenfell, Manchester Arena and many other public disasters. Why is it that ordinary people have to organise themselves to take on the power of the state to get justice? Hopefully, if there is one outcome from today, it is that we do not have a situation in which the

[Lord Coaker]
might of the state seems to try to prevent ordinary people, who have suffered a huge disaster in their lives, getting justice. As we have heard so movingly from my noble friend and others, that just cannot be right and something has to change.

Lord Bellamy (Con): I entirely agree with the noble Lord, Lord Coaker. Something—a combination of many things—went very badly wrong. As often with tragedies on this scale, it is a series of things going wrong that makes the ultimate result so difficult and tragic.

If I may express a personal view at the Dispatch Box, those families reflect and embody the true spirit of this nation and their communities. For that reason, we should be proud of them, salute them and commend them on their efforts. I know that does not bring their loved ones back, but we should do what we can to recognise their achievement.

In this instance, certain servants of the state, in certain situations, did not behave in the way that we would expect citizens of this country to behave. That has to be remedied and tackled, and we have to do our best to make sure that it does not happen again, as the noble Lord, Lord Coaker, has said. I associate myself with his remarks about the noble Lord, Lord Grantchester, and the magnificent speech he made on behalf of Liverpool and the families.

Baroness Bennett of Manor Castle (GP): My Lords, I echo the comments of the noble Lord, Lord Coaker, on the contribution of the noble Lord, Lord Grantchester. It was a hugely powerful moment. I should perhaps declare that although my involvement is much less than that of others this evening, I have taken part in a number of events in Sheffield with the Hillsborough survivors' association, usually in conjunction with the Orgreave Truth and Justice Campaign. I echo the remarks of others thanking Bishop James for the exceptional work that has gone into this report.

I appreciate the Minister's careful and deep—unusually deep from the Dispatch Box—explanation of why the Government have not chosen to head down the statutory route in terms of the duty of candour. However, it is important to put on record that the Hillsborough survivors' association has already said that it thinks we need that law. That law should not be focused on junior officials who may be trapped in circumstances beyond their capacity. When we are talking, as we are in this case and others, about very senior people who may have a lot to lose by not being open—not showing candour—I am not sure that we do not need a legal framework to deal with them.

I very much welcome the acknowledgement in the Statement that justice unfunded is justice denied. There is in far too many of these cases a deep inequality of arms between families and official bodies that establish an array of KCs—very powerful and extremely well-paid lawyers—against what can be a crowdfunded legal team or one with very limited funding. On that point, I refer to paragraph 38 of the Statement from the other place, which acknowledges that:

> "Bishop James talks broadly about the proper participation of bereaved families at inquests where the state is represented. We will seek to further understand the experience of these individuals".

I raise the case of seven year-old Zane Gbangbola, who was tragically killed by lethal gases in 2014 in Chertsey, Surrey. If the Minister looks into that inquest he will see that there was a massive inequality of arms between the situation of the family, which basically crowdfunded and got a tiny bit of legal aid at the last second, versus nine public bodies that all had their own representation. The case of Zane and the continuing fight of his father, Kye, and his mother, Nicole, to get an independent inquiry into that case is ongoing. The call has been backed by Sir Keir Starmer and Andy Burnham. Acknowledging that the Statement mentions seeking to

> "further understand the experience of these individuals",

can the Minister commit that the department will listen to the experiences of Kye and Nicole when it is considering the experiences of families?

Lord Bellamy (Con): My Lords, the noble Baroness rightly makes a point about the distinction between junior officials and senior officials. The present public accountability Bill does not make that distinction. It is drawn in very wide terms. Without offering any commitment, I think that the point that she makes will be registered in the ongoing discussion of this issue. The equality of arms is a deep problem, probably in most justice systems. As noble Lords will have seen from the Statement, a number of measures are proposed which the Government will undertake to try to redress that balance. On the specific question about the case of Zane and similar cases, the Ministry of Justice is always ready to have its attention drawn to particular circumstances. If she is kind enough to do so, I will ensure that this is looked into.

House adjourned at 8.49 pm.

Grand Committee

Wednesday 6 December 2023

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Baroness Scott of Needham Market) (LD): Good afternoon, my Lords. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells ring, for 10 minutes.

Aviation (Consumers) (Amendment) Regulations 2023

Considered in Grand Committee

4.15 pm

Moved by ***Lord Davies of Gower***

That the Grand Committee do consider the Aviation (Consumers) (Amendment) Regulations 2023.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, these regulations were laid in draft before this House on 16 October 2023. The purpose of this statutory instrument is to restate, using powers under the Retained EU Law (Revocation and Reform) Act 2023, key principles of retained EU case law relating to regulation 261/2004. This will help aviation consumers to receive the same protections they currently have when faced with flight disruptions.

