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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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House of Lords

Tuesday 12 December 2023

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Introduction: The Lord Bishop of Winchester

2.37 pm

Philip Ian, Lord Bishop of Winchester, was introduced and took the oath, supported by the Bishop of London and the Bishop of Durham, and signed an undertaking to abide by the Code of Conduct.

European Political Community Summit

Question

2.39 pm

Tabled by ***Lord Wallace of Saltaire***

To ask His Majesty's Government what preparations they are making for the fourth European Political Community Summit, to be held in the United Kingdom in spring 2024.

Lord Wallace of Saltaire (LD): My Lords, I was glad to hear the Foreign Secretary refer to the European Political Community as one of the important fora for the UK. I ask the Minister—

Noble Lords: Question!

Lord Wallace of Saltaire (LD): Apologies. I beg leave to ask the Question standing in my name on the Order Paper.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): I thank the noble Lord for sharing the second part of his Question; it is always good for a Minister to get early warning. The UK values the European Political Community as an important platform for co-ordination on European issues. The EPC enables European leaders to come together to tackle shared challenges, from the war in Ukraine to achieving energy security to tackling illegal migration. The UK has attended all three summits so far at Prime Minister level. We are continuing to consult partners about the UK EPC summit and will make an announcement in due course.

Lord Wallace of Saltaire (LD): My Lords, I presume we are chairing this meeting as we are the host. Does that give us particular influence over the agenda? Does it imply that our Prime Minister and Foreign Secretary will be visiting some of our major partners in Europe in the coming months to ensure that the meeting goes well? If it is in May or June and it looks as if the Republicans are ahead in the US election campaign, this will clearly be one of the main multilateral fora for British foreign policy. What preparations to involve the country and inform the public will there also be beforehand?

Lord Ahmad of Wimbledon (Con): My Lords, I think that many countries will be seized with elections next year—about 60 regional and national elections are planned. I can assure the noble Lord that both my noble friend the Foreign Secretary and my right honourable friend the Prime Minister, who attended the last summit, are focused on strengthening our partnerships on important issues including the war on our continent in Ukraine. The EPC has shown a strong ability to co-ordinate and to be very vocal in our unity of purpose and action on such important issues.

Lord Collins of Highbury (Lab): My Lords, the noble Lord stressed the importance of security in discussions at the summit. With the war in Europe, it is even more vital that we discuss those issues. As the noble Lord knows, I have asked this question before. Are the Government prepared to use this summit to propose a new UK-EU security pact, as advocated by Labour, to complement the work of NATO to ensure that we properly address those security issues with our nearest partner?

Lord Ahmad of Wimbledon (Con): There are several issues the noble Lord has now caveated when asking me questions by saying "as advocated by Labour".

Lord Collins of Highbury (Lab): Getting ready for government.

Lord Ahmad of Wimbledon (Con): Well, it is always good to be prepared, but do not count your chickens before they are hatched. To quote a former Baroness, "We fight on, we fight to win". We will continue to be resolute.

In all seriousness, the EPC is an informal gathering of leaders, as the noble Lord knows. We remain very much focused. The agenda is important. It is not just on security. The noble Lord will be aware that previous EPC summits have discussed important issues of security, particularly energy security. I think that the whole of Europe, and indeed the world, is seized of the importance of energy security for the medium and long term.

Lord Jackson of Peterborough (Con): My Lords, my noble friend the Minister will be aware of the discussions about collaboration and co-operation with the EU on defence and security matters, known as PESCO, which have been ongoing for over 12 months. There have been concerns about openness and transparency in respect of that agreement. Is the Minister satisfied that there will be sufficient scrutiny and oversight by Parliament during the ongoing discussions and on the final agreement that is reached?

Lord Ahmad of Wimbledon (Con): One of the points my noble friend has raised—my right honourable friend the Prime Minister has been clear on this, as have other members of the Cabinet—is the importance of the sovereignty of the British Parliament on a range of issues. While we value strengthened co-operation and engagement on a raft of issues, including those we have with the EU when it comes to European multilateral co-operation, it is important that the sovereignty of Parliament is always prioritised.

Lord Purvis of Tweed (LD): My Lords, Russia and Belarus will not be participating, which is right, because a thread within the three EPCs has been human rights and the consistent message to support the European Court of Human Rights and re-embolden the Convention on Human Rights. The Minister will recall that the first topic in the first EPC was immigration. Will the Foreign Office be advising our European friends that, in response to immigration challenges, they should bring forward legislation on whose front page the Minister responsible cannot certify that it is consistent with the obligations that we have to the convention?

Lord Ahmad of Wimbledon (Con): My Lords, I am sure the noble Lord will be watching the debate in the other place with great attention and, of course, immigration is very much the remit of my colleagues in the Home Office. The United Kingdom has stood steadfast on the issue of human rights, and it is important that we continue to do so and that the legislation brought forward rightly gets tested by our own legal system. I think the Government's record has also shown that even where we disagree with decisions taken by our courts, we adhere to them. That adherence to the rule of law is an important strength of our United Kingdom.

The Earl of Kinnoull (CB): My Lords, does the Minister agree that the first three EPCs have been great successes and that that success has largely been born not of what is on the agenda at the EPC but in the fact that leaders of the 47 countries now concerned are able to meet to discuss matters even on a bilateral basis? Can he confirm that, because it is very important for people to hear it around the place? Secondly, do we have any plans for developing the EPC beyond where the first three got to?

Lord Ahmad of Wimbledon (Con): On the noble Earl's second point, this is a new organisation which was put forward by the French President and we supported it. I agree with him on his first point as well: that we have seen the convening of leaders. It is not just the formal agenda—if there is such a thing—because this is an informal meeting. The noble Lord, Lord Purvis, alluded to illegal migration, and at the last summit Prime Minister Sunak and Prime Minister Meloni were able to meet to tackle some of the key issues that impact not just our country but Europe as a whole.

Lord Cormack (Con): To follow up the question just asked by the noble Earl, will the Prime Minister be conducting a series of bilateral conversations and, if he is doing that, will he include at the top of the list the new Prime Minister of Poland?

Lord Ahmad of Wimbledon (Con): My Lords, I am not the diary manager for the Prime Minister—but you never know with the extension of mandates, roles and briefs. In all seriousness, I can speak quite specifically, as I know that my noble friend the Foreign Secretary is very seized of the importance of strengthening our relationship with our key European partners, and I am sure he will be focused on the agenda issues of artificial intelligence and the war in Ukraine. These are important issues not for our country alone, not just for Europe but for the world as a whole.

Lord Dubs (Lab): My Lords, the Minister mentioned migration, as did other noble Lords. Can the Minister indicate what tangible result has come from the discussions on migration at these summits?

Lord Ahmad of Wimbledon (Con): My Lords, they provide an opportunity for agreements to be put in place, such as the UK's agreements with Albania. Practical suggestions can be shared, and it can be ascertained how successes can be reflected across Europe. It is important when we look at illegal migration to note that there are two sides to the coin. The first is stopping illegal migration, but we also recognise that people migrate to countries for a variety of reasons, including bettering their lives, and some are fleeing persecution. The country that I represent on the world stage has a long tradition of standing up for the rights of the persecuted and that is really where we should be focused. Parties of different colours and different political persuasions have always stood up for that right and it is a proud tradition of our country.

Lord Lilley (Con): Further to the supplementary question from the noble Lord, Lord Purvis, when the Prime Minister meets other member states, will he discuss concerns that others have about the rulings of the European Court of Human Rights? Will he do so particularly with the French Government, who have announced that they will disregard such rulings and have already begun to do so by sending an Uzbek asylum seeker back to Uzbekistan even though the European Court of Human Rights said that he would stand at risk torture and death? Can he also ask why they get away with it, but it causes a great rumpus here but no concern to the Lib Dems?

Lord Ahmad of Wimbledon (Con): It has often been said that I have an ever-widening brief, and I am now being asked to speak for the French Government.

I shall not take up my noble friend's offer, but I assure him of two things. First, we do point out the importance of adhering to agreements. Indeed, the United Kingdom is at the top of the league for adherence to the European Court of Human Rights' decisions. Notwithstanding the criticisms we often get, the action demonstrably shows that the United Kingdom remains a proud holder of the international obligations that we have signed up to.

Adult Social Care: Staffing

Question

2.50 pm

Asked by ***Baroness Pitkeathley***

To ask His Majesty's Government, further to the report of the National Audit Office *Reforming adult social care in England* published on 10 November (HC 184), how much of the £265 million allocated to reforming social care staffing between 2022–23

and 2024–25 has been spent so far, and what problems they have encountered in spending the allocated money.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): The Government have made up to £8.1 billion available this and next year to strengthen adult social care provision. Specifically, we have invested over £15 million so far this year in supporting our workforce reform programme. The Government remain committed to our 10-year vision to put people at the heart of care and make long-term sustainable investment to future-proof the sector. Further announcements of support will be made shortly.

Baroness Pitkeathley (Lab): I thank the Minister for that reply. He will know that the NAO's report said that only £19 million of the very welcome £265 million that was originally allocated has thus far been spent. Even if the Minister does not agree that this is an utterly inadequate response to the crisis in social care, as the King's Fund has said, he must admit that the slowness of progress is somewhat frustrating. Is it because there are not enough staff in the DHSC to distribute the money? I understand there are about 100 vacancies. Alternatively, is it because there have been many ministerial changes in his department, or because—as many in your Lordships' House will suspect—social care is simply not a priority for this Government and, once again, millions of unpaid carers will be left to prop up a crumbling system?

Lord Markham (Con): I share the noble Baroness's concern about the speed of deployment. At the same time, it is fair to say that we are developing a whole new set of social care qualifications, which we think we can all agree are key to this. We are also developing a whole new payment mechanism, because there are 17,000 independent providers and we need a mechanism to allow payment. It is a complex programme, but I agree that we need to do everything we can to speed it up.

Lord Allan of Hallam (LD): My Lords, a key part of the equation for long-term social care sustainability is charging reform, yet the National Audit Office report points out that the Government have scrapped their charging reform programme board and have no overarching social care programme in place. Can the Minister confirm where responsibility for charging reform now sits, and whether we can expect any progress in this critical area in 2024?

Lord Markham (Con): Charging reform is still part of the Government's commitment. At the same time, I think we all recognise that, largely as a result of the pandemic, we had to stabilise the social care situation first. That is what the £8.1 billion in funding has been all about and what the investment and recruitment have been for—so that we can stabilise first. I am glad to say that we are reaching a more stable footing. For the first time, staffing went up over last year and, likewise, the number of people in social care went up. We have to stabilise before we move on to the reform. I think we would all agree that the speed of reform needs to be a bit quicker, but it is sensible that we stabilise the situation first.

Lord Patel (CB): My Lords, in the Government's search for long-term sustainable funding for adult social care, what assessment have they made of the successful models that operate in Germany and Japan, for instance?

Lord Markham (Con): The shorthand for the German system is the "double doughnut", which tries to give wraparound care. We can learn many things from that system, which is why a part 2 reform needs to happen here. I accept that we are clearly not there yet.

Lord Forsyth of Drumlean (Con): My Lords, is not the truth of the matter that the Government have just shuffled off responsibility on to local authorities? Can the Minister tell the House what percentage of expenditure by local councils is now being spent on social care to fill the gap, at the expense of vital local services?

Lord Markham (Con): My noble friend is correct: on average, it is about 74% or 75% of a local authority budget. I think we would all agree that that is not a good situation, because obviously a local authority has a number of matters it needs to deal with. This is one of the issues around long-term reform that we will need to consider.

The Lord Bishop of London: My Lords, we are very familiar with the pressure on the social care workforce. As the Minister pointed out, we have seen vacancies fall within the social care sector, which is very welcome, but that is supported by the recruitment of 70,000 staff from overseas. I am glad that the health and care sector is exempt from the new visa charges, because we are clearly reliant on assistance from overseas. However, given that they are no longer able to bring dependents on their visa, have the Government considered the impact that this will have on recruiting workers from overseas into the social care sector?

Lord Markham (Con): We have tried to adopt a balanced approach here. While we all understand the necessity in the healthcare sector, I think most of us would agree that 750,000 net migration is a very high number. The balance we have struck is to protect this sector. Our figures generally show that we will be able to keep the recruitment coming. We are now moving on to part 2 of the reform, through the other things we are doing, particularly around qualifications—we know that people who are qualified are far more likely to stay in a social care setting. That is what the whole investment is about. It will be rolled out next year and will fund hundreds of thousands of places. I think it will make a real difference to the motivation, recruitment and retention of staff.

Lord Hunt of Kings Heath (Lab): My Lords, to respond to the right reverend Prelate's question, if I may, the Migration Advisory Committee has said that

[LORD HUNT OF KINGS HEATH]
the reason we recruit so many people from overseas is poor terms and conditions in social care. The Government set the market for social care, through their poor funding of local authorities. When will they grasp the nettle and realise that we actually have to give care workers decent pay and conditions?

Lord Markham (Con): It is absolutely understood that, to have a highly motivated workforce, you need to look at everything—pay and conditions, and training and motivation. We see that while, on average, staff turnover is almost 30%—which is way too high—about 20% of care home providers have a turnover of less than 10%. Why is that? It is because they are investing in their staff and they have a training programme. That is why we are trying to do a similar thing. The national care certificate that we are putting in place will take time; for it to be valuable, we will need to put the right things in order, including the digital platform to pay the 17,000 providers. These are all parts of the reform, which will make a difference.

Baroness Watkins of Tavistock (CB): My Lords, does the Minister accept that many delayed transfers of care from hospital are associated with difficulty in getting social care in people's own homes? In rural areas, we are still not paying for time spent travelling. Surely there is something we could do much more quickly, before the training certificate, to employ local people in a fair way to provide care in people's homes, particularly in rural areas.

Lord Markham (Con): The noble Baroness is correct about that; it is a key pillar of this reform. This is why we have tried to learn one of the main lessons from last year, by putting the £600 million discharge fund out early, so we can get those sorts of measures in place. That is why we have expanded the virtual care ward network to 10,000 beds, with the idea that people can be cared for in their own home but with support from the staff there. That is absolutely the direction we are moving in.

Lord Shipley (LD): My Lords, the Minister said a moment ago that three-quarters of local government spending is on adult social care. I would ask him just to check that figure, because if we add to it children's social care, it basically means that every local authority will, before long, be issuing Section 114 notices. It is very important to get the facts absolutely clear here. What the Minister said demonstrates that local authorities are seriously underfunded for adult and children's social care, and are cutting other public services as a consequence.

Lord Markham (Con): I will absolutely clarify the number to the noble Lord in writing. It is of course a range, according to different local authorities, but I think we would all agree that it is a level that, as a percentage, is too high.

Baroness Wheeler (Lab): The Nuffield Trust has called the NAO findings a

"damning indictment of the Government's progress towards delivering social care change".

To follow on from my noble friend's question, the NAO points out that only 7.5% of the much vaunted £265 million allocated by the Government to addressing social care staff shortages and recruitment for 2023-35 has actually been spent, heavily impacted by the DHSC's staff recruitment freeze. What specific actions are the Government taking to address this and ensure that the money they say is there is actually paid out?

Lord Markham (Con): There were five parts to the programme of reforms mentioned and the £265 million. There was international recruitment, which we have done; it has worked well, and we need to continue doing that. The second part was a volunteer programme, which, again, we have done and it is working well. Thirdly, there were digital skills passports, so that staff could swap from place to place and take their qualifications with them; we have done that. The two other things will take longer. The care workforce pathway is out for consultation. It will mean that people can have a long-term qualification that can get them into other professions as well, such as nursing. Lastly, there is the care certificate qualification. That takes time. Everyone knows that, for that qualification to be meaningful, it will take time to set it up. That is the key expense item. The digital platform is going to be launched next June, so it will be rolling out from there.

Bovine Tuberculosis

Question

3.01 pm

Asked by ***Lord Colgrain***

To ask His Majesty's Government what progress they have made towards identifying a vaccine for eradicating bovine tuberculosis.

Lord Harlech (Con): My Lords, I declare my farming and land management interests as set out in the register. A candidate vaccine, CattleBCG, has been identified. The Animal and Plant Health Agency, APHA, has also developed a companion candidate test to detect infections among vaccinated animals. This represents a major scientific breakthrough. Field trials are ongoing and, if successful, will move us closer to being able to vaccinate cattle in England against this insidious disease. Deploying a vaccine against TB in cattle remains a top government priority, but I am pleased to say that vaccinating badgers against TB is already a reality.

Lord Colgrain (Con): I thank my noble friend for his positive and most encouraging reply. Bovine TB devastates both emotionally and financially those farmers who find that their herds contain positive reactors. It also hangs a Damocles sword over those neighbours who fear infection contagion, as we are experiencing with the current ever-expanding TB cluster in Kent. I ask my noble friend to agree with me that, given that deer are carriers of TB and the national deer herd is at a historical high and still increasing, we must accelerate all preventive measures at pace across all possible carriers, whether by way of the vaccine he has described for cattle or the contraceptive feed that has proved so successful with American white-tailed deer.

Lord Harlech (Con): My noble friend is absolutely right to raise the issue of other species that carry bovine TB. Deer are not a protected species so, if evidence emerges that deer are involved in the spread of TB in a particular location, measures can be taken to control the population. In Great Britain, deer are generally considered to be spillover hosts of TB—that is, they are unlikely to sustain the infection within their own population in the absence of infected cattle or a wildlife reservoir.

Lord Grantchester (Lab): I declare my interest as a farmer in Cheshire. Badger controls are an emotive issue. Does the Minister agree that where a policy based on science is found to work in practice, care should be taken before abandoning it? Over the four culling years between 2016 and 2023, across three subregions in Cheshire a reduction just short of 51% of herds under restriction was achieved. This is not to be dismissed lightly, when there is in fact little evidence in England of the effectiveness of a vaccine that has operational difficulties. Does it not make sense to allow all areas of England to undertake a cull to control disease in cattle, disease in badgers and stress in rural communities before introducing vaccination?

Lord Harlech (Con): The noble Lord is absolutely right on the 56% reduction in incidence in cattle; that was one of the statistics I had prepared for the Dispatch Box. With our culling strategy, we will continue to follow the science. Culling will remain part of our toolkit for tackling this insidious disease for as long as necessary. However, we are moving to the next phase of our long- term strategy, which will also focus on wider-scale badger vaccination as the primary TB control measure in badgers.

Lord Trees (CB): My Lords, a cattle vaccine will be a very valuable tool in controlling bovine tuberculosis, but it is likely to be several years before it is rolled out. In the hotspots of TB in the south-west of England, there is mounting evidence that outbreaks and breakdowns in herds are being linked to the continuing presence of infected cattle in those herds that are not detected by the current statutory tests. Will His Majesty's Government urgently support the introduction, as a mandatory requirement, of additional diagnostic tests, which exist and are well proven, to aid the detection of such carrier cattle and their removal from herds? That would expediate the eradication of this terrible disease.

Lord Harlech (Con): My Lords, I defer to the far greater knowledge and experience of the noble Lord, Lord Trees, in this area than my own. No diagnostic test for TB or other diseases is 100% accurate. The causes of recurrent cattle TB breakdowns in areas of endemic bovine tuberculosis are complex and manifold. The skin test is useful as a primary screening test and is supplemented by approved, ancillary tests where needed, based on stringent risk assessments. Defra supports the development of new diagnostic tests for TB and encourages test providers to seek World Organisation for Animal Health validation for UK regulatory approval.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, Scotland has maintained its status as free of bovine TB, despite minor outbreaks. It also has a population of badgers and deer. In the past, one Welsh farmer lost 500 cattle to the disease. An outbreak of bovine TB can have a devastating effect on a dairy farmer. Given the density of dairy cattle in the south-west, is it not time for the Government to take a much stronger line on preventing the disease spreading by speeding up the vaccination programme so that farmers can protect their herds and livelihoods?

Lord Harlech (Con): I take on board what the noble Baroness said and agree with much of it. As we all saw from the pandemic, diseases and viruses do not respect borders. The Welsh Government are pursuing a different strategy and seeing the incidence of bovine tuberculosis increase in Wales; that goes completely against what we are doing. For cross-border livestock trading, this is incredibly worrying—I say that as someone who comes from Oswestry, a market town.