Regulation 261/2004, which will become assimilated law at the end of 2023, sets out the rules on compensation and assistance for air passengers in the event of denied boarding, flight cancellation or long delay. Regulation 261/2004 has been the subject of significant amounts of litigation, and the associated case law has shaped the interpretation of this legislation. However, the retained EU law Act will also make it easier for courts to depart from EU case law after the end of 2023. This means that, without the changes made by this instrument, important principles that protect consumers in the UK would be lost.

The SI codifies four key principles needed to maintain the current protections for air passengers, by inserting them into regulation 261/2004. First, passengers will continue to be afforded the right to compensation under Article 7 of regulation 261/2004 where flight delay results in arrival at the passenger's final destination three or more hours after the scheduled arrival time.

Secondly, the SI codifies principles that make it clear that the rights to compensation, refunds, rerouting, and care and assistance fall within the scope of regulation 261/2004—not Articles 19 or 29 of the Montreal Convention. The Montreal Convention is an international treaty governing airline liability and relates in part to delay of passengers. This is an important point of clarity that will help passengers continue to receive the rights they are currently entitled to, rather than the more limited rights under the Montreal Convention.

Thirdly, the SI clarifies that, for the purpose of regulation 261/2004, a flight comprised of more than one leg will be treated as a whole if it is booked as a single unit, and that such a flight will be considered as departing from the point of departure of the first leg of the journey. This is important because compensation under regulation 261/2004 is linked to the length of the journey and the territory or jurisdictions covered.

Finally, the SI codifies the principle of "extraordinary circumstances" into a clear definition of that term. Such circumstances may give rise to an air carrier being exempt from the requirement to pay compensation. What constitutes "extraordinary circumstances" is a highly litigated topic, so it is important to codify the EU case law in order to provide clarity. I beg to move.

Lord Jones (Lab): My Lords, I thank the Minister for his competent and helpful introduction. Complex and dense though these regulations may be, I see no reason not to support them.

To what degree do the regulations impinge on Cardiff Airport? It has often been in the news. How many airport consumers were there this year and last year? How many cancellations were there? Can the Minister give any feedback as to consumer satisfaction? Has there been any discontent? What is his general view of the future? Does the consumer in greater south Wales have any difficulty accessing Cardiff Airport? As a percentage, how many airport consumers instead make for Bristol or Heathrow airports? Perhaps the Minister will write if these questions are not to be answered in this debate.

The purchase of Cardiff Airport by the Senedd, the excellent Government in Cardiff, was controversial to some degree. Might the Minister say what the situation is now? I acknowledge the Minister's service to Wales when he was a Member in the other place. He represented one of the finest coastlines in Europe—Langland, Oxwich and Three Cliffs come to mind, and he might know that these bays are fine for swimming; it is truly an area of natural beauty.

There is no aviation without the aerospace industry, and the Minister knows that both are vital to the economy of Wales—for example, Airbus, at Broughton, in north-east Wales, where direct employment involves some 5,000 employees. There is also, as he will know, a big aviation interest in south Wales. These two industries involve a great reservoir of national skills, and these skills in Wales are priceless. Airbus, at Broughton, is a world-class centre in wing manufacture. What links are there between Airbus UK and His Majesty's Government? How are the interests of the consumer represented?

The Explanatory Memorandum is helpful. The regulations are, of necessity, complex, as is the Explanatory Memorandum in parts—all the pages require insight. However, it is very good to see the word consumers writ large.

Lord Jackson of Peterborough (Con): My Lords, I shall speak briefly in this debate. I feel rather lonely as one of the few English Members here; we have north and south Wales's finest and other Members as well, and on the Whip's Bench, of course.

[Lord Jackson of Peterborough]

I will add briefly to the comments of the noble Lord, Lord Jones. When I was the special adviser in the Department for Exiting the European Union, this issue was a bone of contention in what later became the trade and co-operation agreement. There was a lot of shroud-waving about this because, of all the issues that were litigated and debated in the run-up to the European Union in/out referendum in 2016, the most acute was how people's holidays would be affected when they were travelling to and from Europe. For those of us who believed in Brexit, it was always the case that we were not going to enact domestic legislation just for the sake of it, but would assimilate good, practical, sensible and pragmatic legislation where appropriate. I think this is an example of that today.