Baroness Hayman of Ullock (Lab): My Lords, I declare my interest as president of the Rare Breeds Survival Trust. I really appreciated the thoughtful contribution from the noble Lord, Lord Colgrain, on alternatives to a cull; that has to be the way forward. How does the Minister anticipate that the government Bill to ban live exports, particularly given the exceptions that it includes, will tie in to the need to review existing trade standards for exports of vaccinated animals?

Lord Harlech (Con): Defra is engaging with WOAH, the European Commission and international trading partners. On completion of field trials of the vaccine and the new DIVA test, we will submit a formal application to WOAH as part of the process of gaining international recognition. Many countries worldwide battle with bovine TB and will be interested in developments in England, but I cannot make specific mention of anything that will be included in a future Bill.

The Earl of Caithness (Con): My Lords, farmers will appreciate what my noble friend the Minister said: the cull will continue, as scientific evidence shows it to be working very well. Can he also comment on the reported increase of ground-nesting birds in areas where the cull has been effected? It has increased biodiversity in those areas.

Lord Harlech (Con): My noble friend is right to raise this: biodiversity net gain is a key Defra priority. Badger culling has been linked with positive effects in some bird species, although recent studies by the British Trust for Ornithology, looking at the effect of badger culling, have not found consistent evidence for effects of the badger cull on breeding bird populations. Badgers are known to predate bumble bee nests, which is increasingly worrying. The Game & Wildlife Conservation Trust is currently conducting research to investigate the impact of badger culling on bumble bee density.

Viscount Brookeborough (CB): My Lords, is it not about time that we put badgers more on the basis of deer—permissible culling throughout the country? People see deer old and diseased, and everybody realises what the problem is. With badgers, they have no idea of the cruelty going on underground with sick badgers, old badgers, badgers without teeth and badgers with broken legs. That is where that love of badgers leads. If we culled them generally, we would know where TB really was in the badger population, instead of just taking it out in these super-big culls.

Lord Harlech (Con): My Lords, as I explained earlier, we are moving to the next phase, a targeted approach to badger culling.

Guyana: Sovereign Territory
Question

3.11 pm

Asked by ***Lord Bruce of Bennachie***

To ask His Majesty's Government what support they are providing to Guyana in response to the threat of illegal annexation of parts of its sovereign territory by Venezuela.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the UK is fully engaged at senior levels following the recent steps taken by Venezuela with respect to the Essequibo region of Guyana. The actions of Venezuela are unjustified and should cease. We are clear that the border was settled in 1899 through international arbitration. My noble friend the Foreign Secretary made clear our position in a recent meeting and subsequent calls with President Ali of Guyana. We will continue to work with allies and partners in the region and through international bodies such as the UN Security Council, the Commonwealth and the Organization of American States to ensure that the territorial integrity of Guyana is fully protected and respected.

Lord Bruce of Bennachie (LD): I thank the Minister for his Answer and declare an interest as president of the Caribbean Council, which has sent three missions to Guyana in the last year, hosted President Ali as a guest of honour in this House, and organised seminars on trade and investment with Guyana. This provocative move by President Maduro—backed by President Putin, of course—reviving a dispute settled, as the Minister said, in 1899, is a blatant attempt to distract attention from his unpopularity at home. The claim is being reviewed by the International Court of Justice, which has urged no action by Venezuela, but the President of Venezuela has said he does not recognise the court—which is standard practice, of course, for dictators and authoritarian regimes. They threaten the free world. What can the Government do, apart from what the Minister said, with Americans, the Commonwealth and any other institutions to ensure that this aggression does not lead to conflict, that Guyana's territory is protected, and that it has the full support of Britain and the Commonwealth?

Lord Ahmad of Wimbledon (Con): My Lords, I recognise the important work that the noble Lord does with respect to the Caribbean. As he said, we are working through multilateral institutions as well. There was a UN meeting on 8 December. There was also a Commonwealth meeting of Ministers convened yesterday. Again, there was a strong statement from all Commonwealth countries in support of Guyana's position. I know that, over the years, meetings have been called at the UN on Guyana's territorial sovereignty and integrity and the UK's position has been very clear. We have called for immediate de-escalation. This rhetoric cannot be allowed to continue. Another meeting is being convened by Caribbean and Latin American countries later this week, as the noble Lord will know, to which both leaders have been invited, but the UK is very clear. That is why my noble friend the Foreign Secretary has engaged extensively, with Irfaan Ali directly. Indeed, he met him directly in the margins of COP and subsequently has made a number of calls to give that reassurance and strong support.

Baroness Hooper (Con): My Lords, given that the present Government of Venezuela have stated that they have always laid claim to this part of Guyana as part of their territory, can my noble friend say whether he or the FCDO has any record of such claims? I must say that it was news to me.

Lord Ahmad of Wimbledon (Con): My Lords, recognising the important role of my noble friend over many years when it comes to the Caribbean and South America—indeed, we had an enlightened debate only last week on the very issue of South America—the UK's position has been clear and that is why it is important that the UN restates it. Coming back to the point raised by the noble Lord, Lord Bruce, we should come together with multilateral organisations, particularly within the Commonwealth, to underline our strong support for Guyana's position.

Lord Collins of Highbury (Lab): In that debate, the noble Lord mentioned the UNGA high-level panel meeting and his representations. At Friday's Security Council meeting there was an opportunity to raise the issue. What further discussions has he had at the United Nations and what action is the United Kingdom going to press for at the UN? We need a clear pathway to ensure that this threatened action is stopped immediately.

Lord Ahmad of Wimbledon (Con): The noble Lord will have noted our statement at the United Nations Security Council. I was not there but elsewhere; I cannot remember where I was on that date, but I was somewhere in the world. The United Kingdom is engaged extensively on the issue. Yesterday, the Minister for Development covered the meeting with the Commonwealth Secretary-General, and my noble friend, when he travelled to the United States, had similar discussions with our partners and allies in Washington, together with Secretary Blinken, on this issue. It is important that we stand by Guyana at this time, and I know that His Majesty's Opposition agree. The position has been agreed and that agreement is long-standing. In Venezuela, there is a lot of political

rhetoric and an election next year. We know the status of Mr Maduro. The United Kingdom does not engage with him directly and recognises that he is desperately in trouble in Venezuela. This may well all be rhetoric, but we must be mindful of that to ensure that any action taken gets a unified response diplomatically from across the world.

Lord Stevens of Birmingham (CB): Having been in the Essequibo region earlier in the year, I think it right that Guyana pursues this matter through diplomatic routes—the ICJ, the UN and other forums. But the fact is that the Venezuelan military is much stronger. It has tanks, jets and naval assets sourced from Russia, Iran and elsewhere. In addition to the support that the US Southern Command and the Brazilians reinforcing the border are providing, are the British Government willing to commit that Guyana will get defence support from this country should Guyana seek it to deter Venezuelan military aggression?

Lord Ahmad of Wimbledon (Con): My Lords, we have supported Guyana over a number of years. The noble Lord raises a valid point. I assure him that we are very much seized of the issues of protecting the sovereignty of Guyana. I do not want to go into what may happen. The United Kingdom, including its military assets, is engaged around the world but, for now, we are very much focused on the diplomatic channels. We are urging all partners with leverage over Venezuela and its Administration to ensure this does not escalate, and that is where our focus is.

Lord Howell of Guildford (Con): My Lords, is this not a rather chilling example of what happens when big countries start bullying small countries when the rule of law is disregarded generally and people feel that they can grab what they like out of the international order? Will my noble friend accept that this kind of unfolding anarchy is precisely why we obviously should stand firm with our friends in Ukraine? We should leave no doubt at all that these kinds of illegal acts must be stopped, because each one allowed through will produce a dozen more.

Lord Ahmad of Wimbledon (Con): I totally agree.

Lord West of Spithead (Lab): My Lords, Nelson's favourite defence negotiators in Europe were a squadron of British battleships. Unfortunately, we do not have as many military assets as we used to. Does the Minster agree that this sort of aggression, or what looks as if it will become aggression, should be stood up to? We cannot allow Ukraine and now this from these Putin-like people, but we need military forces for that. Does the Minister not think that we ought to put a little more money into our military forces?

Lord Ahmad of Wimbledon (Con): I am sure that my noble friend Lord Minto has taken note of the noble Lord's final point. I agree that we are proud of our military, which has stood by countries such as Ukraine. As I said in response to an earlier question, we have assets around the world that we deploy for life-saving missions for humanitarian causes and to ensure that the security of the rules-based order that we adhere to is sustained, maintained and strengthened.

Lord Purvis of Tweed (LD): My Lords, Guyana is the only Commonwealth member in South America. I read the Commonwealth ministerial group communiqué, to which the Minister referred; it endorses the position of the UK as a member of that group. However, if the Commonwealth is to be relevant for its only member in South America, what practical next steps can it take with regard to the follow-up from the CMG meeting yesterday?

Lord Ahmad of Wimbledon (Con): My Lords, I have answered that in question in part. It is important to recognise the role of our Caribbean partners. The meeting being convened is reflective of the unity between Latin American, South American and Caribbean countries, as is the fact that it is being hosted as it is. The noble Lord will be aware of the role of Barbados in looking more to the long term and internally on Venezuela and the situation there. Stability and security in Venezuela are key to ensuring stability and security in the wider region.

Lord Swire (Con): The meeting will convene on Thursday in St Vincent—at which, we hope, the presidents of Venezuela and Guyana will be present. Can my noble friend give any indication as to whether the Commonwealth Secretary-General will also attend that meeting?

Lord Ahmad of Wimbledon (Con): I seem to be taking on the role of diary secretary for a number of people at Questions today. The short answer is that I am sure she is considering the important role of the Commonwealth. The convening power of the Commonwealth is in the incredible 50-plus nations that come together, but this meeting is taking place within the context of co-operation between Latin America and the Caribbean nations. I am not aware of the Secretary-General's attendance but, if I hear that it is confirmed, I will share it with my noble friend.

Business of the House

Announcement

3.21 pm

The Lord Privy Seal (Lord True) (Con): My Lords, we now come to three repeats of Urgent Questions asked in the other place. It may be opportune for me to draw your Lordships' attention to paragraph 6.11 of our *Companion* as to procedures on such Questions. It is a matter for the usual channels whether the initial response or statement is repeated; obviously, it is available in the *Hansard* of the other place if the repeat comes on a following day.

The important thing is that these are Questions, not Statements. If I may say so, I have noticed one or two recent experiences where there have been quite prolix interventions, not only from the other side but from the Government Benches behind me. It is to the advantage

[LORD TRUE]
of the House if we can get as many interventions as possible from noble Lords—for example, nine or 10—in the 10 minutes allowed for these Urgent Question repeats. In a recent instance, only five Peers got in. This business is under Question procedure, not Statement procedure.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I fully endorse the comments of the Leader of the House. These are called Urgent Questions—the clue is in the title.

Former Afghan Special Forces: Deportation

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 11 December.

"I thank the shadow Minister for asking this Urgent Question.

The Afghan relocations and assistance policy is far more generous in design than predecessor schemes such as the ex-gratia scheme. None the less, ARAP is a specific scheme intended to support those who worked for, with or alongside the UK Armed Forces in support of the UK mission or national security objectives in Afghanistan. While we are acutely aware of the difficult circumstances in which many Afghans find themselves, not everyone will be eligible even if they worked for the Afghanistan security forces. Many Afghans have worked in proximity to UK Armed Forces, but this may have been in service of the Afghan Government, in a nation-building capacity, or though working directly with other nations.

CF333 and ATF444, known as the Triples, were Afghan-led taskforces set up to counter drug trafficking and organised crime and they reported into the Afghan Ministry of Interior Affairs. They are therefore a component of the Afghan national security forces and are not automatically in scope for relocation under ARAP. Regrettably, we cannot relocate all former members of the Afghan national security forces under the ARAP scheme. That means that some Afghans, whose bravery and heroism are in no doubt whatever—indeed, I served alongside many of them myself—such as certain members of the CF333 and ATF444 taskforces, will not be eligible for relocation under ARAP. Each ARAP application is assessed on a case-by-case basis. All applications, including those from former members of the Triples, are scrutinised on their own merits and in line with our published policy and eligibility criteria, available on the Government website, and in line with the Immigration Rules. All applicants, irrespective of job role, will be eligible only if they individually meet these criteria outlined in the published policy.

I must emphasise this point for the record: any suggestion that we are making blanket decisions—eligible or ineligible —for any cohort of applicant, or that we have any preconceived position on any application to the scheme, is simply untrue. That is not the approach that Defence takes on processing applications as a matter of policy. The MoD consults the evidence provided from each applicant and our own internal records and engages with internal stakeholders and other departments when determining eligibility in line with the Afghan relocations and assistance policy and the Immigration Rules".

3.23 pm

Lord Coaker (Lab): My Lords, 200 special forces are unable to leave Pakistan or are under threat of being returned there. They fought alongside our troops. Why have we let them down, and why are they facing deportation back to face the Taliban? Why can they not come to this country under the safe passage they were promised?

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): His Majesty's Government are fully aware of their responsibilities under both the ARAP and the ACRS. They are implementing both schemes to the agreed guidelines at pace, in Afghanistan, Pakistan and here in the UK.

Baroness Humphreys (LD): My Lords, the UK has a responsibility to relocate these soldiers, otherwise it is likely that they will either die or spend their lives in prison. Will the Minister make it possible for these soldiers to pursue an expedited application process through either the Afghan citizens resettlement scheme or the Afghan relocations and assistance policy, so that they can reside safely in the UK?

The Earl of Minto (Con): CF333 and ATF444, known as the Triples, were Afghan-led task forces set up to counter drug trafficking and organised crime, and they reported to the Ministry of Interior Affairs. They are therefore a component of the Afghan national security forces and are not automatically in scope for relocation.

Lord Stirrup (CB): My Lords, answers to questions on this issue tend to be full of bureaucratic detail and process. This hardly seems appropriate for people who are facing rapid expulsion from Pakistan and almost equally rapid assassination by the Taliban. Why will the Government not set up a mechanism to pursue this issue proactively and urgently, in order to sort it out? If the Minister needs any advice, perhaps he could turn to the noble Lord, Lord Lancaster of Kimbolton, who has a lot of experience in this area and could point him in the right direction.

The Earl of Minto (Con): I do not disagree with quite a lot of what the noble and gallant Lord said. However, perhaps I may just take a moment to advise noble Lords of the scale of the challenge. There have been 142,000 applications under the ARAP scheme, 95,000 of which are unique—in other words, there are a certain number of repetitions. From April 2023 until the end of August 2023, the bureaucracy coped with 75,000 of those applications. To date, we have settled nearly 14,000 Afghans in this country, and we are hoping to settle another 2,800 by the end of December. There are 2,500 people with approval currently in Pakistan, with whom we have very good relations, and

they all have the document which allows them to leave. In fact, 500 were approved last week. While I am not saying that we are on top of it, we are very close to getting there.

Lord Lancaster of Kimbolton (Con): I thank my noble and gallant friend Lord Stirrup for probably setting me up to fail. I had the privilege of working with some of these Triples during my own service in Afghanistan and was very involved during my time as Minister for the Armed Forces. I accept that this is not straightforward, but I must add my voice to those saying that we owe an absolute duty to these people and we must sort this out. That said, there are many applications, and a lot of false ones. From our perspective, the biggest challenge seems to be our lack of paperwork and documentation, which is causing the delay. While I encourage my noble friend, as others have done, to do everything he can to support these armed forces personnel, please can we learn the lesson from this episode and ensure that we keep the right documentation in future?

The Earl of Minto (Con): In the interests of brevity, I quite agree.

Baroness Coussins (CB): My Lords, can the Minister tell the House why it is no longer possible to provide a breakdown of the jobs of people applying for relocation under ARAP? It is impossible for us now to tell what the success or failure rate is among members of the Triples, or those who do any other job. After all, for the past 10 years or so and until recently, I have been able to find out exactly how many Afghan interpreters have been relocated. Why is the data not now collected on how many applicants are soldiers, interpreters or anything else?

The Earl of Minto (Con): My Lords, the noble Baroness makes a very good point. The accuracy of the data held on large numbers of people requires double-checking and checking again. At the heart of approval under ARAP is the accuracy of exactly what these individuals did.

Lord Browne of Ladyton (Lab): My Lords, in responding to a question about specific individuals in the other place, the Armed Forces Minister told the House that His Majesty's Government

"do not have the employment records of the Afghan special forces".—[*Official Report*, Commons, 11/12/23; col. 631.]

Today, I was informed by a very reliable source that, until at least August 2021, our embassy in Kabul held nominal records for members of CF333 and ATF444, for the purposes of their "top-up pay". They were in our employment and, until at least August 2021, His Majesty's Government held their employment records. Surely, they still exist?

The Earl of Minto (Con): My Lords, I am not certain that the word "pay" is accurate. I think expense recompense is more appropriate, which is different: you gift something and get something back. If the records are there, we will follow them down. I was not aware that they were held.

Baroness D'Souza (CB): My Lords, can the Minister inform the House whether HMG are in direct contact with the Pakistan Government and authorities specifically on this issue, now?

The Earl of Minto (Con): My Lords, I assure the House that His Majesty's Government are in direct contact with the Pakistan Government at the very highest level. They are being extremely co-operative about not returning to Afghanistan people who may be at threat as a result of the recent conflict.

Lord Kamall (Con): My Lords, the Minister mentioned that it is important to follow guidelines to make sure that applicants fall within them. If there are applicants who do not fall within the guidelines but whose lives are clearly in danger, will the Government make exceptions for them?

The Earl of Minto (Con): My Lords, ARAP has got to the stage where things are considered case by case. There is opportunity to be flexible within that.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, is it not important—

The Lord Bishop of Durham: My Lords—

Lord Foulkes of Cumnock (Lab Co-op): But I am from Scotland!

The Lord Bishop of Durham: My Lords, I declare my interest as a trustee of Reset, as laid out in the register. The British population have a lot of sympathy with these Afghans. What work has been done to learn the lessons from Ukraine and see what levels of community sponsorship might be offered to such Afghans who qualify under these schemes, and to welcome them here? I recognise that this is a Home Office question, so I understand if the Minister needs to write.

The Earl of Minto (Con): The right reverend Prelate makes a very good point. Since Pakistan changed its method of treatment of its illegal immigrants, we have managed to bring several hundred people back directly from Pakistan. In fact, another 181 are arriving today or tomorrow. They will go into transitional accommodation before they get into their proper accommodation, as was the case before 17 October. We are certainly on the right route with this.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I do not recall the part of the *Companion* that says that bishops have pre-emptive rights, but never mind. As well as being brief, answers should actually answer the questions put. May I now give the Minister the opportunity to answer the question put by my noble friend Lord Coaker?

The Earl of Minto (Con): My Lords, we absolutely respect that these individuals were brave, fought alongside us and gave support when necessary. Guidelines obviously need to be adhered to, because we are not in a position to offer resettlement to every member of the Afghan

[The Earl of Minto]
national forces. There must be limits, and the way in for these particular fighters and their support staff is through ARAP.

Refurbishing Trains: Contracts
Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 7 December.

"I thank the honourable Member for his Question, which I will answer on behalf of the Secretary of State. The department works closely with rolling stock owners and train operators to understand when new and refurbished trains are likely to be required, and to ensure a regular flow of work for train manufacturing companies. Trains are major assets, with a lifetime of 35 to 40 years, so there will naturally be peaks and troughs in procurement cycles. The average age of the current fleet is 17 years.

The department has overseen the procurement of more than 8,000 new vehicles for the Great British mainline railway since 2012. Some of those are still being produced, including Alstom trains for South Western and West Midlands trains. Passenger travel habits have changed over the past three years, and while numbers are showing signs of improvement, we are still seeing reduced passenger revenue on the railways. We are aware that Alstom is facing difficult trading conditions. It is consulting its unions and employees on possible job losses. While it must be a commercial decision for Alstom, the Government have been working with the company to explore options to enable it to continue manufacturing at its Derby site. Officials from my department and my right honourable friend the Secretary of State for Transport have held regular meetings with senior management at Alstom. We have also convened a cross-Whitehall group to advise on ways to support continued production at Derby and how best to support those workers who could lose their jobs.

The fact remains that the market for passenger trains is competitive. The department cannot guarantee orders for individual manufacturers. None the less, we expect substantial continued demand for new trains. Last month, LNER confirmed an order of 10 new tri-mode trains for the east coast main line, and on Monday, a tender for new trains for the TransPennine Express route was launched. Contract awards are also expected between late 2024 and early 2025 for major orders for Southeastern, Northern and Chiltern. In the meantime, the Government will continue to work with Alstom and other UK manufacturers to ensure a strong and sustainable future for the rail industry".

3. 35 pm

Lord Tunnicliffe (Lab): Alstom's Litchurch Lane factory in Derby has provided high-skilled jobs for generations, but uncertainty over the UK rail industry and the lack of long-term strategy means that those workers are now in jeopardy. The workers are a national asset. People are one of the scarcest assets in this country; an asset that must be looked after to preserve the capability to lead to long-term growth.

Last Thursday, the Rail Minister in the other place, Huw Merriman, said:

"We will be doing everything we can to assist Alstom in keeping that plant open".—[*Official Report*, Commons, 7/12/23; col. 486.]

That is a very hard, precise commitment. Can the Minister tell us what action the Government have taken in the light of that promise?

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, we have been actively involved in discussions with Alstom for several weeks on this matter and have held frequent meetings with the company to look at options around its production gap. We will continue to work with Alstom. A cross-departmental task force has been established and officials are meeting Alstom regularly to discuss how best to support employees at risk of redundancy.

Baroness Randerson (LD): My Lords, in the past, when a major long-standing employer such as Alstom hit a crisis, the Government used to blame the shackles of EU competition law. Well, we are not bound by that any more, so who will the Government blame now? The truth of the matter surely is that the Government need to provide certainty on the new orders required.

The managing director of Alstom, in evidence to the Transport Committee in the other place, made it clear that one of its immediate problems is uncertainty over whether the Government will pursue the £2 billion contract for all the 54 HS2 trains they have ordered. Can the Minister tell us, here and now, whether that is the case? Will the full order still be required?

Lord Davies of Gower (Con): I thank the noble Baroness for that question. What I can say to noble Lords that manufacturers are ultimately responsible for sourcing work for their assembly plants. There are upcoming procurements in the market being run by Northern, Southeastern, TransPennine and Chiltern. It is a competition process that is open to all manufacturers to bid, including Alstom in Derby. The department is also working with the Treasury to set out a pipeline for expected rolling stock orders, to provide the sector with further clarity over the near term.

Regarding HS2, Alstom are part of a contract with Hitachi to design, build and maintain HS2 trains for phase 1 only.

Baroness McIntosh of Pickering (Con): My Lords, may I wish the Government all the best in ensuring a future for Alstom? Who is responsible for ensuring that the overhead electricity wires are fit for purpose? We have seen three outages in two different parts of the country, one of which lasted three days and caused absolute havoc on the east coast main line. This cannot be sustainable. Will the Minister assure us that there is a rolling programme of improvements and refurbishment of the overhead lines, particularly on the east coast main line?

Lord Davies of Gower (Con): Well, we have been subject to adverse weather, of course. I can, however, assure my noble friend that Network Rail is responsible for overhead lines. I will take her comments back to the department.

Lord Grocott (Lab): My Lords, I do not think the Minister answered properly the question about HS2. It was, in my view, a disastrous decision made by the Government to cancel the Derby and Manchester links, so can he tell us how many trains were required, had those links still been about to be built, and how many trains are now required, so we can work out the deficit for ourselves? While he is about it, will he please answer a question which his department has repeatedly been unable to answer for me as a Written Question: precisely how much money has been lost—wasted—as a result of the cancellations to which I have referred?

Lord Davies of Gower (Con): The noble Lord asks two very fair questions. I do not have those details to hand, but I will ensure that he gets them in written form.

The Lord Bishop of St Albans: My Lords, last week in the other place the Department for Transport said that the contract tenders for refurbishing existing trains would be brought forward very soon. Time is short for Alstom, the only end-to-end manufacturing facility in the UK. Can the Minister give any assurances about how soon these contracts will be brought forward, because the days are now being counted down?

Lord Davies of Gower (Con): I cannot give any specifics in terms of days, but the department is certainly aware of this and will bring it on as soon as possible. I assure the right reverend Prelate that, if I can ascertain exactly how many days, I will write to him with the information.

Baroness Butler-Sloss (CB): My Lords, it may be my fault, but I have not actually understood whether the current HS2 contract with the company is or is not going to go forward.

Lord Davies of Gower (Con): The contract with HS2 and Alstom will go forward in terms of phase 1.

Lord Watts (Lab): My Lords, the Minister says that there will be investment in the railways. We know that there is money being kept safe from the cancellation of High Speed 2; how much of that is going to be transferred to northern schemes, because it looks quite clear that the Government are transferring money intended for the north down to the south?

Lord Davies of Gower (Con): If I am correct, I believe it was somewhere in the region of £30 billion to £34 billion.

Lord Ranger of Northwood (Con): My Lords, having had a small passion around railways and networks—in fact, the last time we ordered some new rolling stock for London, I was with the then mayor as we brought the S stock trains into London—I have looked at the timelines and supply chains, especially with manufacturers in and across the UK. Does the Department for Transport have a view on what rolling stock may be part of the ordering book when we look at network north plans, and also for plans for the London Underground, which seem to be going a bit slower than they should be?

Lord Davies of Gower (Con): Well, the department is always talking with rail operators and manufacturers. Of course, rail manufacturers play an important role in growing the UK economy, and there is a strong pipeline for future orders for UK rail manufacturers. As I perhaps alluded to earlier, there are upcoming procurements in the market being run by Northern, Chiltern, TransPennine and Southeastern; this competition process is open to all manufacturers to bid, including Alstom. As I said earlier, the department is also working with HM Treasury to set out a pipeline for expected rolling stock orders, to provide the sector with further clarity over the near term.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, it is a pity that the noble Lord, Lord Young of Cookham, is not here for this, because he is the guilty man, as he was the Minister who privatised the railways in such a chaotic way. As well as the overhead lines and the rails being run by one company, and the actual services by other companies, the LNER reminded me recently that it does not actually own its trains—it only rents them. It is total chaos. I seem to remember that this Government—on their last legs now, but nevertheless—suggested some kind of "Great British Rail" set-up, to try to improve the position. What has happened to that?

Lord Davies of Gower (Con): It has been the case for many years that train companies lease their rolling stock, and that still is the case.

Baroness Kramer (LD): My Lords, could the Minister unpack the statement he has made, which sounds so very reassuring, that the Government will abide by the contract for the purchase of trains for phase 1 of HS2? Surely, the train manufacturer invested and provided facilities for the HS2 project overall. The same trains of course would run beyond Manchester when the line was extended and, therefore, you cannot mix and match two different sets of trains. Has he looked at the economics of the decision that has been made and understood what the consequences are for the manufacturer with which he is contracted?

Lord Davies of Gower (Con): I say, in answer to the noble Baroness's question, that Alstom is part of a contract with Hitachi to design, build and maintain HS2 trains for phase 1 only. Phase 1 of HS2 between Birmingham and London will continue, with a rescoped Euston station. We expect Alstom's contractual obligations to be honoured with HS2 Ltd.

Israel-Hamas War: Diplomacy
Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 11 December.

"I thank the right honourable Gentleman for his Question. The Government are undertaking extensive and global diplomatic engagement to get much greater aid into Gaza, support British nationals and the safe return of hostages, and prevent dangerous regional escalation. Days after Hamas's brutal attack, the then

Foreign Secretary was in Israel to see for himself the devastation wrought by this heinous act of terrorism, and his successor visited in late November to continue dialogue with Israeli leaders. Last week the Prime Minister discussed the latest efforts to free hostages with Prime Minister Netanyahu, and stressed the need to take greater care to protect civilians in Gaza. Two days later, the Foreign Secretary discussed the future of the Middle East peace process with the US Secretary of State in Washington.

The situation in Gaza cannot continue, and we are deploying all our diplomatic resources, including in the United Nations, to help to find a viable solution. The scale of civilian deaths and displacement in Gaza is shocking. Although Israel has the right to defend itself against terror, restore its security and bring the hostages home, it must abide by international law and take all possible measures to protect civilians. We have called for further and longer humanitarian pauses. It is imperative that we increase the flow of aid into Gaza, but as we have said at the UN, calling for a ceasefire ignores the fact that Hamas has committed acts of terror and continues to hold civilian hostages.

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".

3.46 pm

Lord Collins of Highbury (Lab): My Lords, we are all agreed: a cessation of hostilities to give space and time to get food, water, electricity and medicine into Gaza is essential. Although Israel has the right to defend itself against terror and bring back the hostages, it must act within international and humanitarian law. Andrew Mitchell said yesterday:

> "We continue to identify and look for mechanisms for ensuring that there can be no impunity".—[*Official Report*, Commons, 11/12/23; cols. 618-19.]

Does the Minister recognise that the International Criminal Court has jurisdiction to address the conduct of all parties in Gaza? As he knows, I have asked before about whether the Government will match the US and impose travel bans on illegal settlers involved in attacks, serious criminal activity and fostering hatred in the West Bank. Andrew Mitchell also said yesterday that the UK was

> "seeking that those responsible should be not just arrested but prosecuted and punished".—[*Official Report*, Commons, 11/12/23; col. 614.]

Did the noble Lord, Lord Cameron, discuss travel bans with his US counterparts last week? When can we anticipate an announcement that we will follow suit?

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, on the noble Lord's second question, my noble friend Lord Cameron was in Washington and, as I said last week, there were discussions on a wide range of issues including the situation in the Middle East. The noble Lord will know that I cannot speculate at this time, but I assure him that we are fully seized of the actions the US has taken and are reflecting on what further actions we can take on settler violence. Again, we are very much at one on this. The Government's position and the Opposition's is that settler violence must be stopped, but as my noble friend the Foreign Secretary said when he visited Israel and the OPTs, it is not just about stopping the violence; it is also about holding perpetrators to account.

On the issue of the ICC, the UK remains a strong supporter. As a state party to the Geneva conventions, it is also important that Israel recognises its accountability and responsibility. As a democratic Government and a democratic state, I am sure it will adhere to that. On the wider issues of humanitarian routes and access, the noble Lord knows that both my noble friend Lord Cameron and I have been fully engaged. I returned from Doha only last night. One of the key areas we were focused on is the importance of releasing the hostages and getting humanitarian relief into Gaza. We welcome the announcement from Israel on the checking facility at Kerem Shalom. The UK was the first to raise this and we hope that we can restore the full operational capacity and capability of Kerem Shalom to get vital, life-saving aid into Gaza.

Lord Purvis of Tweed (LD): My Lords, as the Minister is aware, I too have just returned from Doha, this lunchtime. During my visit, I met separately with the Prime Minister, the assistant Foreign Minister and the Minister of State, as well as the Jordanian Foreign Minister. All those discussions covered the need for opening up and providing immediate life-saving humanitarian assistance. From these Benches we stress our repeated call for an immediate bilateral ceasefire to stop the air attacks from the Israeli Government, as well as a period in which all hostages would be returned. That would signal day one of a much-needed political track. It needs to involve moderate Israeli leaders, as well as a reconstruction of a Palestinian entity. What support are the UK Government giving to that much-needed political track, as part of an enduring ceasefire?

Lord Ahmad of Wimbledon (Con): My Lords, we are working extensively on those very points. As I have said before, as friends and allies of Israel we understand its security issues—but, equally, people within Israel and in the wider region understand that for the medium and long term this means security, justice and stability for Israelis and Palestinians alike. We are very much engaged on a range of diplomatic tracks. Together with my noble friend the Foreign Secretary, we have been engaging directly in the region; the Prime Minister has also visited a number of times. This week we will have some inward visits from Ministers within the region. What really needs to happen is what we have talked about before: a revitalised contact route that ensures we understand the current realities on the ground. Both Israel and the Palestinian leadership need to be part of that.

I further assure the noble Lord, on the diplomatic track and ensuring some sustainable agreements, that we welcome—as all noble Lords did—what happened in the pause. That cessation allowed for hostages to be returned. I also agree with him that the release of the hostages is the vital first step to ensuring that we see lasting and sustainable peace in the Middle East.

Lord Robathan (Con): My Lords, should Hamas release all the hostages and lay down its weapons, and should the terrorists who perpetrated the appalling atrocities on 7 October flee to the Gulf to live in luxury hotels with their leaders, would there not be an immediate ceasefire? Peace might be able to come. We could then decide some long-term political future for the Palestinians and the Israelis.

Lord Ahmad of Wimbledon (Con): My Lords, I agree with my noble friend that as a first step, as I have said, the hostages must be released. It is a no-brainer, as far as I am concerned. Those people were taken, so that will be a vital first step. The other issue to recognise is that we have proscribed Hamas as a terrorist group. It is for Hamas to choose its pathway. Does it want to put down weapons and talk peace? Then say so and put that offer on the table. I alluded earlier to being in Qatar. We are seized of ensuring that, in every country, we deliver the vital messages to those who have influence over Hamas. Given the priority of releasing the hostages and bringing a cessation to the violence we are seeing, Hamas needs to lay down its weapons and say that it no longer wishes to continue to attack Israeli interests.

Baroness Meacher (CB): My Lords, does the Minister accept that following the widespread breaches of human rights by both Israel and Palestine over quite a period, it has now become urgent for the international community to bring pressure to bear on them both to replace their leaders with those who genuinely respect the human rights of both communities? Only with such leaders on both sides—it will not do if it is simply on one side—will Israel and Palestine have hope to live in peace in the future.

Lord Ahmad of Wimbledon (Con): My Lords, I am sure the noble Baroness agrees that it is for Israelis and Palestinians to choose who leads them, but I agree with the sentiments that she expresses. It is important that we have people who recognise, as difficult as peace is, how a sustainable peace can be possible. That is why we have committed ourselves to revitalising and energising the peace process that leads to the delivery, in practical terms, of the two-state solution—not just one in which Israel and a Palestinian state live side by side in peace and security but one in which there is a recognition that real strength comes from the inter-dependency of people and communities.

Lord Dubs (Lab): My Lords, have the Government considered, in conjunction with our friends, sending hospital ships to the region to provide emergency medical help to people in Gaza who are not getting it in their own hospitals?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord is right to raise that. Our discussions with key Gulf partners and directly with Israel are about opening land routes, which are the most effective routes. That is why I alluded earlier, in response to the noble Lord, Lord Collins, to Kerem Shalom. These are six lanes instead of the one lane from Rafah, and we will continue to implore that. I assure the noble Lord that we are looking at all routes, including maritime routes, to provide support and aid into Gaza. We also recognise that where we can provide support we should, whether through supporting countries that have field hospitals in Gaza or through a specific idea that the French have had and that we are exploring, involving vessels that we have currently deployed for humanitarian support and the flexibility to provide support in the way the noble Lord suggests.

The Lord Bishop of Durham: My Lords, this tragic situation is also caught up in the complexity of the religious faiths of the region. In what way are faith leaders involved in the diplomatic conversations to seek to bring peace?

Lord Ahmad of Wimbledon (Con): My Lords, to me that is fundamental. There is a unifying factor, which from the Muslim perspective was the prophet Abraham, and we all recognise that. Faith leaders have an important role: they can bring people together as an important part of track 2 diplomacy. I am engaging directly with faith leaders because I believe to my core that faith is about bringing people together, not dividing us.

Lord Pickles (Con): My Lords, I draw attention to my entry in the register of interests, particularly my interests relating to friendship with Israel. Was my noble friend as shocked as I was this morning to see videos of much-needed aid going into Gaza being hijacked at gunpoint by Hamas in front of Palestinian citizens? Given this callous disregard for the interests of Palestinians within Gaza, has my noble friend received any indication from the bloodstained, child-murdering rapists of the terrorist group Hamas that they have even the slightest interest in abiding by any diplomatic initiative?

Lord Ahmad of Wimbledon (Con): My Lords, I have not seen those specific videos but I have seen earlier videos about the atrocities and the abhorrent attacks of Hamas. I have already said that we regard Hamas as a proscribed group. It has shown by its actions, and continues to demonstrate, that the welfare of the people of Gaza—the Palestinians and the civilians who are suffering—is not a priority for it. We want to see unhindered access, which is why we are working with Israel and other key partners, including Egypt, to ensure that can happen. We are also working with key partners that have influence over Hamas because it is important to ensure that there is a reality check. This will not stop until it does the right thing. There are the wider issues of the Middle East peace process, which we are also working on, but as a first step it must release the hostages. Let us have a cessation of hostilities. We want to allow unhindered access for aid to reach the most vulnerable, and that is needed now.

National Insurance Contributions (Reduction in Rates) Bill

Second Reading

Relevant document: 3rd Report from the Delegated Powers and Regulatory Reform Committee

3.59 pm

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

That the Bill be now read a second time.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, the past few years have been a somewhat unhappy lesson in living through history, be that the impact of a once-in-a-generation pandemic or the shock waves of the largest conflict in Europe since World War II. Covid and Putin's illegal invasion of Ukraine have forced this Government to take tough decisions to protect the public purse. Thankfully, the choices we have made are paying off: inflation is falling, this year's growth is more resilient than expected and debt is forecast to reduce. This makes it possible to pay back working people while ensuring that public money remains sound.

Thanks to this Government's long-term plan, this Bill will slash taxes for 29 million working people. It has three measures: the reduction of the national insurance contributions—or NICs—class 1 primary main rate; the reduction of the NICs class 4 main rate; and the removal of the requirement to pay class 2 NICs. The measures all fundamentally deliver on a core priority for this Government: allowing working people to hold on to their hard-earned cash. I shall explain each of the measures in more detail.

First, the Government's changes to the employee class 1 NICs main rate will reduce it by two percentage points to 10% on earnings between £12,570 and £50,270, from 6 January 2024. This is a change that puts working people first. For example, the average worker on £35,400 will see and feel an annual improvement of £450 to their payslip at the start of the new year. An average full-time nurse will see an annual gain of over £520. Families with two earners on the average income will be £900 better off, because this Government believe that hard work should be rewarded.

Our remaining two measures focus on NICs for the self-employed. The Chancellor highlighted the importance of the self-employed in his Autumn Statement speech, commenting that:

> "These are the people who literally kept our country running during the pandemic: the plumbers who fixed our boilers in lockdowns, the delivery drivers who brought us our shopping and the farmers who kept food on our plates".—[*Official Report*, Commons, 22/11/23; col. 333.]

This fantastic workforce also deserves to be recognised. Of course, to be self-employed you need to be organised, efficient and responsible, and the Government should not get in the way of that. The self-employed want to stand on their own two feet, and the Chancellor stands ready to support this with two tailored interventions. The first is a cut in the class 4 rate by one percentage point, from 9% to 8%. The second removes the requirement for the self-employed with annual profits above the income tax personal allowance to pay class 2 NICs. Those who wish to pay voluntarily will still be able to do so. Both measures will be in force from 6 April 2024.

These changes simplify the system for self-employed taxpayers, bringing it closer to the system for employees. These measures mean that a typical self-employed plumber will gain £410 a year. The Government intend to fully abolish class 2 NICs, reducing needless complexity and freeing up valuable time. Further detail about this reform will be set out next year. As a result of changes in the Bill, a self-employed person who is currently required to pay class 2 NICs every week will save at least £192 per year. Taken together with the cut to class 4 NICs, this will benefit around 2 million people. Importantly, those with profits under the small profits threshold of £6,725, and others who pay class 2 voluntarily to get access to contributory benefits, including the state pension, will continue to be able to do so. No low-income, self-employed people who pay voluntary NICs will be asked to pay more.

The Government are committed to tax cuts that reward and incentivise work, and which grow the economy in a sustainable way. The tax cuts in this Bill will be worth over £9 billion a year—the largest ever cut to employee and self-employed national insurance. These measures will give 29 million working people an average yearly saving of over £450. That is fair and that is right. Nor will these measures benefit only those already in work. According to the Office for Budget Responsibility, these reductions in tax will lead to an additional 28,000 people entering work, because ensuring that work pays will encourage more people to seek employment. Be in no doubt that we are doing the right thing by standing with the hard-working people of this country and ensuring that their contributions are recognised and fairly rewarded.