I particularly welcome the fact that this legislation not only is being enacted in domestic law, particularly on the issue of long delays, but seeks to uplift important case law, including the Sturgeon v Condor Flugdienst case. That goes wider than simply a long delay to a flight; it also considers the material impact that that has on travellers. I therefore strongly welcome the instrument.

It is good that this complements other legislation the Government have brought forward, and they should look at it as protecting the travelling public from monopolistic or oligopolistic behaviour. I know it is not quite within the bailiwick of this statutory instrument, but noble Lords will have seen this week examples of alleged drip pricing by Ryanair, which is price gouging of customers, who are often in a very difficult position—they do not have perfect knowledge in perfect competition, which is the basis of the economic free market. They have excess charges applied to luggage, seat selection, travel insurance, and food and drink. The Minister will have the strong support of many noble Lords from across your Lordships' House if the Government take a robust attitude to legislation and regulation on this, because it is also an important subject.

It is vital to address delays, particularly for disabled folk, older people and families, but we must not see incremental price gouging and oligopolistic behaviour by rapacious airlines. I hope that the Government—of whatever party after the election next year—address this very important issue.

Baroness Randerson (LD): My Lords, I welcome the enthusiasm of the noble Lord, Lord Jackson, for more radical legislation on this. The pandemic and the problems that the aviation industry has had in recent years have revealed the shortcomings of the protections that consumers currently have.

I also welcome this legislation. I am pleased to see the level of interest it has exerted here. The noble Lord, Lord Jones, as part of the Welsh community here today, talked about the problems that Cardiff Airport has faced. As a resident of Cardiff, I welcomed last week's news that Ryanair will fly two routes out of Cardiff—a new set-up that will do something to replace the loss of the Wizz Air flights.

This legislation deals with a significant problem in aviation. I noticed that the Explanatory Memorandum says that, in 2019, 1.5% of UK flights were delayed by more than three hours; that is 31,000 flights. By 2022, that had gone up to 40,000 flights, which was equivalent to 2.6% of flights. In the first nine months of last year, nearly 19,000 passenger complaints were registered. Those are complaints by passengers who have been unable to get satisfaction or any resolution to their problems from the airline. It is very much the case that some airlines are far worse than others at dealing with these problems. This set of problems needs to be dealt with, and I welcome the Government turning their attention to them.

4.30 pm

In practice, these regulations are a redrafting of EU legislation that had been retained following Brexit. I make one inquiry of the Minister on paragraph 6.5 of the Explanatory Memorandum, which explains that the current EU legislation has been heavily litigated against and subject to many court cases for interpretation, so the Government have rewritten it. Is the Minister content that the rewriting is sufficiently explicit and rigorous such that it will not create its own set of litigation as a result of new phraseology?

I welcome the legislation's clarification of what exactly is meant by arrival time. Two weeks ago, we had references in this place to delays to passengers, particularly those with disabilities, getting off planes. The clarification that arrival time means when you get off the plane is very helpful, and I welcome the six-year limit on claims of damage to baggage and cargo. I also welcome the clarification on the treatment of a journey of more than one leg.

My next question to the Minister is on the definition of extraordinary circumstances. Paragraph 7.21 of the Explanatory Memorandum says that they will include a delay arising from

"an air traffic management decision"

that

"could not have been avoided even if all reasonable measures had been taken".

Can the Minister give me an example of exactly what is meant by that? Does it, for example, refer to adverse weather and a decision not to fly or specifically to the sorts of air traffic management problems we had a few months ago due to shortage of staff?

Some months ago, the Department for Transport undertook a consultation on consumer rights in relation to delays and cancellations of internal flights within the UK. Could the Minister clarify whether the Government intend to take forward any changes to consumer rights in those circumstances? At the time, there were strong rumours in the aviation industry that the consultation was undertaken potentially to reduce passenger rights within the UK. But all has gone quiet, so I rather hope that the Government have dropped that. Maybe the Minister will tell us.

Lord Tunnicliffe (Lab): My Lords, these regulations establish rules relating to compensation and passenger assistance in the event of denied boarding, cancellation or long delays. The instrument maintains the status quo and aims to offer clarity, following multiple legal challenges. We therefore do not oppose its introduction. Indeed, I thank the Government for bringing forward these regulations.

However, why are we debating these regulations today? As the Joint Committee on Statutory Instruments pointed out, the instrument is within the scope of the negative procedure, so Ministers have decided that the alternative is more appropriate. Can the noble Lord elaborate on this?

Turning to the measures contained in the regulations, I note that their main purpose is to remove ambiguity rather than set new policy. Will the Minister explain which cases these clarifications relate to?