4.05 pm

Lord Sikka (Lab): My Lords, in the era of never-ending real wage cuts, high inflation, high taxes, high interest rates and the cost of living crisis, any help for hard-pressed households is welcome, but that cannot hide the Government's sleight of hand. Let us remember that last year the Government were prepared to increase the national insurance contribution rate for employees from 12% to 13.25%. They did not really feel that there was any need to help the poorest then. Now that they are doing incredibly badly in the opinion polls, some bribes are obviously coming out and this 2p cut is just one example.

Of course, people will not be fooled by the bribes; they will remember what the Government have done to them. Since March 2021, the income tax personal allowance and thresholds have been frozen and will remain frozen until 2027-28 or maybe even beyond. In 2022, the UK had a tax-to-GDP ratio of 35.3% compared to the OECD average of 34%, and it is going to get worse because of fiscal drag: millions more people are going to be paying income tax and national insurance contributions because of that.

Since March 2022, the threshold for national insurance contributions has also been frozen. Due to the impact of inflation on VAT, higher duties, income tax and national insurance, the additional tax yield is expected to be around £57 billion in 2027-28. This shows that the Government's claim that they are handing things back to the people is really a work of fiction. The cut in the main rate of national insurance for employees from 12% to 10% and changes in rates for the self-employed will hand back, according to the OBR, £2.2 billion in 2023-24 and £9.4 billion in 2024-25, rising to £10 billion in £2028-29. That is a total of nearly £50 billion.

What are the Government going to collect through national insurance contributions for the same period? According to the OBR, despite the cut in the rate, they

will collect £62 billion—£12 billion more than the cut they are handing back. That is all because of fiscal drag. Can the Minister explain why the cut in the national insurance contribution rate does not fully wipe out the increase in revenues from the contributions? Whichever way anyone looks at it, this cut is part of an impression management exercise. It is a small part of the additional taxes that the Government have already collected and will continue to collect.

In line with their usual practice, the Government are handing a lower amount of the national insurance cut to the less well-off and more to the rich. The annual median wage for an employee is £29,669, so a median-wage earner will get a cut of just £341 a year. Those earning more will collect far more. The median earners will still pay a higher proportion of their income in national insurance contributions than wealthier individuals: the Resolution Foundation concluded that the Budget favoured the richest 20% of earners. It will be interesting to see whether the Minister wants to deny that.

As people in London and the south-east of England tend to have higher wages, they will collect a bigger national insurance cut compared to the rest of the country. Due to the Government's failure to address regional disparities, inequalities will now be widened. In the last tax year, 21 million adults had a taxable income of less than £12,570 and, as a result, were not liable to pay any national insurance contributions. Due to fiscal drag, that number is now around 19 million. The national insurance cut delivers zero benefit to 19 million adults, the majority of whom are women. This includes families who have been robbed of nearly £3,000 a year by the Government's two-child benefit cap. As usual, the poorest are invisible to the Government. Can the Minister please explain the impact of the national insurance cut on regional and gender inequalities?

The national insurance cut provides little comfort to most families. Savings for median earners are immediately wiped out by the higher price of food, energy, transport, interest rates, mortgage payments, rents and council tax—there is no benefit. The Resolution Foundation estimates that, due to sluggish economic growth, persistent inflation and higher taxes, the average household will be £1,900 a year poorer by January 2025, compared to December 2019—that is a real legacy of the Government. There is no redistribution or levelling up; nothing in the Bill matches that.

The Government could have helped the 19 million adults receiving zero benefit from the national insurance cut by abolishing VAT on domestic fuel, or by cutting the standard rate of VAT, but they chose not to do that. The cost could have been met by clawing back the benefit of the 2% national insurance cut from the richest individuals—for example, by making the national insurance contribution rate more progressive for individuals on higher incomes. Patriotic Millionaires have urged the Government to tax them more, but the Government do not even want to do what the rich are urging them to—possibly because those rich people are not in the Conservative Party.

In case the Minister is tempted to say that the Government have helped the poor by increasing benefits, I remind her that the real value of benefits has fallen since 2010. The Government could have addressed the anomalies in the national insurance contribution laws. For example, there is no economic or moral reason for exempting capital gains, dividends and investment income from national insurance payments. The individuals enjoying exemptions use the National Health Service and social care system, but do not pay anything towards them. If a rich person with capital gains has an accident, a taxpayer-funded ambulance and the NHS would come to the rescue, so why do they not pay national insurance contributions? What is the moral and economic justification? The Government could have raised billions of pounds by eliminating that anomaly.

The Government could also have hit the tax avoidance industry. I know many accountants who are busy converting incomes to capital gains so that certain individuals not only pay tax at a lower rate but dodge national insurance contributions. The Government have done absolutely nothing to deal with that. Of course, getting rid of the tax avoidance industry helps with economic efficiency as well, but again the Government are oblivious to that. Can the Minister explain why investment income in the hands of comparatively few people continues to be exempt from national insurance payments? What is the justification for this? If she wishes, I would be delighted to participate in any debate that she might wish to call on this.

4.13 pm

Baroness Primarolo (Lab): My Lords, I will make a short intervention in this debate to ask the Minister a few questions about the allocation from the National Insurance Fund to the NHS following the introductions of the measures in the Bill.

The Institute for Fiscal Studies estimates that 19% of the National Insurance Fund is paid directly to the NHS. My first question to the Minister is, will she confirm that that percentage is correct? When Governments quote figures going to the NHS, they always talk in cash terms, but when we see a reduction in funding for the National Insurance Fund, it is good to know exactly what we are talking about. Will the Minister confirm the percentage allocated to the National Health Service from the National Insurance Fund?

Secondly, will the Minister assure your Lordships' House that the cash value currently paid in funding to the NHS from the National Insurance Fund will not be reduced as a result of these measures? Would she be good enough, after this debate, to provide the forecast figures for both the percentage and the cash terms of the money paid from the National Insurance Fund to the NHS? Should there be any shortfall, will she give an undertaking on behalf of the Government that that reduction—that loss of funding—will be made good by the Government from general taxation: that it will be earmarked not as extra funding but as replacement funding, should there be any reduction as a result of the measures in the Bill?

I absolutely appreciate that national insurance Bills are incredibly complicated, having dealt with them in the past in another place, so if the Minister does not have that information at her fingertips, which I would entirely understand, I would be more than happy for her to write to me and the relevant spokespersons in the House with those figures. While reducing national

[Baroness Primarolo]
insurance has the implications that the Minister has rightly identified, it also has a potential downside, and we need to know what that is. Will the funding of the National Health Service be protected?

4.17 pm

Baroness Kramer (LD): My Lords, I start by thanking the noble Baroness, Lady Primarolo, because the point she raised is one I think we did not raise in our discussion of the Autumn Statement and perhaps did not have the front of our minds as this Bill went through. The link between national insurance contributions and funding of the NHS is critical. In thinking about it, I am astonished that an impact statement did not discuss those consequences, and I do not remember them being raised by the OBR or in other discussion papers. The issue the noble Baroness has raised is critical, and I thank her very much for asking that we all share in the Minister's reply. Again, I have sympathy for the Minister: I doubt very much whether she has these numbers at her fingertips.

The Liberal Democrat Benches are obviously not opposing the Bill, but I would like to set a bit of context. I shall refer to the work of the Resolution Foundation, quoted extensively by the noble Lord, Lord Sikka, which last week published the third and final phase of its report *Ending Stagnation* and provided us with updated numbers that graphically expose the price that UK households are paying for that economic stagnation. If real pay growth had continued to follow the trend from before the 2008 financial crisis, the average British worker would be £10,700 a year better off—a really significant figure. There are almost 9 million younger Brits who have never worked in an economy that has sustained rising wages. As a consequence of that impact on wages, the UK is now Europe's most unequal large economy. That used not to be true. Our poorer families are now a staggering 27% worse off than their French and German counterparts. That is a measure we rarely look at, but it is critical. Obviously, when ordinary families are trying to cope with stagnant wages and a cost of living crisis, it is particularly unacceptable for a Government to dress up a rise in taxes as tax cutting.

By 2028-29, the freezing of the national income tax thresholds adds £45 billion a year—not over that time, but a year—to taxpayers' annual tax bills, offset by the rate cuts we are discussing today only to the tune of £10 billion annually. If this Government were a private company, I suspect that trading standards would have a very dim view of an entity that presented an annual increase in charges of £35 billion as a cut. The public will be none too impressed when they find out the hard way, as I said in the Autumn Statement debate, that a typical earner will pay £400 more next year in tax and NICs after these measures, and a middle-income earner will pay £1,200 more. Like the noble Lord, Lord Sikka, I used that debate to point out the inequality of the distribution of the rate cut, with five times as much going to the top fifth of earners, compared with the bottom fifth. That distribution is a choice. Interestingly, the noble Lord, Lord Dobbs—who is not in his place today, perfectly understandably—described himself in that debate as a struggling self-employed person. When the Government decided that they needed to look most closely at and give most support to the top fifth of earners, perhaps they had the noble Lord in mind.

I note that the NIC rate cuts offer some relief to self-employed workers. This is a group that particularly lost out during Covid. The sector is, frankly, also suffering from HMRC's harsh and shambolic loan charge regime, which is doing little to stop promoters mis-selling tax products, but is continuing to drive to breakdown and even suicide individuals who got caught up in the loan charge because they followed advice in good faith. To date, as the Minister will know, HMRC has referred 10 suicides to the IOPC, and three more are contested.

We have to change the way we deal with the self-employed sector. I very much hope that the Government will—as they often promise but never actually do—follow through on the 2017 Taylor review, which called for and fashioned principles for the update of working relationships, taking them from the past into today's world of business. In that, there is new opportunity for the self-employed.

4.22 pm

Lord Livermore (Lab): My Lords, the Labour Party supports this Bill, and we welcome the cuts in national insurance that it contains. We have long argued that taxes on working people are too high, and that we want them to be lower.

We have been consistent in this view. We opposed the manifesto-breaking increase in national insurance that the Prime Minister tried to implement last year, when he was Chancellor. When he introduced his 1.25% increase in national insurance contributions for employees and employers—his so-called health and social care levy—we described it at the time as

"a new tax on working people and their jobs".—[*Official Report,* Commons, 14/9/21; col 845.]

When it became clear to him that the Labour Party was correct to say that this was the worst possible tax rise at the worst possible time, he attempted a partial U-turn, and then, eventually, the increase in national insurance was rightly reversed.

Unfortunately for working people, this reprieve to their living standards was short-lived, as it was quickly followed by the Government's disastrous mini-Budget, which crashed the economy and sent interest rates and mortgage rates soaring. Interest rates have now risen 14 times to a 15-year high of 5.25%, while the average two-year fixed-rate mortgage at one point rose from 2.6% to over 6%. As a result, families re-mortgaging since July have seen their mortgage payments rise by an average of £220 per month. Some 1.6 million families have seen their mortgage deals end this year. Next year, a further 1.5 million families will face a similar fate.

According to the Resolution Foundation, this Parliament is now on course to be the first ever in which real household incomes fall. We are now seeing the biggest ever fall in living standards since records began. The cut in national insurance that the Bill contains is not the full story on tax, nor does it represent the reality that many British people now face.

Despite what the Government would like us to believe, and in contrast to the claim the Minister made in her opening speech that the Government are paying

back working people, the reality—as the Institute for Fiscal Studies, the Resolution Foundation and the House of Commons Library have all made clear—is that taxes are going up, not down. As the noble Baroness, Lady Kramer, implied, it is important that we are all honest about that point. The truth is that the tax burden will now rise every single year for the next five years, rising to its highest ever level and making this the biggest tax-raising Parliament ever. Indeed, new data published just this week by the OECD showed that the UK's tax burden has now increased to its highest rate ever on record.

Prior to the Autumn Statement that announced the cut in national insurance we are debating today, the Government had already put in place 25 tax rises amounting to £90 billion and the equivalent of a 10p increase in national insurance. This 2p cut does not remotely compensate for the tax increases already announced. As my noble friend Lord Sikka pointed out, the Resolution Foundation has calculated that, even after this cut to national insurance, households will still be £1,900 worse off.

These cuts to personal taxation are more than eclipsed by increases in taxes that the Government have previously announced. For example, the freezing of national insurance and income tax thresholds for six years is now expected to cost taxpayers £45 billion. This fiscal drag means that nearly 4 million more people will pay income tax and 3 million more people will pay the higher rate. The combined effect is an average tax rise of £1,200 per household.

According to Paul Johnson from the Institute for Fiscal Studies, the cut in national insurance rates

"pales into … insignificance alongside the … increase in personal taxes created by the six year freeze in allowances and thresholds".

The IFS has calculated that, extraordinarily, almost every single person in the UK liable for income tax or national insurance will now be paying higher taxes overall. As a result, the tax burden will now reach 37.7% of GDP by the end of the forecast period, an increase equivalent to an astonishing £4,300 of additional tax for every household in the country. This is a tax-raising Government.

The actual lived experience of the British people is not that their taxes are going down; it is that their taxes are going up. The reality that working people face is not that they will be better off; it is that they will be worse off. We should all be honest about that fact. We should be honest, too, about the reasons why: taxes are so high in this country because growth is so low. The UK's growth record over the past 13 years has been poor by international standards. We have languished in the bottom third of OECD countries, with 27 OECD economies growing faster than us since 2010. Over the next two years, no fewer than 177 countries are forecast by the IMF to grow faster than the UK. For this year and next, we will be 35th out of 38 OECD countries for growth.

The latest outturn figures for GDP show that there was no growth at all in the third quarter of this year. In the Autumn Statement, the Office for Budget Responsibility downgraded its forecast for growth in each of the next three years, so that growth in 2024 is now forecast to be just 0.7%—more than half the 1.8% predicted as recently as the Budget in March. The Bank of England's view is that even that is too optimistic; its latest forecast shows no growth at all in any of the next three years—no growth this year, next year or in 2025.

That is the economic reality faced by the British people—the reality of 13 years of failure. Growth and living standards are down; mortgage rates and taxes are up. The tax burden will now rise every single year for the next five years, rising to its highest ever level and making this the biggest tax-raising Parliament ever, with an average tax rise of £1,200 per household. While the cut to national insurance is welcome, the British people will conclude that it is simply too little, too late.

4.29 pm

Baroness Vere of Norbiton (Con): My Lords, I am enormously grateful to all noble Lords who have taken part in this relatively short debate. As your Lordships might expect, I did not agree with all the points, statistics and bits of data that were shared, and I will obviously have my own, but I will try to stick within my wheelhouse and stay within the realms of national insurance today.

However, I want to comment on the general thrust from the noble Lords, Lord Sikka and Lord Livermore, and the noble Baroness, Lady Kramer. It was just extraordinary. I feel really pleased that everybody has now come round to the Conservatives' way of thinking that taxes are too high, and we need to think about reducing them and we must do so responsibly. I am grateful for that vindication of the Conservatives' policy when it comes to personal taxes. We agree that they are too high, but of course many of the tax rises that are forecast to come into place—I absolutely accept that taxes will go up, although this national insurance cut reduces them—are already announced and baked into the figures.

I did not hear many noble Lords recognising the reasons why we needed to put taxes up—

Baroness Kramer (LD): I was very tactful not to point out that the Minister, as with all Conservatives—I think they have probably signed an oath somewhere—did not mention Brexit and the economic damage it has done, which is a fundamental part of all this. In giving the history of the things that have gone wrong, it is best not to lecture the House when the Government are deliberately leaving out one of the key culprits.

Baroness Vere of Norbiton (Con): My Lords, I definitely was not lecturing the House—far be it from me to do so. However, it would obviously not be a debate without a Liberal Democrat mentioning Brexit.

I am going to move on from that general observation that I am pleased that there is this political groundswell now back behind the Conservatives for lower taxes, which is excellent—

Lord Sikka (Lab): My Lords, I apologise for intervening, but just to back up the Liberal Democrats, it is not just Brexit. As the Minister will know, since 2010, between £450 billion and £1,500 billion of taxes have not been collected due to avoidance, evasion, fraud and error. If only a fraction of that had been

[Lord Sikka]
collected, the Minister can imagine how the whole country would have been transformed. If the Minister is looking to expand the debate, here is a point to talk about.

Baroness Vere of Norbiton (Con): The Minister is definitely not looking to expand the debate but is trying to make progress. I hear what the noble Lord says, and if he has read the Autumn Statement, which I am sure he has, he will have seen the announcements made in it about tax avoidance.

Moving on to comments made by noble Lords, I think it is probably not worth rehearsing and rehashing the elements around fiscal drag. Again, I want to put some numbers on record, because there is an opportunity to do so. Thanks to the cut in employee national insurance contributions announced at the Autumn Statement and to above-average increases to starting thresholds since 2010, an average worker in 2024-25 will pay more than £1,000 less in personal taxes than they would otherwise have done. That statement has attracted some interest, and I reassure noble Lords that the calculations underlying this statistic are based on public information, including a published estimate of average earnings. They are robust and could be replicated by an external analyst. This goes back to what I was trying to say about data. Lots of people will do calculations on different bases, but at the end of the day, from the Government's perspective, we want taxes to come down—this is a start—but of course we will do it only in a responsible manner. However, personal taxes for somebody on an average salary of £35,400 have come down since 2010.

The noble Lord, Lord Sikka, asked about distribution analysis, and the national insurance cuts will of course benefit everybody who pays national insurance. That includes 2.4 million people in Scotland, 1.2 million in Wales, 800,000 in Northern Ireland, et cetera. The latest published HMRC data for 2021 shows that the largest proportion of income tax payers reside in the south-east, followed by London. It will be the case when one has a tax cut that those who pay the largest amount, and the numbers of people who pay tax if they are located in certain areas, are therefore going to see the largest reductions.

However, we have also looked at the impact on women—again, an issue raised by the noble Lord, Lord Sikka. NIC charges apply regardless of personal circumstances or protected characteristics. The equalities impact will reflect the composition of the NIC-paying population. Of course, that feeds into whether we would like women to be paid more. Of course we would. That is why rewarding work will see 28,000 people come into jobs—and I very much hope that they will be well-paid jobs and will be taken up by women.

The noble Lord, Lord Sikka, talked about better-off households. Distribution analysis published at the Autumn Statement shows that a typical household at any income level will see a net benefit in 2023-24 and 2024-25, following government decisions made from the Autumn Statement 2022 onwards. Low-income households will see the largest benefit as a percentage of income. Furthermore, looking across all tax, welfare and spending decisions since the 2019 spending round, the impact of government action continues to be progressive, with the poorest households receiving the largest benefit as a percentage of income in 2024-25. I know that the noble Lord feels that we do not focus on those on the lowest incomes, but he is not correct in that regard.

Baroness Kramer (LD): You cannot eat a percentage of income. Going out and buying a loaf of bread costs you just the same whether you are a high earner or a low earner. So, using the percentage of income comparator to understand the cost of living pressures that people are living under and who is getting the most benefit is not the appropriate measure. If you use the cash number, you realise how much purchasing power arrives for people at the bottom end and how much more purchasing power arrives for people at the top end. That is the appropriate benchmark.

Baroness Vere of Norbiton (Con): I absolutely accept that the noble Baroness is right to say that you can look at it in a different fashion but, in terms of whether what the Government are doing is progressive, it is fair to say that people on lower incomes are benefiting, as a proportion, to a greater degree. Of course, the Government have intervened when it comes to cost of living. That has been cash and that is not about percentage of income. It is all around our energy price guarantee, increases to the national living wage and looking at the uprating of benefits, which will rise by much more than inflation is forecast to be next year. So there are lots of different factors to take into account and sometimes one can be quite blunt when dealing with a tax cut that is, frankly, going to benefit 29 million people.

The noble Lord, Lord Sikka, asked why national insurance contributions do not apply on unearned income. National insurance contributions are part of the UK social security system, which is based on a long-standing contributory principle centred on paid employment and self-employment. 'Twas ever thus. Of course, a future Government may make substantial changes to that which would again increase the tax burden—but this Government are content that we will maintain the contributory principle.

Lord Sikka (Lab): I thank the Minister for giving way. I hear what she says, but people who have what the Minister calls unearned income—some people may call it "rentier income", which is perhaps a clearer expression—can still use the National Health Service. If there was an accident, an ambulance would arrive, even though they had not paid any national insurance. If the need arises, they can still get social care. So why are they not required to pay? They simply are free riders. If they paid, the Government could have made an even bigger cut in national insurance.

Baroness Vere of Norbiton (Con): This potentially leads on to the next question from the noble Baroness, Lady Primarolo, about the percentage of mixed receipts that goes to the NHS. It is about 20%; 80% comes from elsewhere. Those people who pay taxes on their unearned income will, of course, pay into the general fund.

Lord Sikka (Lab): As the Minister knows, the taxes levied on dividends and capital gains are lower than the taxes on wages. If she wants her point to stand, can she

explain why capital gains and dividends are taxed at a lower rate than wages? What is the justification for that?

Baroness Vere of Norbiton (Con): I suspect that we are now moving into an area of debate where is not appropriate to go today, because there is business still to come in the House; I know that my noble friend is desperately waiting to get up.

I go back to the point made by the noble Baroness, Lady Primarolo. Obviously, the balance of the national insurance fund is monitored closely. The most recent report from the Government Actuary's Department—GAD—forecast that the fund will be able to self-finance for at least the next five years. But, of course, the Treasury has the ability to top up the NIF from the consolidated fund when needed. Indeed, this has been done in the past—it was routinely done in the 1990s—so it is not right to say that the cut in NICs puts any pressure at all on any payment to the NHS or otherwise; that is set independently from the national insurance fund.

Baroness Primarolo (Lab): I do not wish to detain the House but, frankly, that is not the question I was asking. I was asking the Minister about something that she has confirmed: 20% of the 100% that the NHS gets comes from the national insurance fund and it is equated to a cash value. If there is less in the national insurance fund, less cash goes to the NHS. The simple question I asked was not about whether the NHS will still get the 100%; it was about whether the 80% will become 81% or 82%. It is quite a techy point and I do not want to delay the House, but it makes quite a difference to the cash that the NHS receives. I was just asking the Minister to confirm and clarify that; I am not seeking to score any points off her.

Baroness Vere of Norbiton (Con): I am grateful to be able to clarify that it is not set on a percentage basis at all. The amount of money that goes to the NHS is set in actual terms; for example, it is £160 billion in 2023-24 and will be £162.5 billion in 2024-25. It has nothing to do with the percentage of anything.

I will write to the noble Baroness, Lady Kramer, on the Taylor review and everything that she raised. That would probably be the most appropriate thing to do.

For the time being, I am grateful to all noble Lords who have taken part in the debate and I beg to move.

Bill read a second time and committed to a Committee of the Whole House.

Lord Evans of Rainow (Con): My Lords, now that we have concluded Second Reading, Members have a further hour to table amendments to this Bill. Members wishing to table amendments should contact the Public Bill Office. We will resume proceedings on the Bill at the point shown on the annunciator after the Statement and the debate on the overseas electors regulations.

BBC Funding

Statement

The following Statement was made in the House of Commons on Thursday 7 December.

"With permission, Madam Deputy Speaker, I would like to make a Statement on the BBC.

The BBC is a great British institution and plays a vital role in our culture and creative economy. It broadcasts our values and identities all over the world, reaching hundreds of millions of people every day. In January 2022, the Government and BBC agreed a six-year funding settlement, which froze the licence fee at £159 for two years. The two-year freeze has already saved every fee payer £17 over 2022 and 2023. That settlement provided vital support for households when inflation was at its highest, while giving the BBC the funding it needed to deliver on its remit.

Under the terms of the settlement, the licence fee must now increase annually in line with the consumer prices index, with the first increase due in April 2024. The Government are committed to supporting families as much as possible during these difficult times. We recognise that bill rises are never welcome and family budgets remain under pressure.

Today, I am announcing that we will use the annual rate of CPI in September to calculate the increase of the BBC licence fee in April 2024. This is the same way the Government calculate inflation-linked increases to state pensions and benefits. The decision means next year's licence fee increase will be kept as low as possible. In April, the licence fee will rise by 6.7%, to £169.50 annually. That will minimise the rise for households, keeping it to £10.50 over the year, or 88p per month, rather than a rise of £14.50 that would have happened under the previous CPI measure.

While we recognise that household budgets remain under pressure, the decision, alongside the two-year freeze, will save individual licence fee payers over £37 by the end of 2024. These interventions support households, while providing the BBC with £3.8 billion to produce its world-leading content. The Government engaged with both the BBC and S4C to understand the impacts on the finances of both broadcasters. The decision will ensure that S4C, which is also funded from the licence fee, can maintain its unique role in promoting the Welsh language and supporting our public service broadcasting landscape.

Although we have taken steps to ensure that the uplift is kept as low as possible, we recognise that a £10.50 increase will still be felt by licence fee payers. The number of licence fee payers is also declining, with an increasingly competitive media landscape. We need to make sure that the cost of the BBC does not rise exponentially, and that it is not borne by a smaller number of fee payers. We are already seeing an increasing number of households choosing not to hold a TV licence. The number of households holding TV licences fell by 400,000 last year, and has declined by around 1.7 million since 2017-18. That is placing increasing pressure on the BBC's licence fee income.

We are also seeing a rapidly changing media landscape, with more ways for audiences to watch content. The reach and viewing of broadcast TV fell significantly in 2022, with weekly reach falling from 83% in 2021 to 79% in 2022. As this trend continues, linking the TV licence to watching live TV will become increasingly anachronistic, as audience viewing habits continue to move to digital and on-demand media.

We know that if we want the BBC to succeed, we cannot freeze its income, but at the same time we cannot ask households to pay more to support the BBC indefinitely. We are already supporting the BBC to realise commercial opportunities that will make it more financially sustainable, and will continue to explore them provisionally with the BBC.

The situation clearly shows the need to consider the BBC's funding arrangements to make sure they are fair for the public and sustainable for the BBC. Therefore, I am also announcing that today the Government are launching a review of the BBC's funding model. The review will look at how we can ensure the funding model is fair for the public, sustainable for the long term, and supports the BBC's vital role in growing our creative industries.

The review will be led by the Department for Culture, Media and Sport and supported by an expert panel. It will assess a range of options for funding the BBC. We are clear that we want the BBC to succeed. The review will include looking at how the BBC can increase its commercial revenues to reduce the burden on licence fee payers. Given pressure on household incomes, I can explicitly rule out this review looking at creating any new taxes. The findings of the review will support the Government to make an informed choice on whether to consult the public on moving to alternative funding models. That would take place as part of the charter review process, in which any final decision on reforming the BBC's funding model would be taken.

The BBC is a great national institution. We want to ensure that it is fit for the present and whatever the future holds, while keeping costs down for the public. That means ensuring that the BBC is supported by a funding model that is fair to audiences, supports the creative industries, and is sustainable in the age of digital and on-demand media. I commend this Statement to the House."

4.44 pm

Baroness Merron (Lab): My Lords, we on these Benches are clear that the BBC must continue as a universal, publicly owned and publicly funded public service broadcaster, with funding that is both sufficient and sustainable. After flirting with the privatisation of Channel 4, the Government's somewhat chop and change approach to BBC funding is creating significant uncertainty for our valuable public service broadcasters and the wider creative ecosystem. Have the Government undertaken an assessment of the likely impact of the additional pressure being placed on BBC budgets? Is this likely to lead to more journalist job cuts, disruption to commissions and supply chains, or harm to the organisation's soft power across the world? If an assessment has been undertaken, will it be published?

The BBC has already scaled back some of its public service output in response to the licence fee freeze. This has seen, for example, local radio services streamlined. From my time as an MP in the other place, I recall how local communities had the greatest trust in local TV and radio stations as a source of news and information. Does the Minister agree with the continuing importance of local provision of news and information at a time when fake news proliferates, particularly online, and when many local newspapers are scaling back their operations? To turn to the national sphere, most recently, the format of "Newsnight" has changed, with its important investigative journalism scaled back and moved elsewhere.

The Government's desire to focus on the cost of living is understood, but it is their actions which have stretched household budgets to breaking point. Does the Minister accept that this change in how the licence fee is calculated will have a negligible impact on working people's finances, through a saving of just £4 a year, while having a far bigger impact on the BBC's ability to fulfil its public service duty and role?

We also understand the desire of the Secretary of State to launch the future funding review. She is, after all, not the first person to have had that idea, but many lack confidence that the process is about getting the right result for the BBC. What steps will be taken to shore up confidence in the review among stakeholders, staff and the public?

We have learned so much from the past few years about what it means to be a resilient society, not least because of the pandemic, when the BBC really came into its own, not just as a broadcaster but as an educator, a trusted source of information and a connector. The Government's resilience framework promises a direction of travel which incorporates prevention, preparedness, response and recovery, no matter what the disaster. Can the Minister indicate whether there has been consideration of the impact of the BBC's funding on all these aspects of resilience?

Our great broadcasting institutions, their employees and the wider creative sectors that they do so much to sustain deserve far better than they are getting currently. Labour, on the other hand, will work with, rather than against, the BBC and other public service broadcasters to grow our creative industries and ensure that all parts of the UK benefit from their output. That is the essence of public service broadcasting.

Baroness Bonham-Carter of Yarnbury (LD): My Lords, in 2022, the Government made a firm commitment that, after two years of freezing the licence fee, they would allow it to rise for the following four years according to the rate of inflation. The BBC kept its side of the bargain, despite having to make heavy cuts. The Statement repeated here today makes it clear that the Government have not. The Government's excuse—that their below-inflation settlement is about helping with the cost of living—will not wash. The difference between an inflation-linked settlement and the actual one is 45p per month, yet this will deprive the BBC of £400 million over the next four years, causing enormous damage to an institution already reeling under successive cuts by this Government. There are more direct ways to help those who are trying to deal with the burden of inflation and increased energy bills.

What does this mean? It means less investment in the nation's creative industries, fewer jobs created nationwide, more job cuts at the BBC and, almost certainly, fewer journalists dedicated to checking facts and reporting impartially, which is so important in the world of the internet. The BBC feeds into the Government's levelling-up agenda, making programmes

across the country while boosting local economies and utilising local skills—except that cuts to BBC local radio, already in train, mean that the spotlight on the local level is increasingly dim and will grow dimmer, thanks to today's Statement.

As mentioned by the noble Baroness, Lady Merron, another casualty is investigative journalism. I used to work on "Newsnight"; we criss-crossed the UK and the world seeking out stories and telling them in depth, not just reacting. Now, it is another current affairs programme shunted off to an existence solely in the studio. As my former colleague Michael Crick—he may not be the favourite person of some of your Lordships, but he is one of mine—noted:

"If I were a dodgy politician or a crooked businessman or a lazy civil servant, I would rest a bit easier in my bed".

I mentioned the world. International reporting is already shrinking, and believe me it will shrink further. Just look at how the terrible events in the Middle East have led to Ukraine virtually disappearing from the airwaves. Major events have been occurring in Afghanistan, Sudan, Myanmar and Latin America: we hear nothing. Bringing the world to domestic audiences is so important. As a consequence, we are more equipped to understand, connect and empathise with what is going on beyond UK borders. Ignorance is not a good idea. It is fed by the echo chamber of the internet. Does the Minister not agree?

Of course, the BBC is not just about journalism, important as that is. It is the backbone of our world-beating creative industries and the single largest investor in original UK content operating in the UK. Innovation is often overlooked. It was the BBC that came up with the idea of television. My noble friend—if I may call him that—Lord Birt was behind BBC Online and the BBC has continued to lead, with the likes of the iPlayer and BBC Sounds. It led on rolling out the digital switchover and created two consumer platforms to help make online TV available to all UK audiences. Every £1 of BBC R&D spend alone contributes to £9 in value beyond. Can the Minister explain why this is not something to support?

Then there is soft power. Through the World Service and the programmes the BBC exports, it is central to promoting the UK around the world and is the envy of the world. The Government's integrated review, published this year, boasted correctly that the BBC is

"the most trusted broadcaster worldwide".

Considering all these positives, have the Government assessed the impact of these unexpected cuts on the BBC? Can the Minister say where he sees them coming from and what he would be happy to do without?

Finally, on the announced review of the BBC's funding model, it is of course appropriate that the funding model for the BBC should be investigated, but does the Minister think it is right for the Government to do so without any public consultation and in the space of a few months? Who will be on the expert panel and how will they be chosen? These Benches have long proposed that the funding process, as well as the appointment of the BBC chair, should be taken out of government control and handed to a genuinely independent body. As David Attenborough said:

"The basic principle of public service broadcasting is profoundly important. If we lose that we really lose a very valuable thing".

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I am grateful to the two noble Baronesses for their questions. I was not clear from the contribution of the noble Baroness, Lady Merron, whether the Labour Benches are closed-minded to the future funding model of the BBC and wedded to the licence fee model. Nor was I clear from the noble Baroness, Lady Bonham-Carter, whether the Liberal Democrat Benches think the rise for licence fee payers ought to be higher.

What we have done this year and since the beginning of 2022 is, initially in 2022, agree a funding settlement with the BBC, which froze the licence fee at £159 for two years. That has already saved households £17 over this year and last. Under the terms of the settlement, the licence fee must now increase annually in line with CPI but, because of the decision we have taken to calculate this using the annual rate of CPI in September, rather than a rolling six-month period, the increase will be kept as low as possible.

In April the licence fee will therefore rise by 6.7% to £169.50 annually. That is an increase of just 88p per month, as opposed to a rise of £14.50, which would have happened under the previous way of measuring CPI using an average of the 12 months preceding September. We have done this because we recognise that household budgets remain under pressure. This decision, alongside the two-year freeze, will save individual licence fee payers more than £37 by the end of 2024. It will also ensure that the BBC is provided with more than £3.8 billion to continue to produce the world-leading content for which it is rightly renowned across this country and the world. That is a fair deal which provides value for money for the licence fee payer, while ensuring that the BBC can continue its important work and play its important role in our national life.

The BBC has made a statement about the impact of the decisions as it sees them—the noble Baroness, Lady Merron, asked about that. It is of course for the BBC to make its decisions about how it spends this £3.8 billion, but we are providing it with a significant cash uplift that will support the corporation in delivering its mission and public purpose and continue to deliver for licence fee payers.

The noble Baroness, Lady Bonham-Carter, was right to highlight the work that the BBC does across the country reporting on the lives and interests of people across these islands, as well as the important work done by the BBC World Service across the globe. That is the world's largest international broadcaster and plays a hugely important role providing accurate and impartial news, analysis and discussion in more than 40 languages to more than 360 million people around the world every week. The Government strongly support the BBC's mission to bring high-quality impartial news to global audiences, particularly in places where free speech and the freedom of journalists is limited. We will consider how the topics that the future funding review will explore apply to the funding arrangements of the BBC World Service and to the important work that the BBC does in broadcasting in minority languages here at home in the United Kingdom.

[Lord Parkinson of Whitley Bay]

The next steps of the funding review will include appointing an expert panel, engaging with interested parties and commissioning research. The review will aim to report to the Secretary of State by next autumn. The findings will inform the charter review, which is where any final decisions on changing the BBC's funding model will be made by His Majesty's Government. Given the commercial sensitivities, the findings of the review will remain confidential until the review has concluded. Decisions about the membership of the panel will be made by Ministers, but we will ensure that the panel incorporates a broad range of views. Its role will be to provide advice and external challenge to the review, so that we can consider the best way to equip the BBC with the income it needs to continue the important work that it has done for more than a century, and that we look forward to it continuing to do in an increasingly complex media landscape. It is vital that it is able to continue doing that for the reasons the noble Baroness, Lady Bonham-Carter, highlighted about the contested news sources we see and have debated many times in your Lordships' House.

4.59 pm

Lord Birt (CB): My Lords, I quote the current Secretary of State: the BBC

"needs to live in the real world",

and

"We can't keep putting prices up for the licence fee".

What is actually happening in the real world? In the last three years, while the licence fee has been frozen, the price of Netflix has risen by 50%, Disney+ by 83%, Apple TV by 40%, and spend on the NHS, excluding Covid costs, has risen in the same period by around 12%. In the period 2010-20, the BBC had to cut spending by 30%. After two years flat, there is a further drop in real terms of something like 12%. Against that backdrop, frankly, this new settlement will be but a drop in the ocean.

It is recognised the world over that the century-old BBC is one of the greatest creations of our times. No other country in the world has so effectively captured its national experience, cultural expression and national dialogue, viz: the exquisite "Planet Earth", "Horizon", "Dad's Army", "Fleabag", "Little Dorrit", "Happy Valley", "Gardeners' Question Time", and the Proms—I could go on and on. The BBC still makes wonderful programmes, but—

Lord Harlech (Con): My Lords, the *Companion* is very clear that, in the Back-Bench portion of Questions on a Statement, noble Lords are encouraged to make their point and ask a question.

Lord Birt (CB): I hope noble Lords will allow me to come to a conclusion. I can see all too clearly how much the BBC has diminished in every area of programming since my time as director-general. Last year, the previous Secretary of State tweeted:

"It's over for the BBC as they know it".

Let us name the game; the BBC is a victim of the culture wars and, as a result, we are witnessing the long, slow, painful, diminution of this great institution. Will this continue?

Lord Parkinson of Whitley Bay (Con): I must disagree with the noble Lord. We want to ensure that the BBC continues to be able to do its work over the next hundred years just as brilliantly as it has over the past century. That is why we are trying to find a settlement that is fair for licence fee payers, who bear the cost at the moment, but which is also good for the BBC, sustainable for the long term, and supports the BBC in its important work.

The noble Lord drew attention to the rising cost of other service providers. He is right to do so; it highlights what a good deal people get when they pay their licence fee and get to enjoy the work of the BBC. Of course, the number of households holding a TV licence fell by 400,000 last year, and has declined by around 1.7 million since 2017. We want to ensure that the costs are not borne by an increasingly small number of people. Of course, people are consuming television, including on the BBC, in different ways. That is why it is right to look at the future funding model, to make sure that the BBC can continue to do its important work in a very different media landscape over the decades to come.

Lord Hamilton of Epsom (Con): My Lords, we are regularly told that the licence fee is not a tax, but on the other hand it walks like a tax and quacks like a tax. Of course it is a very flat tax, in that it impacts enormously on people who cannot easily afford it. As the noble Lord, Lord Birt, has referred to, the BBC is coming under enormous competition from many other forms of media. Surely this settlement is quite generous, looked at in those terms.

Lord Parkinson of Whitley Bay (Con): I agree with my noble friend. We want to strike a balance that is fair to licence fee payers, who are, of course, facing pressures on the cost of living. We want to show that the BBC, like them, is having to make decisions about how it spends its money in the current climate, but also highlight the brilliant way it spends it, the important work it does and the important role it plays with the output it produces.

Baroness Young of Old Scone (Lab): My Lords, I find the Minister and the Government's position quite confusing. I declare an interest as a former deputy chair of the BBC, and commend the noble Baroness, Lady Bonham-Carter, and the noble Lord, Lord Birt, for their exposition of the real, parlous state that the BBC finds itself in.

The Minister is saying that he is supportive of the BBC's role. We have a unique thing in the BBC; it is a jewel in the crown internationally and it provides a huge range of behind-the-scenes and in-front-of-camera services to this nation. Yet the position of this Government has been, consistently since 2010, to squeeze and squeeze the BBC harder. This is at a time when 81% of the households in this country subscribe to multiple streaming services, costing them up to £400 a year, when they are getting a bargain, even with a properly inflated licence fee payment, with the BBC.

I will ask the Minister just one question. When this review of the basis of the funding of the BBC is taking place, is the objective to make sure that the BBC will

have adequate funds to do the thing that it really needs to do? That is to help reshape its already changing offering to be relevant in the modern world, both nationally and internationally, and to ensure this jewel in the crown that we have is not destroyed inadvertently by a fruitless debate about the licence fee basis of payment.

Lord Parkinson of Whitley Bay (Con): The review aims to ensure that the BBC's funding model is fair to licence fee payers, sustainable for the long term and supports the BBC in the vital work it does, including its important role in growing our thriving creative industries. We know that, if we want the BBC to continue to succeed, we cannot freeze its income but, at the same time, we cannot ask households to pay more to support the BBC indefinitely. So, the review will look at a range of options for funding the corporation, including looking at how the BBC can increase its commercial revenues to reduce the burden on licence fee payers.