Will the Minister elaborate on the issue of extraordinary circumstances a little more? At first I thought the definition in the instrument was pretty clear, but a number of people have since commented that it is not as clear as it looks and anything that he can add will be helpful. On the drafting process, can the Minister explain what informal consultations took place to prepare this instrument? While I understand that no review clause is required as it is made under the REUL Act, will the Minister explain how the department will monitor its implementation? Given that the Minister in the House of Commons was unable to answer this point, will the Minister say whether the tariffs referenced will be subject to inflationary increases?

Somewhat at the last minute, I picked up recent rumours that some airlines have reacted to the requirement to pay this tariff by substituting vouchers—indeed, in some cases vouchers with expiry dates—instead of cash. That does not seem to be within the spirit of the regulations. Given that the essence of this instrument is to clarify the situation, I would value the Minister's comments on this. Do the Government believe these rumours are true? If they are, does this instrument in any way help? If not, will he address the issue and go to what I think is the implied standard, which has to be pure cash? I hope the Minister can provide clarity on these points.

Lord Davies of Gower (Con): My Lords, I thank noble Lords for their contributions to this debate, in which issues that are to some extent technical have been raised.

I will start by responding to the issues about Cardiff Airport raised by the noble Lord, Lord Jones. I well remember Cardiff Airport being taken under Welsh government control. At the time, I was a member of the then National Assembly for Wales. There were sceptical views about it at the time, but the Welsh Government have taken it on and still own it. Indeed, we all wish it well, but it has gone through some difficulties and has been supported financially by the Welsh Government. In answer to his question on cancellations, consumer feedback and access to the airport, I do not have that information to hand, so I will have to come back to him in writing. The Welsh Government will be responsible for a lot of it.

The Government have strong relationships with Airbus UK, for obvious reasons, but more than that I cannot say at the moment.

I thank my noble friend Lord Jackson for his remarks. The instrument is about maintaining current consumer protection for air passengers. The Act's powers were not considered the appropriate vehicle to undertake a full review of regulation 261/2004. However, the Department for Transport committed to consult further on compensation and payment frameworks for flight disruption in its response to the aviation consumer policy reform consultation. This is a complicated area of law, and any potential reform requires careful consideration and consultation with the European Union under Article 438 of the trade and co-operation agreement.

It was not considered necessary to codify any other EU case law principles, beyond those identified. The four principles restated in this instrument have been identified as necessary to be codified in order to maintain the status quo for consumer rights in relation to flight disruptions—that is, for denied boarding, flight cancellations and long delay. In interpreting retained consumer aviation EU law in the UK, the courts are likely to adopt a purposive approach. This means that the courts will consider the intended purpose of the regulation, rather than solely relying on the literal meaning of the words.

A question came up on consultation. The department has committed to further consultation on regulation 261. I think another question came up from one noble Lord on air traffic management. That is very fact-specific and I cannot at this moment provide specifics in respect of the legislation.

Going back to the retained EU law Act, its powers operate on assimilated law, while restatements such as those that this instrument makes are not assimilated law. Once the instrument is made, any further amendments to the regulation on these precise topics would therefore require primary legislation. It may be possible for certain retained EU law Act powers to be used to further codify assimilated EU case law, in the event that further principles, separate to those in this instrument, are identified as requiring codification. However, it is not considered necessary at this time to codify any other principles of EU case law relating to regulation 261/2004.

Noble Lords asked about informal consultations. We have had sessions with industry and consumer groups on this.

Perhaps I could just cover the consequences of not making this instrument. If it is not made, there would be a reduction in the protections available to consumers when travelling by air under UK law after the end of 2023. For example, UK courts would be more likely to find that passengers subject to long delays—that is, a delay of three hours or more in reaching their final destination—would not be entitled to compensation. Such a reduction in consumer protections would not only be an unacceptable policy but risk breaching the shared objective under Article 438 of the trade and co-operation agreement to achieve a high level of consumer protections for air travel.

I know that some other more technical questions were asked, which I will certainly look at and write on. The noble Lord, Lord Tunnicliffe, brought up a couple of questions which I am not able to answer at the moment, but I will certainly look at them and write to him.

Lord Tunnicliffe (Lab): I wonder whether the noble Lord could adopt the convention that when he writes to one of us, he copies in everybody who has been part of this debate. I do not know whether he has ever tried to retrieve a document from the Library, but it is an uphill battle.

Lord Davies of Gower (Con): Absolutely. Of course, I undertake to do that.

In closing, these regulations will help air passengers to receive the same protections they are currently entitled to if their flights are disrupted. Not only is it important for passengers to have protections in place for such instances; it is vital for improving consumer confidence in the sector, following the disruption we saw during and after the Covid-19 pandemic. I will leave it there and commend the regulations to the Committee.

Motion agreed.

Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023

Considered in Grand Committee

4.45 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, these regulations were laid before this House on 26 October. This instrument amends the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 and the Plant Health etc. (Fees) (England) Regulations 2018 to extend an exemption in certain circumstances from the payment of fees in connection with applications for a phytosanitary certificate.

The 2015 and 2018 regulations set fees for delivery of plant health services in England by the Forestry Commission and Defra respectively. This includes fees for phytosanitary certification services required to comply with entry requirements relating to controlled plant health material. All businesses that use these services are charged a fee to recover the cost of delivery.

Earlier this year, the UK Government and the European Union announced the Windsor Framework. It fundamentally amends the old Northern Ireland protocol to restore the smooth flow of trade within the UK internal market and safeguard Northern Ireland's place in the union. Under the Windsor Framework, new schemes allow for the smooth movement of retail agri-food goods, plants and seeds for planting, seed potatoes, and used agricultural and forestry machinery and vehicles from Great Britain to Northern Ireland.

Where goods do not move with the new Northern Ireland plant health label or via the new Northern Ireland retail movement scheme, they must meet different requirements including, in the case of plants and plant products, being accompanied by a phytosanitary certificate. These goods move through what is sometimes referred to as the red lane, where fees and certification requirements apply.

For businesses that move goods from Great Britain to Northern Ireland outside of the new schemes, but where the goods remain in the United Kingdom, the UK Government introduced the movement assistance scheme. Introduced in December 2020, the scheme waives the cost of inspections and certification for businesses moving agri-foods from Great Britain to Northern Ireland. This underlines our ongoing support for the agri-food and horticultural sectors in the United Kingdom, as well as for consumers in Northern Ireland.

In September, as part of a package of financial support provided to support the industry with the implementation of the Windsor Framework, we confirmed that the scheme would be extended. This instrument specifically ensures that fees related to issuance of phytosanitary certificates are disapplied until 2025 for goods moving from England to Northern Ireland.

Amendments made by this instrument extend an exemption from the payment of fees for certification services where goods are moving from England to a private business or individual in Northern Ireland. The exemption also applies to movements of goods by private individuals in their passenger baggage.

Although the SI applies in England only, as it is a devolved matter, both the Scottish and Welsh Governments are currently taking forward their own parallel legislation.

This instrument will ensure that trade from England to Northern Ireland is not subject to additional plant health costs until 1 July 2025, giving businesses time to adapt to the new movement routes now available thanks to the Windsor Framework. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to this statutory instrument. As he indicated, these regulations cover businesses which are exempt from paying fees to Defra and the Forestry Commission for pre-export and export certification services for products of animal origin and phytosanitary certification for regulations of plants, plant and wood products and other material between England and Northern Ireland. The current fee exemption expires at the end of this month.

This SI is straightforward and will ensure that the movement of goods between England and Northern Ireland continues to run smoothly without the need for cumbersome paperwork and the payment of fees. Apart from removing the expiry date for the current legislation, there is no other change to the movement assistance scheme. The Scottish and Welsh devolved Administrations, having been consulted, plan to lay parallel legislation to amend their devolved fees legislation.

I support these regulations and have a couple of questions. As there was no significant alteration to the SI, no formal consultation took place. I understand this, but will the Minister say what form the informal stakeholder engagement took? The Explanatory Memorandum indicates that this engagement was strongly supportive of the proposed extension, so it would be useful to know just how it took place. I note that a new date of termination of 2025 has been inserted into the EM and I assume that, when we get to that date, the fee exemption might possibly be renewed. Can the Minister confirm this?

Lastly, paragraph 13.2 of the EM states:

"This instrument applies equally to all businesses trading in regulated plant health material between England and Northern Ireland, including small businesses. The costs associated with this trade are not mitigated by the size of the business".

Does this mean that where costs are incurred they are not proportionate and that small businesses will pay the same as large businesses? I would be grateful for clarification. Apart from these small queries, I am happy with this SI and its provisions.

Baroness Hayman of Ullock (Lab): My Lords, we support this statutory instrument. I do not think there is any reason for me to repeat why it is required; that was ably introduced by the Minister and referred to by the noble Baroness, Lady Bakewell.

It is important that intra-UK trade is effectively maintained, which this instrument is designed to do. I was pleased to see that Scotland and Wales plan to make parallel legislation; it is important that the devolved Administrations are consulted and move forward with the Government here.