The Earl of Clancarty (CB): My Lords, I am not against a review of the funding model, but that is a completely different matter entirely from the long-term squeezing of funds available to the BBC—which is surely, as has just been said, the central problem. One problem should not be used as an excuse not to solve the other problem.

Lord Parkinson of Whitley Bay (Con): As we know from previous exchanges, there is the immediate decision about licence fee increases and the settlement that the Government reached with the BBC at the beginning of 2022—which saw the two-year freeze to help households at the time—and the longer-term questions which are right to ask to make sure that we are funding the BBC in a sustainable way, so that it can continue to do important work in the decades to come, which are going to look very different from the BBC's first century.

Lord Foster of Bath (LD): My Lords, many of us despair at the way in which the Government praise the BBC and yet constantly undermine it. In terms of future funding, is the Minister aware that your Lordships' Select Committee looked at this and rejected a straightforward advertising funding model on the grounds that it would not provide enough funding for the BBC and would damage other public service broadcasters. It also ruled out a sponsorship funding scheme as well. Will the Government rule out those two options and accept that guaranteeing the universality of the BBC will always require some form of public funding?

Lord Parkinson of Whitley Bay (Con): I do not agree that providing the BBC with more than £3.8 billion is undermining it. That is a large amount of money for the BBC to do its important work. The noble Lord is right to draw attention to the work of your Lordships' Communications and Digital Committee. I know that my noble friend Lady Stowell of Beeston would have liked to be here for this exchange, but the committee is on an external visit today. We will, of course, engage with her and the ideas and work of the committee. As I say, the future funding review will look at such matters as we weigh all that up and make decisions about the best way to provide the BBC with the sustainable income it needs.

Lord Mendoza (Con): My Lords, the BBC is a thriving part of a much wider creative industries sector. That sector has transformed in recent years and continues to transform. The McKinsey report on the arts sector, which came out last month, described the creative industries as now having reached a £126 billion contribution to GVA, which is exactly equivalent to the entire construction sector, with 2.5 million jobs. This is the universe in which the BBC is now swimming. The expert panel will be looking at a funding model, but is it not slightly strange to have a funding model in search of a strategy? Should not that expert panel also consider what we want the BBC to provide as a public service broadcaster, whether on news—local, regional and international—education, children's programming and so on? I hope that the expert panel will think more on that as well, so that we do not just have £3.8 billion looking for something to do.

Lord Parkinson of Whitley Bay (Con): My noble friend is right to draw your Lordships' attention to the excellent report done by McKinsey and published recently, which highlights the successes of our creative industries. They were growing nearly twice as quickly as the rest of the economy before the pandemic. As he knows, the Government are determined, through our *Creative Industries Sector Vision*, to continue to help the sector grow and thrive. He is also right that the BBC and our other public service broadcasters play an important role in the success of the creative industries. That is why, as I have said, we want to take that into account as we look at the best way to fund the BBC in the decades to come. We want the BBC to continue to succeed as a public service broadcaster long into the future, providing high-quality public service content and supporting our thriving and growing creative industries.

The Lord Bishop of Durham: Will the review look at what the BBC generates for the nation, as well as what goes in? Arguably, it generates far more money than the £3.8 billion, but this cannot be reduced to just an economic debate. Will what the BBC generates in good will around the world and our standing as a nation, because of what it does, be taken into consideration?

Lord Parkinson of Whitley Bay (Con): I hope the right reverend Prelate can tell from what my right honourable friend the Secretary of State said in another place that we do appreciate the huge value that the BBC brings to viewers and listeners across the country, as it has done for more than a century. It is because we value it that we want to ensure that it is able to survive in decades to come. We are also looking at how we can support the BBC in that fast-changing broadcasting landscape. We have more than doubled the borrowing limit of the BBC's commercial arm to enable it to access private finance, so that it can pursue an ambitious commercial growth strategy of its own, which of course will have an important impact on boosting investment in the creative economy of the whole UK.

Lord Inglewood (Non-Afl): The Minister has explained that at the centre of the financial arrangements which he has described is the concept of fairness. If we consider fairness in respect of licence fee payers and in respect of the BBC, we are really talking about apples and pears. Could the Minister explain how the Government balance fairness to the licence fee payer with fairness to the BBC? It seems that there may be a bit of a risk that we end up with a solution that is rather fairer to one side than the other.

Lord Parkinson of Whitley Bay (Con): That thorny question is one for the future funding review, but it is important. We want to ensure that the BBC has a sustainable income, but also that the sources of that are fair. I have pointed already to the declining number of people who are paying for a licence fee and the declining number who watch television live. Funding models which are predicated on some of those conceptions of the past will look increasingly anachronistic as we move into the BBC's next century. We have also seen licence fee evasion rising, so it is right that we look at this to make sure that we are coming up with a good answer to the difficult question that the noble Lord poses.

Lord Wallace of Saltaire (LD): My Lords, have the Government looked at models of public service broadcasting in comparable countries in terms of both international and domestic activities? In the United States, France and Germany the international dimension of Voice of America and so on is publicly funded, but here the international dimension of the BBC has been financially squeezed by the Government in recent years, which is a disaster for British foreign policy.

In France, Germany and the Netherlands the domestic side is also substantially publicly funded, while in the US it is not; it is given over to commercial interests. The Minister will be as painfully aware as the rest of us of the destructive impact that has had on maintaining a national dialogue at the centre of democratic politics in the US; instead, it encourages culture wars. There are powerful commercial interests in this country—the Murdoch press more than anything else—that would very much like to see that happening here, and it is not at all clear that all members of the Conservative Government are still committed to the principle of public service broadcasting.

Can the Minister, as a One Nation Tory and not a member of any of the "five families" on the right, say that he, at least, is committed to the principle of public service broadcasting, which implies a broadcaster that one can trust—the BBC comes out high on public trust in all public opinion polls—and a substantial chunk of public funding?

Lord Parkinson of Whitley Bay (Con): The whole of the Government are committed to the BBC's important role as a public service broadcaster. My right honourable friend in her Statement in another place rightly called the BBC "a great British institution" that

"plays a vital role in our culture and creative economy".—[*Official Report*, Commons, 7/12/23; col. 514.]

As we look at future funding options, we will look at how public service broadcasting is delivered in other countries, both the ways in which that is done and the pros and cons of those models.

The noble Lord is right to highlight that the BBC plays its role in a globally exceptional way. I have already talked about the more than 360 million people who tune into and rely on the BBC World Service for impartial news and analysis. We should be very proud that it is our national broadcaster that people across the world tune into, and we want to ensure that it is sustainably funded for many decades to come.

Lord Hayward (Con): When considering the financing of the BBC, will my noble friend clearly bear in mind all the issues that have been raised by noble Lords across the House concerning its importance worldwide and its contribution to society in general? However, what concerns me is that the BBC has not looked deeply into other areas to see what can be brought under control. I have typed "apple crumble recipes" on my phone. The first four entries come from the BBC. Why on earth, when the BBC should be providing services worldwide in multilingual circumstances, are we confronted by an organisation that provides food recipes to anyone who wants them and who can get them for free from other sites as well?

Lord Parkinson of Whitley Bay (Con): I did not know there were so many ways to make an apple crumble, but I am sure my noble friend's was delicious, however he made it. He is right. The BBC is getting more than £3.8 billion, which is a large amount of money, for it to continue to do the important work that it does. It is up to the BBC to decide how it spends its money, but it is right that it makes sure that it is doing so in a way that would delight all licence fee payers.

Baroness Young of Old Scone (Lab): My Lords, I hate to intervene twice—I know it is against the rules and the noble Lord, Lord Harlech, will tell me that I cannot—but I think I am right in saying, and the noble Lord, Lord Birt, will be able to confirm this, that the BBC's recipes are an entirely commercial venture and are no longer funded from the licence fee.

Lord Parkinson of Whitley Bay (Con): I have indeed pointed to the extra freedom that the Government have given the BBC to pursue its commercial income, so that it can continue to do its excellent work and be funded in a sustainable way that is fair to licence fee payers, viewers, listeners and indeed bakers.

Lord Vaizey of Didcot (Con): My Lords, given that a full-scale rebellion is under way against my noble friend Lord Harlech's—

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, the time allowed for the Statement has elapsed.

Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023

Motion to Approve

5.20 pm

Moved by ***Baroness Penn***

That the draft Regulations laid before the House on 23 October be approved.

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

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Penn) (Con): My Lords, in our manifesto, the Government committed to removing the 15-year limit on voting rights for overseas electors and we are delivering on that promise. Last year, Parliament passed the Elections Act, resolving to extend the franchise to all British citizens, including eligible Irish citizens, living overseas who were either previously registered to vote in the UK or were previously resident in the UK. The two statutory instruments we are debating flow from that Act.

If approved by Parliament, together, these instruments will make necessary changes, as well as improvements, to electoral registration processes across the UK from 16 January 2024 to coincide with the commencement of the franchise change. To ensure the registration processes are workable for applicants and for administrators, we have worked closely with delivery partners and stakeholders across the electoral sector and have engaged with representatives of British citizens overseas on the design of the process. We have created a process that ensures that our democracy remains secure, fair, modern and transparent.

I will start by outlining the changes these instruments make to the registration application process to enable overseas electors to apply, and to enable electoral registration officers in Great Britain and the chief electoral officer in Northern Ireland to determine their eligibility under these new criteria. These instruments ensure that there are robust processes to verify an applicant's identity and establish their eligibility to register at their qualifying UK address.

The Elections Act 2022 established two conditions for registering to vote as an overseas elector. Going forward, an individual can apply under the previous registration condition or, if never registered, the previous residence condition. Applicants who have previously registered to vote in the UK should apply in respect of the address where they were last registered, under the previous registration condition. For the first time, applicants previously resident in the UK, but who never registered to vote, can apply in respect of the address where they were last resident, under the previous residence condition. Applicants will, as now, be required to complete a declaration as part of their application. These instruments update the declaration requirements to reflect the new eligibility criteria. When determining an application, electoral registration officers must check and be satisfied of the applicant's identity and connection to their qualifying previous UK address.

To check the applicant's identity, as now, the applicant's national insurance number will be data-matched by DWP. Digital improvements mean that this process will be quicker than the current identity checks. Where an applicant cannot provide a national insurance number, or this cannot be matched, they will be able to provide documentary evidence. This new step, introduced by the instrument for Great Britain, brings the process into alignment with existing practice, maintains integrity and eases the administrative burden on applicants and administrators by reducing recourse to attestations. As now, an attestation from a qualified elector—that is, a statement from a UK-registered elector who is not a close relative—may be used to verify an applicant's identity where verification by documentary evidence is not possible. To verify an applicant's connection to their qualifying address, as now, in most cases, electoral registration officers will be able to rely on checks against previous electoral registers. Registers are typically held for 15 years, and we expect they will be retained for longer in future.

Where register checks are not possible, this instrument enables several ways to verify an applicant's connection to their qualifying address. This includes a DWP data match, checks against local records where available and the power for a registration officer to request several types of documentary evidence, originating from reputable sources—such as the UK Government, local authorities and banks—from the applicant. We have considered stakeholder feedback on documentary evidence available to overseas applicants and have provided flexibility in these measures while ensuring they retain integrity. An attestation from a qualified elector can also be used for qualifying address verification where documentary evidence is not possible. This is in close alignment with the process for verifying the identity of both overseas and domestic electors.

I turn now to the renewal process and absent voting arrangements. Currently, to stay registered, an overseas elector must reapply every year. This instrument implements a new fixed-point renewal process, which enables overseas electors to remain registered for up to three years. In Great Britain, overseas electors' absent vote arrangements will also be tied to the registration renewal process, meaning that an overseas elector will be able to renew their registration and their absent vote arrangement at the same time. These changes will benefit the elector. Enabling an elector to maintain their registration and absent vote in this way means that, when a parliamentary election is called, the elector's absent vote can be issued without delay.

This improved process will also support administrators to maintain the accuracy of registers, minimise time-consuming processes and reduce their workload in the run-up to an election. Registered overseas electors will be able to renew their declaration within the last six months of their current registration period. The instruments will ensure that overseas electors are made aware in good time when they need to renew. Electoral registration officers will be required to send a first renewal reminder after 1 July during the year in which an elector's current registration period is due to expire, with a second reminder to follow a reasonable time thereafter, enabling registration officers to manage the process alongside their other responsibilities.

The instrument applying to Northern Ireland does not amend absent voting arrangements, as electors registered in Northern Ireland are automatically entitled to use proxy votes as part of the existing process.

These instruments maintain the integrity of registration processes, ensuring that electoral registration officers continue to register applicants only when satisfied as to their eligibility. We are setting strengthened requirements for attestors and applying a new limit to the number of individuals an attestor can attest. Within an electoral

[Baroness Penn]

year, an attestor may in future provide identity attestations only for a maximum of two individuals and, separately, address attestations for up to two individuals. We believe this to be a necessary and proportionate measure that maintains integrity while ensuring accessibility for overseas applicants who can now be attested by any UK-registered elector, not just an overseas elector.

In addition to the changes I have just outlined, these instruments make further improvements to the registration process, making it easier and quicker for eligible overseas applicants by enabling electronic submission of information, including copies of documentary evidence. In some cases, these can be provided at the point of application to speed up the process. Overseas electors registering in Great Britain are also now able to apply for a postal or proxy vote online, following the introduction of the new online application services on 31 October 2023.

We continue to work closely with the sector, including the Association of Electoral Administrators and the Electoral Commission, in preparation for implementation; we will provide funding for additional costs incurred in line with the new burdens doctrine. We are also working closely with the Electoral Commission, which has the statutory responsibility to promote democratic engagement. The commission is undertaking a targeted communications campaign both to engage with British citizens overseas and to promote awareness through their friends and families. My department will work alongside other government departments, including the Foreign, Commonwealth and Development Office, to facilitate the commission's plans for awareness raising and to amplify its activity through government communication channels where value can be added.

I will address the regret amendment tabled by the noble Lord, Lord Khan of Burnley. The Government strongly disagree with the notion that the draft measures for consideration today will weaken the existing robust system of checks that surrounds all political donations. UK electoral law already sets out a robust regime of donations controls to ensure that only those with a legitimate interest in UK elections can make political donations. The rules are very clear: political parties and other campaigners are required by law to undertake all reasonable steps to verify the permissibility of a donation within 30 days of receiving it, and prior to its acceptance. Donations that do not meet the established permissibility tests must be returned and reported to the Electoral Commission. There are also already provisions that explicitly prohibit money being funnelled through permissible donors on behalf of impermissible donors.

5.30 pm

The Government absolutely recognise that, despite this, there is a risk that some people, whether they live in the UK or overseas, will try to evade the rules. That is why we recently strengthened those rules by creating specific offences for foreign interference in elections in the National Security Act 2023. The Government have given the Electoral Commission more information-sharing powers to access Companies House information, under the Economic Crime and Corporate Transparency Act 2023.

Overseas electors are important participants in our democracy, and it is only right that they should be able to make donations to political parties in Great Britain in the same way as other citizens registered on the electoral roll in Great Britain. The rules are the same for all electors. I beg to move.

Amendment to the Motion

Moved by ***Lord Khan of Burnley***

At end insert "but that this House regrets that the draft Regulations could dangerously weaken the restrictions on overseas political donations and allow foreign money to enter British democracy".

Lord Khan of Burnley (Lab): My Lords, I thank the Minister for her introduction. These regulations implement the provisions of the Elections Act to remove restrictions on overseas electors. Overseas voting provides an important link for British citizens across the world. On these Benches, we are clear that those who have a strong connection to this country and their community should still have a say in how they are run. We do not oppose the principle of overseas voting and giving citizens who still have a strong connection to the UK a voice in our elections. That includes people who still have a strong connection to our local services and communities. But we need to consider this carefully and look at the potential impact on our democracy.

By repealing the 15-year residency limit, former residents who are now living abroad will be able to vote regardless of how long ago they left the UK. I am proud to have represented the community and region I grew up in as a Member of the European Parliament. Like many honourable Members in the other place, I know how important it is that those who live in our area, pay their taxes and are part of the community feel represented. As much as we support the rights of overseas voters, it would be wrong if people with little connection to this country—who may have moved a long time ago and not used any services or paid any taxes in decades—diminished the voices of constituents across the United Kingdom. We must consider how we strike a balance in our rules. There are voters who still feel a connection to the UK despite moving away 30, 40 or more years ago. But the policy of removing the cap on this important principle will undermine the balance between enfranchising those people and maintaining integrity in our democracy.

Although we do not think that there is a moral disagreement about some of the issues with votes for life, I fear that the risk of abuse of the system proposed by the Government is far too great. The registration rules proposed mean that some overseas voters require only the attestation of the identity and past location of another overseas voter. We understand that it may be difficult for legitimate overseas voters to verify their identity, but there seems to be a risk of manipulation of the system to allow those eligible for the scheme to have their pick of which seats they want to vote in.

As Florence Eshalomi MP outlined in the other place, some 30 seats were decided by fewer than 1,000 votes at the last general election. While I am sure that very few will attempt to abuse the system in that way, it

could have a large impact on marginal seats when votes are added up around the world. Can the Minister assure me that there will be additional safeguards to prevent fraud? I understand that there is a tight limit on attestation and that those attesting for another voter will need to sign a declaration of their truthfulness, which is right—but those measures may not be enough to prevent people trying to abuse the system in a way that could impact the next general election.

Can the Minister stipulate what robust processes will be in place to verify an applicant's identity and establish their eligibility to register at their qualifying United Kingdom address? What support are the Government putting in place to enable electoral registration officers in Great Britain and the Chief Electoral Officer for Northern Ireland to determine their eligibility under these new criteria? The Government should also be more open about how much this change will cost, given that they confirmed to the Secondary Legislation Scrutiny Committee that there will be additional funding to cover the costs of registering new electors.

The new rules create a huge loophole in our donation laws. The current rules on UK donations mean that those who donate more than £500 must be on the electoral register. We must be honest and say that we cannot pretend that the current system is perfect, but it is an important safeguard against money flooding into our political system from foreign and hostile states. The Labour Front Bench first raised these concerns during the passage of the Elections Act, when my noble friend Lady Hayman of Ullock pointed out that the removal of the 15-year limit could create a loophole in donation law.

Furthermore, during debates on the National Security Bill, my noble friend Lord Coaker called for greater restrictions on political donations from overseas. In our current system, those on the register have a clear and recent link to the UK. We think that opening the electoral register as widely as the Government are doing today goes far beyond what our current donation rules were set up to do. It will allow those with tenuous links to the UK, who have spent most of their lives in states that may even be openly hostile to our aims, the right to massively influence our system. The reality is that it will be impossible to ensure that the huge numbers of potential donors in our system are not vulnerable to manipulation by hostile actors. There is already clear evidence of attempts by these actors to influence UK democracy, as we have seen in recent days. It will also make enforcement of our rules much harder, given the difficulties that we may face in challenging those who fall foul of donation laws while living in another jurisdiction. The Government know the risks that those hostile actors pose to the UK and our allies. Just this year, we saw the attack on Britain's Electoral Commission. Has the Minister met with it following this incident?

This Government should instead look to proposals made by the Electoral Commission, which recommended introducing new duties on parties to enhance due diligence and the risk assessment of donations. Louise Edwards, a director at the Electoral Commission, recently commented that the current levels of transparency around donations are "not enough". The Electoral Commission has called for more laws to help protect parties from those who seek to evade the law, as well as more checks on the identity of donors. It is beyond belief that the Government are seeking to risk opening our system at such a critical time for our world. What would a political party do if, for instance, it were offered a donation of £50,000 by somebody who lives and works in Moscow today? Will the Government introduce a new requirement on political parties to do proper checks on the source of funds?

Changes to the Electoral Commission's powers under the Elections Act 2022 have left the UK without any body responsible for criminal enforcement of election finance laws. I particularly press the Minister on the fact that no one agency now has enforcement powers over electoral law. Do the Government consider it appropriate for the National Crime Agency to take these powers? If so, will they implement that without further delay? If not, is a department fulfilling this role?

I know that there are British citizens who still feel a connection to the UK, and they will welcome this rule change, but it will also be welcomed by those who want to undermine our democracy and funnel money into our politics. We must not allow that to happen. We must strike the right balance to empower voters without enabling undue influence, but I am afraid that these regulations go nowhere near far enough to do that. Unfortunately, the Government have refused to implement any effective safeguards and have instead brought forward these regulations. I further probe the Minister on how the Government propose to monitor the impact of these new rules. Will they publish regular reviews or statements on the number of new overseas voters? If so, will this include how many have used the attestation route to register? How will we get notified of the number and value of donations made by overseas voters?