I have one question of clarification for the Minister: why did the extension have to be made? Do the Government believe there is going to be a competitive disadvantage to UK exporters or internal UK suppliers from the fees being applied or do the Government just need more time to get everything ready? It would be useful to understand the reasons for the extension date but, beyond that, we are happy to support this instrument.

Lord Benyon (Con): I thank both the noble Baronesses for their interest in this issue and their support for this measure. As I described earlier, the amendments in the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023 are being made to provide an exemption from the payment of fees for certification services where goods are moving from England to a business or private individual in Northern Ireland. The purpose of this instrument is to ensure that trade between England and Northern Ireland is not subject to additional plant health costs until 1 July 2025, giving businesses time to adapt to the new movement routes now available thanks to the Windsor Framework.

The noble Baroness, Lady Bakewell, asked about renewal in 2025. That will of course be a key decision for the Government of the day, who will examine the very facts that I hope respond to the question from the noble Baroness, Lady Hayman, about the purpose of this exemption. Its purpose is to facilitate trade and make it as easy as possible. While the progression from the Northern Ireland protocol to this new Windsor Framework arrangement is being made, we want to resolve as many impediments to trade as we can. As has been said, the movement assistance scheme is extremely popular. Why would it not be? It means that people do not have to pay more money. We want to make sure that we operate as fairly as possible and that people in Northern Ireland can get access to goods as easily as people anywhere else in the United Kingdom.

On the question about consultation, Defra undertook a programme of consultation with its certification and testing delivery partners, including the devolved Administrations, local authorities in England, the Animal and Plant Health Agency, the Forestry Commission, the Soil Association, trade bodies such as the Organic Food Federation, and others. Each organisation reported overwhelming support for the extension among its members and users. Defra also meets frequently with organisations from the whole Northern Ireland agri-food supply chain regarding the implementation of the Windsor Framework. They have also welcomed the extension of this scheme.

From its commencement in 2021, the purpose of the movement assistance scheme has been to support transition to the negotiated end state by maintaining frictionless trade between mainland Britain and Northern Ireland. The scheme achieves this aim by defraying costs of certification and other requirements of the new trading environment, as described by the Windsor Framework and, previously, the Northern Ireland protocol. Delivery of improved SPS inspection facilities, which I visited in Belfast, plus new digital certification solutions will replace direct financial assistance and maintain trade from Great Britain to Northern Ireland.

As I have outlined, the regulations extend the exemption from the payment of fees for phytosanitary certification services where goods are moving in the direction I described. They ensure that the current policy for intra-UK trade is maintained without an additional financial burden to businesses—that addresses a key point that the noble Baroness, Lady Bakewell, raised—relating to certification services provided by Defra and the Forestry Commission.

Motion agreed.

Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023

Considered in Grand Committee

4.58 pm

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

That the Grand Committee do consider the Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations will expand the application of the existing insolvency arrangements for electronic money and payment institutions so that they apply to firms in Northern Ireland and Scottish limited liability partnerships as they already do in England and Wales, as well as for companies in Scotland.

The payment and e-money sectors have expanded rapidly over the last decade, with payment and e-money institutions now holding more than £17 billion of funds belonging to UK consumers. As the sectors have grown, the Government became concerned that the application of standard insolvency procedures to the failure of these firms was leading to negative outcomes for customers. In particular, administration cases involving these types of firms were taking years to resolve, with customers left without access to their money for prolonged periods and receiving reduced money as a result of high distribution costs.

To manage these risks, the Government legislated in 2021 for a special administration regime to provide for the prompt return of client assets should such a firm fail. This regime was delivered through the Payment

[Baroness Vere of Norbiton]
and Electronic Money Institution Insolvency Regulations 2021 and the accompanying rules. These regulations established the special administration regime in England and Wales, and for companies in Scotland. This regime created special administration objectives that an administrator will have to follow when conducting an administration of a payment or electronic money institution.

The key provisions of this regime include: first, bespoke objectives for an administrator to ensure the return of customer funds as soon as reasonably practicable, to engage with the relevant authorities and to either rescue or wind up the institution in the best interests of creditors; secondly, continuity of supply provisions that will allow an administrator to keep the firm's key functions operational for customers; thirdly, provisions to ease the transfer of business processes such that a new firm can take on the incumbent's business and provide continuity for customers; and, finally, bar date provisions to allow the administrator to set a deadline for consumers to claim and thus enable an earlier distribution of customer funds.