The ability to make political donations is dependent on the right to vote, so the change would allow substantially more overseas donations, particularly where the attestation of identity is open to more abuse. We express concern that the changes could dangerously weaken the restrictions on overseas political donations and allow foreign money to enter British democracy. We have therefore tabled this amendment to register our concerns, as this entirely unnecessary risk creates problems for our elections and our democracy. At a time of global instability and significant evidence of hostile states seeking to interfere in UK politics, as well as a lack of public confidence in our political institutions, now is the time to enhance our safeguards, not dismantle them. I hope the noble Baroness, Lady Penn, and the department will think again, and that all noble Lords will support our amendment to the Motion today. I beg to move.

Lord Rennard (LD): My Lords, there are real concerns about these measures. They include the security of our electoral processes, the risk of undermining confidence in them and, above all, our elections being bought by dark money and illegitimate foreign interference. That is why we support the amendment in the name of the noble Lord, Lord Khan of Burnley.

All parties agree on the principle of UK citizens living overseas being able to vote for representatives in our Parliament, but these statutory instruments do not do much to help them. In the absence of a fixed-term

[Lord Rennard]

Parliament, there is a very short timescale in our system for conducting a general election. It is really too short to enable many people living overseas to be able to return postal votes. We could have better addressed the issue of UK citizens living overseas through the creation of overseas constituencies, dedicated to representing their interests. They do this in many other countries, including France, Italy and Portugal. Countries such as the US and Australia allow a longer period, of up to a fortnight after polling stations have closed, for postal votes to be returned, enabling many more of their citizens living overseas to participate in their elections. When I raised such issues during the passage of the Elections Bill, the Government lacked interest. This failure means, for example, that members of our Armed Forces serving overseas, or British diplomats working in our embassies, will often remain unable to cast their votes in general elections.

What the Government are interested in is allowing many more donations to come from abroad, without any organisation in this country having any real capacity to verify the original sources of those donations. The absence of any cap on the size of donations will no doubt encourage more donations of, say, £5 million-plus to come from people whose real interests are not in this country. Why should a billionaire tax exile be able to fund a political party in the UK, and who knows where their money really comes from? The Government have clipped the wings of the previously independent Electoral Commission and made criminal enforcement of election finance laws significantly harder. I wonder why. I think perhaps we should be told.

Political parties themselves have very little capacity to scrutinise overseas bank accounts, or to inspect the accounts of companies operating overseas, even if they want to. Earlier this year, the Government rejected an amendment to the then National Security Bill which would have insisted on greater scrutiny of the original sources of donations to parties. I wonder why. The chair of the Intelligence and Security Committee, Julian Lewis, supported such an amendment, saying that

"the UK has clearly welcomed Russian money, including in the political sphere … We must protect against covert, foreign state-backed financial donations if we are to defend our democratic institutions from harmful interference and influence".—[*Official Report*, Commons, 3/5/23; col. 132.]

But this Government did not want our democracy to have that protection. I wonder why. I think perhaps we should be told.

5.45 pm

As the organisation Spotlight On Corruption says, we need the involvement of the National Crime Agency, with its broad national-level powers, specialist legal tools for tackling national security risks and money laundering, extensive overseas law enforcement network and close working relationship with MI5. The NCA has the ability to co-ordinate and lead criminal enforcement of the UK's electoral laws, but it appears to have taken a back seat on the enforcement of electoral law breaches. I wonder why. I think we should be told.

We have to conclude that the overseas electors legislation is more about big donations from abroad than enabling UK citizens living overseas to cast a vote. Last month, the Government suddenly announced an increase in national party spending limits of 80%, allowing a party to spend up to £35 million in a general election year, even though no previous Government have seen the need to increase the national party limit at all, and Boris Johnson's Government spent just £16 million in 2019. The reason for the new limits must in part be to allow for major new donations from abroad.

The statutory instruments before us expose serious inconsistencies in our approach to elections and to making them fair. They will allow overseas electors to have their identity vouched for by a currently registered voter when they sign up to vote. Voters living here can also register in this way, though the process is very rarely used in the UK. In theory, someone could have lived abroad for 50 years, with little evidence of where they used to vote, and a friend could vouch that they were telling the truth about their eligibility to cast their vote in a marginal seat and to make unlimited donations to a political party.

We are constantly applying double standards in our election laws, as the Government constantly change the rules in their favour. Since May this year, we have required very specific forms of photo ID at polling stations. This is simply a crude form of voter suppression, as Jacob Rees-Mogg recently admitted. In studying the effects of the photo ID rules, the Electoral Commission reported that:

"Around 4% of all non-voters said they didn't vote because of the voter ID requirement".

This barrier to voting could have been reduced significantly if, for example, a voter with the requisite photo ID was able to attest that another voter was who they say they are. This system works well in Canada, and the Electoral Commission recommended it here, but this Government will not have it. I wonder why. I think we should be told.

The Government will allow attestation when an overseas elector wants to register to vote, and unlike with people living in the UK, this may become quite common practice. However, such a system is not allowed when UK citizens living in the UK want to cast a vote at a polling station. Perhaps the Minister will explain this inconsistency, and let us know why the Government will not follow the advice of the Electoral Commission on this issue and why they have ruled out the principle of attestation at polling stations if it is good enough to get on the voting register. Democracy requires a level playing field, but this Government do not seem to believe in it.

Lord Davies of Brixton (Lab): My Lords, I support the amendment tabled by my noble friend Lord Khan of Burnley, following his excellent speech. I have just one additional point to add to this discussion. The argument is that these are British citizens and they should be entitled to vote. The thing about the way the rules will work in practice is that they will tend to be older voters, many of whom may even be past retirement age.

The issue I want to raise is frozen pensions. I am particularly pleased to see in his place the noble Viscount, Lord Younger, who is the relevant Minister. We have discussed these issues before. We have a Government who seem to think it appropriate for these people to

have a vote, but who do not think it appropriate for them to have the pension increases they have paid for. It is a total lottery. If they live in the US, they get pension increases; if they live in Canada, they do not. If they live in New Zealand, they get increases; if they live in Australia, they do not.

The whole system is irrational—as rational as if the noble Viscount came to this House and tried to persuade us not to pay pension increases to people who live in Yorkshire. They are all British citizens; that is the basis of this proposal. My question for the Minister is, what logic is there in giving many British citizens who live abroad a vote if you are not going to give them their pension increases?

Lord Hayward (Con): My Lords, we were, I think, discussing the statutory instruments that relate to overseas voters and their registration, rather than a range of other matters. The noble Lord, Lord Rennard, took us down a series of other paths. I will pick up on two or three of them very quickly. On voter ID, a resolution was passed by this House, proposed by the noble Baroness, Lady Hayman, in a previous debate, whereby that process would be reviewed. Equally, the noble Lord made reference to a process that applies in the statutory instrument which is rarely used in this country but is already in law. Therefore, it is not unreasonable that this application should be extended elsewhere.

The noble Lord referred to postal votes in Australia and other parts of the world arriving after the actual polling date. I think I am correct in saying that in many of those domains, such votes have to be date stamped before or on the actual election day, so there is no extension to the election period by that application.

Returning to the SIs themselves, in any process of trying to extend the entitlement to vote, there is a risk that you reduce the level of security of voting. That is inevitable. Whether it is postal votes, an extended period of voting, votes abroad or whatever it may be, there is an increased risk. The question is, how do you find that balance between extension and security of the ballot? These SIs apply the process that was established under the Elections Act a few months ago. Therefore, I do not see a particular issue with them.

On the question of trying to achieve some form of financial largesse, I wish that the noble Lords, Lord Khan and Lord Rennard, had been present—as I think my noble friend Lord Mott and other noble Lords will have been—at meetings of overseas Conservatives, who were certainly not promising vast quantities of money in return for the opportunity to vote. It was just a genuine desire for the opportunity for a vote in a country to which, as the noble Lord, Lord Khan, acknowledged, those people who are most likely to register do still feel committed.

The concentration is naturally on national elections, but we should also be conscious of local elections. As the Pickles report identified, if those have insecure systems, you are far more likely to end up with a corrupt and influenced local authority, many of which have huge budgets, than at a national election, where it would be much more difficult to overturn the result by the levels of registration, which, to be honest, I expect. However, if the suggestion of the noble Lord, Lord Rennard, is taken up—Members of Parliament having constituencies around the world—I am sure that a number of people would be happy to represent Spain, the Canary Islands or France, for example, rather than some of the domains they have in this country. I say that in respect of all sides of the House, not necessarily this side alone.

I will not be supporting the amendment. I approach all these matters with great consideration because they are important, and my reasoning is twofold. First, as I see it, these SIs implement the process that was approved by the Elections Act. They do not result in an undue threat. There are other processes and aspects of election law which are far bigger threats than this. Cyberattacks have been referred to, as has AI in one form or another, along with dubious registration and intimidation.

Two aspects are particularly important. First, as I think Members on all sides of the House agree, electoral law is a complete mess and needs to be consolidated quickly, so that we do not face the problems we do. Secondly, there is the burden imposed on elections administrators, which has also been alluded to. When I was young and an election occurred, you registered and did everything months or years in advance. Now, there is an elections event, which takes place over three weeks, and everything is concentrated into it. We should not underestimate the burden imposed on elections administrators in any number of different ways. If our elections system fails, it will be because our electoral law is inadequately clear—it is a mess—or because the administrators just cannot cope.

It is for those reasons that I will be supporting the Government's Motion and not the amendment.

Lord Anderson of Swansea (Lab): My Lords, the noble Lord, Lord Rennard, appears to accept that this proposal constitutes a threat to our electoral system, but he says that there are far more severe threats and therefore, among other reasons, he will not support the amendment. I congratulate my noble friend on raising this issue; he is right to do so.

As the noble Lord, Lord Rennard, has done, I would like to point out the danger that this proposal could lead to a vast amount of work for electoral registration officers, as we have seen already. It is certainly quite a weighty SI. I go back in history to the time in the late 1960s when Roy Hattersley first made a concession in this area. Since that time, this thin end of the wedge has been increased and expanded massively.

I would like to hear from the Government whether there has been evidence of fraud as this overseas franchise has developed over the years, and the extent of that fraud. As has been rightly pointed out, the further away you are from the UK geographically, the more likely it is that it is very difficult to verify statements that you make. You can get a friend, perhaps of long standing when you have been abroad for a long time, to do that.

6 pm

The slogan of the Boston Tea Party was, "No taxation without representation". What we have in this case is clearly representation without taxation, as people can have very vestigial links. When I had a

[LORD ANDERSON OF SWANSEA]

place in France, I met many of those people; they were good people, but they had no serious links with the UK. We are talking about a context where there is great concern in the country about foreign interference in our electoral processes, so do these proposals give greater scope for such foreign interference?

I raise again the question of sanctions. For example, it is said that if people living overseas contravene the provisions of the SI by fraud or other means, they will be subject to fines. Surely that is absurd. How can any fines be enforced on someone who lives a good distance abroad? This is just window dressing; it is a spurious suggestion.

We are bound to ask some questions—but I will be brief. What are the pressures behind this proposal? What are the demands and how great are they? Is there evidence of fraud in the past? What is the real motive of the Government in pressing this? My noble friend Lord Khan put his finger on the motive: it is not the advance of democracy; instead, it gives the opportunity for many people to interfere in our elections.

This is surely a partisan proposal; it will benefit the Conservative Party, according to many estimates. What expectations do the Government have about the number of donors, some large, who may suddenly surface as a result of these proposals? In their dying days, this Government have brought forward these proposals. My hope is that an incoming Labour Government will speedily reverse them.

Lord Lexden (Con): My Lords, my noble friend Lord Hayward stressed the central point about these regulations: they bring into effect, at long last, the right of our fellow countrymen and countrywomen living overseas to participate in our elections. They were promised votes for life, and at long last that promise will be fully delivered, following the provisions in the Elections Act of last year that these regulations carry forward.

It is an immensely important day for those who have looked forward to it and have campaigned for it. Many of them are in the Conservative Party, as my noble friend referred to, alongside others in this House. I well remember advocating the removal of the arbitrary 15-year limit in my early speeches in this House, 12 years or so ago. The noble Lord, Lord Wallace of Saltaire, will recall the legislation that gave rise to those discussions.

It was particularly gratifying last year, when the Elections Act was carried into effect, that among those who were able to note it with approval and rejoice was a quite remarkable figure: Harry Shindler OBE, a long-time Labour supporter resident in Italy following courageous action during the Second World War. He devoted a large part of the peacetime that followed to draw attention to the very unsatisfactory state of affairs and to call for change, year after year in place after place. It was wonderful to celebrate with this great man, aged 101, immediately after the passage of the Act last year.

This measure implementing what was agreed last year brings us in line with so many other countries that give full voting rights to their citizens living in other countries. It has become a mainstream democratic principle, and we are right to incorporate it in our law. The Labour Party, through the noble Lord, Lord Khan, seems to be suggesting that it is au fait with the retention of some restriction in this area. I remind the Labour Party of the view of Labour International, to which it belongs. It said in March 2021 that it urges the PLP and party leadership to support votes for life for British citizens living outside the UK:

> "As a democratic party, Labour should acknowledge that many British people living and working abroad still have close connections with the UK and are directly … affected by decisions and actions of the government in the UK".

I ask the Labour Party to bear that very much in mind.

Lord Harris of Haringey (Lab): My Lords, the Minister is well respected in this House for the cogent and clear way she presents material to us, so I listened with great care to what she had to say. While she explained in detail the practical—and, in some cases, quite complicated—details of how this will work, I heard very little about the philosophy underpinning what is being done. The noble Lord, Lord Lexden, just gave us an example of the philosophy of why this is appropriate—the principle of votes for life for citizens—but what we have not heard is the underpinning philosophy of why this solution is the appropriate response to that.

If elections mean anything, they are about local people choosing a local representative to represent their interests in a Parliament, a local authority or whatever else. Here, we are talking about people who have lived overseas—maybe for 15 or 20 years or even longer—so where is that local link and line through which local people vote for a local representative to sit on a body representing their interests? It becomes very blurred. As I understand the proposals, you will, in effect, have a choice. If you have lived overseas for many years but, in your youth, you lived in all sorts of places around the UK, you can pick and choose the constituency or area to which you have affinity. Is that an appropriate way of demonstrating that link?

Some have made jokes about one of the issues, saying that we should have an MP representing people living in the Bahamas. But the principle adopted in other countries is quite clear: it recognises that, after 10, 15 or 20 years, you no longer have the same sort of local affiliation, and it is therefore legitimate that your interests are represented in some other way. For somebody who was last resident in this country 20 years ago, there may well have been several changes in the Member of Parliament for their area—I have lost count of how many general elections we have had in the last 20 years, for a variety of reasons—and they may not have very much knowledge about what has gone on their area. The question then arises as to why it is appropriate for that link to a particular constituency to be allowed.

When the Minister responds to my noble friend Lord Khan's regret amendment, she needs to address why we are doing this. What is the philosophy that underpins it and, secondly, what is the reason for choosing this particular method of delivering the commitment to lifelong electors? Why are we saying that you have this opportunity to pick and choose—to decide which constituency you might want and whether you will participate in local elections about local services? You will, ultimately, decide the amount of expenditure

on refuse collection and other matters. That is no doubt fascinating, but if you have lived overseas for many years, it is difficult to see how you have that affinity and that interest. We have to understand why this particular solution has been taken. When the Minister explains why the option of creating a constituency for overseas residents has not been dealt with, perhaps we can then have some explanation as to whether this has created a significant further loophole in respect of bringing money into this country for electoral purposes. It is difficult to understand why there is this sudden move to do it, and to do it in this way.

Lord Brooke of Alverthorpe (Lab): My Lords, I will be very brief, because I know your Lordships wish to move to the vote. I will just follow up on some of the points made by my colleague. The real problem we have is that the 2010 coalition abandoned all the work that Labour was doing on establishing a national identity. If that had proceeded, we would have created a national identity for every individual. We would have known where they were located at the time they left the country, and that would then have been used as the point at which they cast their vote. I address my remarks primarily to my Front Bench. As we prepare our manifesto, I hope we will go back to what we were doing then. We see the problems that we are having with immigration, the failure to know how many people we have in this country and so many areas in which we need a national database. We should have a look at the Indian experience and the way in which India has created quite an amazing national digital identity, and look to see whether we should not have one in the UK to bring ourselves up to date. It would answer many of the problems of this kind of legislation.

Baroness Hayman of Ullock (Lab): My Lords, I have just one very quick point. The noble Lord, Lord Hayward, talked about the fact that I had asked about reviews; when we consider the potential for election fraud, that is really important. The Elections Act was brought in, according to the Government, because they were concerned about shutting the door on fraud. My concern is that this will open the door to more than they will stop.

I will just pick up some of the things the Minister said in her introduction. If there is no national insurance number, there needs to be documentary evidence provided. That will be provided by the applicant. Checks against the electoral register at the moment go only up to 15 years. The Minister said that will be retained for longer in future, but how do we know how accurate it is now? How will we measure that? What analysis will the Government do as this goes forward to check on the potential level of electoral fraud, and how is it going to be reviewed and analysed in future? We need to make sure that the people on the register are those who need to be on the register—especially if that can then lead to donations.

Lord Wallace of Saltaire (LD): My Lords, we on these Benches are in favour of extending the franchise further, but as part of a wider reconsideration of inclusion on and exclusion from the register. I remind the House that we have an estimated 8 million British citizens living in this country who are not on the register—about which something ought also to be done. We are concerned about how this is implemented and some of its unintended consequences. I remind the House that there are 3.5 million British overseas citizens. That is, by my calculation, roughly 5,500 per constituency, if they all registered. If we assume that no more than 50% register, that is still well over 2,000 per constituency. I am sure the Minister will have been briefed that overseas registration in constituencies is not uniform but highly variable. Some London constituencies already have approaching 2,000 overseas electors, whereas a number of constituencies in Wales have fewer than 20. That is to be expected. Next time we redraw the tightened boundaries of our constituencies, do we take into account the number of overseas voters who are registered in various constituencies? If we do, some London constituencies will get quite a bit smaller because the numbers of overseas voters will take them way over the quota.

6.15 pm

A whole range of questions have not been considered. For example, I know of no element in this SI that talks about spending limits for parties when dealing with and searching out overseas voters. This is all part of the reason why overseas constituencies are, for us, a necessary consequence of extending the franchise for a long time. I should have declared an interest, of course: I will skype my two elder sisters just before Christmas. One has lived overseas for more than 50 years and the other for more than 60 years. I shall remind them that now is the time, as dual nationals, to register to vote in British elections as well as the elections in the countries in which they reside.

My noble friend Lord Rennard talked about the inconsistency between the rules for domestic and overseas attestation. The noble Lord, Lord Hayward, talked about the resources of electoral registration officers. I have spoken to electoral registration officers in Yorkshire who say they fear they will be overwhelmed by this, because people will register at the last minute. The SI suggests that you can challenge or check an application. That simply cannot be done during a short election campaign. This will end up as a considerable mess, with complaints afterwards.

There is, as has also been mentioned, no real mechanism for who enforces some of these rules. The Elections Act 2022 weakened the role of the Electoral Commission. It is quite clear that, whatever happens after the election, we are going to have to look at electoral law as such and the role of the Electoral Commission as the guarantor of the integrity of British democracy.

I do not know whether the Minister has been briefed on the story that appeared in the *Financial Times* on 17 October, very recently, which told us that Penny Mordaunt, as Leader of the House of Commons, wrote to Tom Tugendhat, the Security Minister, in September,

"calling for a new intelligence-sharing framework between the security services and the UK's main parties",

and that:

"Some government insiders fear parties have too little access to sensitive information about potential donors … Mordaunt has been working with officials to identify new mechanisms for data sharing between intelligence officials and political parties".