The Government originally consulted on the special administration regime from December 2020 to January 2021. This included not only public consultation but pre and post-consultation meetings with industry groups, including the Banking Liaison Panel, as well as extensive work with the FCA. During the consultation process, most respondents expressed support for the proposals and many provided detailed and useful comments which enabled the refinement of policy. For example, the Government introduced additional steps within the special administration regime rules to require administrators to provide a reasonable notice period before a bar date comes into effect. This will allow time for administrators to communicate bar dates to customers and for customers to make claims.

In responding to the original consultation, the Government confirmed their intention eventually to extend the regime to Northern Ireland and to limited liability partnerships in Scotland, but that this would be to a different timetable, reflecting further work that was needed given differences in insolvency law. The Government therefore subsequently consulted extensively with the Scottish and Northern Irish devolved Administrations to produce the regulations being debated here today.

As noted, this statutory instrument is required to ensure that the regime can effectively apply to Scottish limited liability partnerships and to firms in Northern Ireland, ensuring that the regime applies effectively across the whole of the United Kingdom. For example, these regulations ensure that the relevant provisions of the Insolvency (Northern Ireland) Order 1989 apply to the payment and electronic money special administration regime, as they would to any other insolvency proceedings for Northern Irish firms. This mirrors equivalent provisions which ensure that the relevant provisions in the Insolvency Act 1986 apply in England and Wales. This includes provisions around the duties of officers and the powers of the liquidator.

These regulations do not apply the insolvency procedure to Scottish partnerships, as they are sequestrated under the Bankruptcy (Scotland) Act, which is a devolved matter for the Scottish Government. In addition, Scottish partnerships, apart from limited liability partnerships formed in Scotland, do not currently enter administration and would not be within the scope of the regime.

In conclusion, by expanding the application of these regulations to the relevant firms in Northern Ireland and to Scottish limited liability partnerships, these regulations will ensure that we have robust arrangements to manage the potential insolvency of payments and electronic money firms throughout the UK. I beg to move.

Baroness Kramer (LD): My Lords, this instrument seems to make good sense and we certainly have no intention of opposing it. I have just three questions. First, I understand that it was always anticipated that this regulation would stretch over Northern Ireland and Scotland as well as England and Wales, so it seems very strange that the consultations for Scotland and Northern Ireland were not done in parallel with the consultations for England so that, when the legislation came in, the relevant instruments could all flow immediately, rather than creating a two-year hiatus. Is there any particular reason why that procedure was not followed? It would seem to be the more obvious route.

Secondly, the Explanatory Memorandum makes it clear that there was extensive discussion with the relevant bodies in Northern Ireland and Scotland, and the Minister basically said the same. Was there expected to be any formal approval by the devolved Governments, or was that not relevant in this instance? Can the Minister clarify the position of the devolved authorities in this? From the way she described it, it sounds as though there has been no tension or opposition, but it would be helpful to know whether I have misread that.

My last question is a more fundamental one to do with the hard bar. It is obviously critical to have an efficient and effective insolvency process, and I fully accept that the Government are working to frame that. When I was involved with the transition out of Libor, or dealing with dormant assents, it rapidly became evident that it is very hard to identify anything close to 100% of the relevant claimants. Organisations change their names, they are acquired or sold, there are inheritances—all kinds of actions cloud and obscure relevant ownership and, therefore, relevant claims.

In the two instances that I cited, Libor and dormant assets, a provision was made to ensure that people who appear past the point where the process has fundamentally changed do not lose out because they were ignorant. Some will say that most people were overwhelmingly in support of this in the consultation, but the kind of people who do not know that they have a claim are also probably the kind of people who do not reply to a consultation. The experience with dormant assets and Libor has shown that there is a substantial body of people and, usually, small companies who have a genuine legal claim of some sort. I am interested to know whether any thought was given to making provision for that particular group, which could be excluded by the establishment of a hard bar. I have no idea what the legal responsibilities of the administrators are if a claim is made after a hard bar has been established—whether the claimant loses no matter the basis of their claim. I would like to understand that a bit better.

Lord Livermore (Lab): My Lords, we also support these regulations. I would like to ask the Minister a couple of questions. First, on how the FCA's significantly expanded remit will be delivered in practice, can she set out what the Government are doing to ensure the FCA's greater powers are accompanied by greater accountability? Can she also tell us what steps the Government are taking to ensure that the additional FCA requirements on payment firms and EMIs are proportionate, and explain how the Government will ensure that these requirements do not hamper innovation in the UK's payment sector?

Secondly, as is often the case with financial services regulation, there seems to have been a significant gap between the consultation, which took place in December 2020 and January 2021—three years ago—and the statutory instrument being brought forward. Can the Minister tell us the reason for this delay?

Finally, I note there is a requirement for this new regime to be evaluated after two years, with a decision then made on whether the regulations should continue to have effect. Can the Minister set out the criteria by which the regime will be evaluated? I thank her in advance for her answers to these questions.

Baroness Vere of Norbiton (Con): My Lords, I can hear much flapping of papers behind me, so I have no doubt that I will not be able to answer all the questions in full, but I will do my best. I am grateful to the noble Lord, Lord Livermore, for giving me advance sight of some of his questions, which was very helpful. The noble Baroness, Lady Kramer, mentioned that she might ask me a few questions. None of them were difficult—well, one of them was a little difficult, but we will give it a go.

I thank all noble Lords for their consideration of this draft instrument. It is all about taking an established regime and ensuring that it operates everywhere that it should across the United Kingdom by applying to all organisations in Northern Ireland and to limited liability partnerships in Scotland.

Both noble Lords mentioned the timing and why the Government were unable to bring forward all the regulations at the same time. We took the opportunity to bring through the England and Wales regime before the regulations being debated today because it was slightly easier to do so and we wanted to get the regime in place as soon as possible, having done the consultation. There are some quite significant differences in insolvency law. We therefore took a little extra time carefully to consider the legislation before applying this to Scotland and Northern Ireland. In doing so, we worked extensively with the devolved Administrations in both those areas. There was no sort of tension or opposition, and the rules underpinning this regime will have to be set out by those Administrations in due course anyway.

Herein is the slightly tricker question from the noble Baroness, Lady Kramer, which is her "hard bar" question. I will certainly write. One observation I have about these sorts of payment systems is that consumers tend to be much more actively engaged in them. I would have thought it would be slightly easier to get in contact with them because it is a much more immediate system. However, I will definitely write and set out exactly what we are doing to achieve the balance that she rightly set out. It is not our intention to cut anybody off; it is our intention to get money to consumers as soon as possible because, as we know, time costs money and, unfortunately, delays mean that consumers sometimes get back less than they would otherwise.

Turning to the points raised by the noble Lord, Lord Livermore, about the FCA's greater powers, accompanied by greater accountability, these regulations directly affect only firms that have entered the insolvency process. They have no effect on firms in normal circumstances. It is also worth stressing that the special administration regime is ultimately a process led by an insolvency practitioner and administrator, not by the FCA. However, the FCA does have a role to play in the regime, including a power to direct an insolvency practitioner, but this power can be used only subject to a number of objectives being met.

More broadly, the Government are committed to the operational independence of the financial services regulator, but increased responsibility for the regulators must be balanced with clear accountability, appropriate democratic input and transparent oversight. I am sure the noble Lord is aware that during the passage of the Financial Services and Markets Act 2023, we included a package of measures to increase the accountability of the regulators, including the FCA, to Parliament when exercising their regulatory powers.

On the proportionality of the FCA requirements, the Financial Services and Markets Act 2000 requires the regulators to take into account eight regulatory principles when discharging their functions, including making rules. The second of these is the principle that restrictions should be proportionate to the benefits that are expected from the imposition of that restriction.

The noble Lord made a good point about whether the requirement would hamper innovation. Clearly, this is an area where innovation has been significant in recent times. The payments are essential to the UK economy but are also a major source of the UK's competitive growth, at the heart of our financial services sector. In July, the Government commissioned an independent review into the future of payments and specifically asked how to catalyse innovation in UK payment systems.

The regulations being discussed today are all about protecting consumers. Our view is that they will strengthen confidence in the sector by improving customer and market outcomes. In addition to the independent review, the Financial Services and Markets Act 2023 includes a new secondary objective for the FCA to facilitate growth and competitiveness. The Government are taking this through across all sectors to achieve that balance between growth and competitiveness and effective and robust regulation.

I think I may have covered the gap between the consultation and this SI. It is all about the differences in law and just taking the opportunity to bring it in as soon as we could, at least for England and Wales. We brought that in during 2021, which is not bad after a consultation which ended in January 2021, so that is a minor pat on the back. I accept that we would have loved to have brought it in at the same time, but a significant amount of additional work needed to happen.

[Baroness Vere of Norbiton]

On the review of the regulations and the criteria to evaluate them, under the Banking Act the Treasury is required to conduct a review of this regime. This is due for completion in 2025 and will be an independent review covering whether the regime is meeting insolvency regulation objectives and whether the regulations should continue to have effect. As ever, once completed a copy of the review will be laid before Parliament. We will set out further details of the review in due course.

Motion agreed.

Committee adjourned at 5.15 pm.