[LORD WALLACE OF SALTAIRE]

I tried to discover whether that letter has been placed in the Library of either House or published, and I have been informed by our Library that it has not. It seems to me that it is of relevance to what we are now discussing, which is the question of how on earth we will check. The Electoral Commission does not have powers to investigate either registration or the source of donations in other countries. I remind the Minister that one of the largest donations to the Conservative Party this year, of £5 million, came from someone whose financial interests are centred in Dubai, which, as we well know, is one of the main offshore centres for Russian and Chinese money, not to mention Gulf money itself, which in turn may have particular ways of foreign interference. Another of the largest such donations, of £2 million, came from someone whose financial and commercial interests are in Indonesia and Thailand. It is very difficult to check, and Penny Mordaunt's letter was suggesting that political parties do not check, whether the person giving the money is really the origin of the money.

So we have a large list of questions that this SI does not answer. Clearly, after the election we need a full and cross-party examination of electoral law, of the role of the Electoral Commission and of the whole question of inclusion and exclusion in voting rights. It may indeed include some of the questions that the noble Lord there was raising. We on these Benches will support this regret amendment if it is pressed, because we are not convinced that the Government have thought this all through. It is quite evident that they have not and we are therefore led to conclude that concern for increasing large foreign donations to the Conservative party from people based in Dubai, Singapore and elsewhere without checks being made is one of the main motivators of pushing this change through so rapidly without thinking through the consequences. We will regret that, because it is a threat to the integrity of our democracy.

Baroness Penn (Con): My Lords, I am grateful for the contribution of all noble Lords to this debate. The noble Lord, Lord Khan, started with some of the principles behind expanding the franchise to overseas electors. The noble Lord, Lord Harris of Haringey, also asked about that point. The statutory instruments implement changes made in the Elections Act and were debated substantially then—but it is worth touching on those points now.

Currently, around 1 million overseas UK nationals are eligible to register to vote, but only around 230,000 were registered in 2019. By that measure, they could be seen as the least enfranchised electors of any group. In terms of connections to the UK, British expats increasingly retain strong links with the United Kingdom. Many have family here or plan to return here in future. Decisions made by the UK Parliament on foreign policy, defence, immigration, as we have heard from the noble Lord, Lord Davies of Brixton, on pensions, trade or Brexit affect British citizens who live overseas, and that is why they should have the right to vote in parliamentary elections.

To those who say that it is politically motivated, as we have heard, I believe it is Lib Dem policy to support votes for life, albeit structured in a different way, to establish overseas voters into stand-alone overseas constituencies. It is the view of this Government that it would sever the connection to where the voters previously lived in the UK and create a two-tier system of MPs. So, it is in the interests of UK citizens resident in the UK to be balanced with those living overseas, and distributing electors on the basis of their previous local connection would ensure that.

As my noble friend Lord Lexden pointed out, Labour International also supports votes for life and has addressed some of the questions around this policy in its own words—in particular the point around whether overseas electors are tax exiles or non-doms. Labour International states that

"the vast majority of us are working age or younger and not tax exiles or rich non-doms. Those who are pensioners may have spent a lifetime paying into UK insurance and be dependent on UK pensions and healthcare funding".

On the connection between paying tax and being eligible to vote, as a matter of principle taxation is not connected to enfranchisement in the UK. If a British citizen can vote for a political party at an election, they should be able to donate to that political party, subject to the transparency requirements on donations. Electoral law already allows registered British expatriates to vote in UK parliamentary elections and make donations. The Elections Act and these statutory instruments make no change to that principle. They merely amend the overseas franchise.

To expand further on the concerns raised by the noble Lords, Lord Khan and Lord Harris, about applicants potentially fraudulently choosing their constituency or registering in more than one location, as now, overseas electors will be entitled to register in respect of only one UK address. The Elections Act 2022 puts in place clear rules regarding where British citizens overseas may register. It must be the address at which they were last registered or, if they were never registered, last resident. As now, their connection to that address must be established before they are added to the register. Individuals applying in contravention of those rules will be providing false information and may have committed an offence. They will be penalised accordingly.

Lord Anderson of Swansea (Lab): How will they be penalised? How can a sanction levied in this country be imposed abroad?

Baroness Penn (Con): Well, as under the current system, all overseas applicants need to prove their identity and their verifiable connection to a UK address. A broad range of offences and penalties applies to persons seeking to register. If the applicant is not registering in compliance with those rules, an electoral registration officer who suspects fraud, for whatever reason, will ask them for further information and will not register the individual if they are not satisfied. So, there may be different routes to enforcement, but the key point here is whether people would be able to get on to the register using inaccurate or fraudulent data. That is what we have put protections in place to prevent. Registration officers are experienced in assessing evidence and, as I have said, as now, when they suspect fraud, they will have the power to ask for further information.

The noble Lord, Lord Khan, also asked about the process for using—

Lord Wallace of Saltaire (LD): Has the Minister ever visited an electoral registration officer's office? Does she realise how small the numbers of staff are? The idea that they can take on all these checks, even outside the short election campaign when they are always extremely busy, does seems a little optimistic.

Baroness Penn (Con): My Lords, I will come on to the question of resources and implementation later in my response but, as I said at the start of my speech, the expansion of the franchise does not change the principle of the franchise. People who have been abroad for up to 15 years are able to vote and these measures are expanding that further.

I was going to add more on the process of using attestations to demonstrate the connection to the UK address, as this was asked about by several noble Lords. It is important to make this work, so that an eligible applicant has every opportunity to demonstrate their eligibility. We anticipate that an electoral registration officer will be able to verify most applicants' connection to their qualifying address using register checks or DWP historic address matching. Where this is not possible, applicants will be able to provide documentary evidence or, failing that, an attestation. This is in alignment with the processes for verifying identity. We have considered feedback from stakeholders on the different types of documentary evidence that an overseas applicant may have available to them and enabled electoral registration officers to consider a wide range of documentary evidence, providing that it contains the applicant's name and qualifying address. This is a hierarchy of processes that applicants must go through. Attestation can only be used if those other processes have not been able to establish the information needed.

The attestation process is a long-established process for voter registration and, as I said before, used only where other methods of verification have been exhausted. Attestors are subject to certain requirements and must provide information that demonstrates that they meet those requirements. They must declare that all information in an attestation is true and acknowledge that it is an offence to provide false information to an electoral registration officer. The Government believe that these instruments strike a balance between the accessibility and integrity of the attestation process by introducing new limits on the number of individuals an attestor can attest for within an electoral year. The Electoral Commission provides guidance for EROs on verifying attestations and has the power to reject those attestations.

6.30 pm

I now come to the additional costs and resources implied by these changes. As I said in my opening remarks, the Government have already committed to funding the additional costs incurred by electoral administration teams from all changes to electoral administration by the Elections Act; this is covered by the new burdens doctrine. This will include funding the additional costs incurred by local government for the registration of newly enfranchised overseas electors. The administrative cost of extending the franchise for overseas electors has been extensively modelled, with the help of local authorities and other sector stakeholders. New burdens funding will be provided via an upfront grant in spring 2024, with local authorities able to bid for additional funding via a justification-led process, to ensure that local authorities have the resources that they need when they require them. The impact assessment published alongside this statutory instrument set out estimates for how much this would cost. The central estimate put it in the range of £40.8 million over a 10-year period.

Noble Lords asked about the systems that we have in place to ensure the integrity of our donations regime and our broader electoral system. UK electoral law sets out a stringent regime of donations controls to ensure that only those with a legitimate interest in UK elections can make political donations, and that political donations are transparent. The same transparency measures will apply to those who are empowered to vote and donate through this expansion of the franchise, as applies to existing voters. Money from a foreign or unknown source is illegal.

The Elections Act 2022 further tightened the law on political finance, making it harder for foreign influence to take place in elections. The Electoral Commission has been given more powers to access Companies House information through powers under the Economic Crime and Corporate Transparency Act 2023, which will strengthen the application of existing political donation laws. The Government's Defending Democracy Taskforce ensures that we have a robust and joined-up response to the range of threats facing our democratic institutions. Through the National Security Act 2023, a new foreign influence registration scheme and new foreign interference offences will strengthen the resilience of the UK political system against covert foreign influence. During the passage of the then National Security Bill, the Government further committed to undertake a consultation on enhanced information sharing between relevant bodies to help identify and mitigate foreign interference in political donations. The Government will lay a report on that before Parliament by the end of next year.

The noble Lord, Lord Khan, asked how we will monitor the impact of the changes made under these provisions. As with any legislation initiated by the Government, we are committed to monitoring overseas electors changes. In the Elections Act, the Government committed to undertake post-legislative scrutiny no less than four and no more than five years after Royal Assent.

I turn to my noble friend Lord Hayward's concerns about the increased burden on administrators. I have addressed funding but let me say that we have sought to minimise as far as possible the new burdens on administrators by working closely with the sector and the Electoral Commission in the policy design. Improvements to the registration process, including enabling the electronic submission of documents and digital improvements to identity verification, will make applications easier to process and reduce the potential for a back-and-forth between electors and administrators. The increase in the registration period for an overseas elector—from one year to up to three years—will ensure that more electors remain registered between elections, which will both benefit the elector and reduce

[Baroness Penn]
the burden on administrators. We are committed to ensuring that the sector is prepared to implement these measures across the UK from 16 January 2024.

Further, on the security of the Electoral Commission, my honourable friend in the other place, Minister Hoare, who leads on this area for the department, met the Electoral Commission—today, in fact. It was the latest in a series of regular meetings that Ministers have held with the Electoral Commission, so we remain in close contact with it.

I am conscious that I have not addressed a number of further questions, and I commit to doing so in writing, but what I have done is set out the principle behind why these changes are taking place and the safeguards we have put in around them. In the light of that, I hope that the noble Lord, Lord Khan, will feel able to withdraw his amendment.

Lord Khan of Burnley (Lab): My Lords, I thank the noble Baroness, Lady Penn, for her response. I also thank noble Lords for their contributions to this debate, although I was quite bemused by the frustration of the noble Lord, Lord Hayward, at myself and the noble Lord, Lord Rennard, having not attended the overseas Conservatives meeting. I did not get an invitation either.

UK politics is already vulnerable to bad actors, including hostile states, seeking to subvert democracy through donations to political parties. I want to highlight the fundamental point in this debate: extending the right to vote to millions of new voters overseas without a related requirement to check the source of donors' funds will significantly increase the risk of foreign influence in our politics.

We have raised concerns around this issue continuously: my noble friend Lady Hayman of Ullock raised concerns during the passage of the Elections Bill; my noble friend Lord Coaker raised concerns during the passage of the National Security Bill; and noble Lords from across the House raised the alarm in the interests of national security during the passage of that same Bill. The Electoral Commission has raised concerns in this area. The chair of the Intelligence and Security Committee has expressed concerns and spoken out on this area, as the noble Lord, Lord Rennard, mentioned. The Committee on Standards in Public Life has also spoken out on this very point.

The Government have resisted in providing the necessary checks and safeguards. Although I appreciate the response from the noble Baroness, Lady Penn—I have the utmost respect for her, especially as we are constantly sharing parenting notes with each other as we both have young children—she has, unfortunately, not provided any assurances on the fundamental issue of foreign and undue influence in our democracy, which ultimately affects our country's national security. In view of the importance of this issue, I would like to test the opinion of the House and put my amendment to a vote.

6.37 pm

Division on Lord Khan of Burnley's amendment

Contents 164; Not-Contents 133.

Lord Khan of Burnley's amendment agreed.

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6.48 pm

Motion, as amended, agreed.

Representation of the People (Overseas Electors etc.) (Amendment) (Northern Ireland) Regulations 2023

Motion to Approve

6.48 pm

Moved by ***Baroness Penn***

That the draft Regulations laid before the House on 23 October be approved.

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

Motion agreed.

National Insurance Contributions (Reduction in Rates) Bill

Committee (and remaining stages)

6.48 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, I understand that no amendments have been set down to the Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. With the agreement of the Committee, I will now report the Bill to the House without amendment. That concludes the Committee's proceedings; the House will now resume.

House resumed. Bill reported without amendment.

National Insurance Contributions (Reduction in Rates) Bill

Third Reading

6.49 pm

Motion

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

That the Bill do now pass.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, I am grateful to all noble Lords who have participated in the passage of the Bill. It delivers on the Government's long-term plan to grow the economy and reform the tax system. It achieves this by cutting taxes for 29 million workers through three measures: a reduction in the main rate of employee class 1 national insurance contributions, or NICs, from 6 January 2024; a reduction in the main rate of self-employed class 4 NICs, from 6 April 2024; and the removal of the requirement to pay self-employed class 2 NICs, also from April 2024. Those who choose to pay class 2 voluntarily will still be able to do so. This

[Baroness Vere of Norbiton]
simplifies the system for self-employed taxpayers, so that it is more closely aligned with the treatment of employees. The Government intend to fully abolish class 2 NICs, and further details about this reform will be set out next year.

Although this is a relatively small Bill, it has a big impact. It is an integral part of the Government's long-term plan to grow the economy and reform the tax system but, most importantly, it is fair and it is right, because it stands by working people.

I would especially like to take the opportunity to thank all the Treasury officials for their enormous hard work in bringing the Bill to your Lordships' House so quickly, such that it will deliver the benefit to workers from January 2024. I beg to move.

Baroness Kramer (LD): My Lords, it is customary at this point to thank all those who have helped us with the Bill. The arduous task of taking it through has perhaps been one of the lighter moments of our parliamentary lives, but there was still a lot of hard work by the Bill team to prepare it. I would thank my staff, except that none of them worked on it. This is just to say a formal thank you to everyone who contributed to this process. We appreciate it.

Bill passed.

Organ Donations

Question for Short Debate

6.53 pm

Asked by ***Lord Hunt of Kings Heath***

To ask His Majesty's Government what assessment they have made of the impact on organ donations of the Organ Donation (Deemed Consent) Act 2019.

Lord Hunt of Kings Heath (Lab): My Lords, I am very glad to have tabled this Question for Short Debate. I was honoured to take through the House my Bill, which became the Organ Donation (Deemed Consent) Act in 2019. In the year before the Bill became law, over 400 people died while waiting for a transplant and a further 755 people were removed from the transplant list as they were just too ill to receive a transplant. The Act aimed to increase the number of organ donations and save more lives.

The Policy Innovation Research Unit at the London School of Hygiene & Tropical Medicine is undertaking an evaluation for the Government on the implementation of the Act. It described the situation we have as a "soft opt-out" system, where it is presumed that people are happy to donate their organs after their death unless they have indicated otherwise or registered their decision to opt out. The principle behind the Act is simple: decisions not to donate should rest with individuals to make during their life, and families should not be able to make decisions on their behalf after they have died. The question is: has the Act made an impact?

My understanding is that there were just under 7,000 patients waiting for a transplant, with a further 3,800 temporarily suspended from the transplant list, at the end of March 2023. In 2022-23, 439 patients died while on the active list waiting for their transplants, compared with 429 in the previous year. A further 732 were removed from the transplant list, mostly as a result of deteriorating health and ineligibility.

NHS Blood and Transplant reported that:

> "In 2022/23, there was a 2% increase in the number of deceased donors … and the total number of patients whose lives were potentially saved or improved by an organ transplant increased by 5%".

Worryingly, its evaluation of opt-out legislation in England observed a consent rate of 61%, which was lower than the predicted post-legislative opt-out consent rate of 78%. We can conclude that, in England, while there has been a little progress, there is no evidence of significant change in consent rates in the initial years after implementation.

So what has gone wrong? I want to identify six issues. The first is whether the NHS is geared up to respond to higher deceased donor rates, if we can get them. The second is whether we have enough specialist nurses. They have the extremely difficult role to play of initiating discussions about potential organ donations with families, at a sensitive time. The family is still always involved in those discussions, but we know that investment in transplant co-ordinators is often cited as one of the key factors for Spain's world-leading organ transplantation service. The third issue is whether we have a strong enough communications strategy. The Government committed £18 million to this but, in essence, Covid got in the way. It seems to have been left to patients themselves and the charities that support them, such as Kidney Care UK, to raise awareness of the Act.

The fourth issue is bureaucracy. While the Act covers some elements of deceased donation, it excludes less common organs, tissues and research. There are now multiple pieces of legislation and consent systems working in parallel, which provide a confused picture for those trying to operate the transplant service. The fifth issue is that there clearly needs to be a lot of work done to reverse the poor donor participation affecting patients with ethnically diverse backgrounds. Finally, we need to think further about the role of families. Although families no longer have a veto in law on organ giving, in practice they are still influential. This contrasts with other countries where opt-out systems are in place, where there tend to be fewer families vetoing the organ donations of their loved ones.

In advance of the evaluation that the Government commissioned, three reports have identified and looked at some of these issues. The first was that of the All-Party Parliamentary Group on Ethnicity Transplantation and Transfusion. Its recent report highlighted how the lack of donor participation affects patients with ethnically diverse backgrounds. It reports that a patient's chance of surviving diseases such as blood cancer, and chronic conditions such as kidney disease, is heavily swayed by their ethnicity. On average, those of mixed heritage and from ethnic-minority communities wait longer for diagnosis and for the best donor to be found for their treatment. The APPG says that its key discovery is how hard it is to get sound data and what little progress has been made on this. The APPG thinks that our healthcare systems do not record ethnicity with the consistency or granularity necessary to be clear about the gaps in need and outcome of treatments.

Kidney Research UK echoed this in its 2018 report on the health inequalities of kidney disease, which found that people from ethnic-minority groups waited between 168 and 262 days longer for a kidney transplant than Caucasian kidney patients. I find that both remarkable and utterly unacceptable; think of the impact that must have on the life chances of those people waiting, on average, much longer for a transplant.

Coupled with that, Kidney Research UK pinpointed in a recent health economics report that demand for kidney transplantation could be as high as 12,000 per year by 2033. In the UK, the current levels are around 3,000—we have an awful long way to go there.

I will mention a final report produced last month by the Cystic Fibrosis Trust, which stated that organ utilisation is a key issue affecting transplant rates in the UK. It pointed out that in 2022-23 only 15% of donor lungs offered for transplantation were utilised. It also pointed to a February 2023 report by the Organ Utilisation Group—I believe Ministers have looked at it very carefully—which highlighted the unwarranted variation in practice between organ types and transplant units contributing to disparities in more general access.

I put the following questions to the Minister. First, is he satisfied that NHS Blood and Transplant and NHS trusts are putting sufficient priority into work on organ donation? Is NHS Blood and Transplant far too risk averse? Has it struggled to adapt to a soft opt-out programme? It looks to me as if it has continued to operate on the basis that the family needs to give consent. Secondly, does he think enough resources have been put into the programme? I particularly have in mind the specialist nurses who are the key professionals in the service in terms of relating to families, alongside transplant services themselves. Do we have continuous communications campaigns and, if not, should we not be prepared to invest some resource in stepping that up? Around that is the message of individual choice; is the choice to donate organs and tissues sufficiently clear to the public?

As patient support charities, including Kidney Care UK, are working across all regions to increase awareness and encourage those vital family conversations about organ donations, can we give those organisations more support?

Is the Minister satisfied that NHS Blood and Transplant is really grasping the opportunities that having an opt-out law can bring to increasing public awareness? During the progress of the Bill, I received huge support from its medical director. He came to briefings very enthusiastic about getting rates up, but I do not get that sense of enthusiasm from the organisation any more. Is it fully committed to taking advantage of the legislation?

Finally, are the Government cognisant of some of the issues that bureaucracy is causing?

I very much welcome this debate and look forward to hearing other contributions.

7.03 pm

Lord Weir of Ballyholme (DUP): My Lords, I welcome the debate brought forward by the noble Lord, Lord Hunt, and the focus that it enables on this issue. I am supportive of the principle of the legislation that he brought forward, which balances out the opportunity for increasing those making life-saving organ donations, while still being wedded to the principle of voluntary decisions to donate.

In the short time available, I will concentrate on a point touched on by the noble Lord—the specific position of those suffering from cystic fibrosis. This covers about 10,500 people in the United Kingdom, and organ donation is particularly relevant to them because it is highly likely that the vast majority will require it at some point in their lives. Normally that is in the nature of a double lung transplant, but it can also have impact on organ donations involving the stomach. As he indicated, it is not simply a question of widening the pool of people willing to give a donation. The latest figures suggest that in 2022 there were 33 donors providing lungs within the system, but only six operations involving a lung transplant. The figure cited by the Cystic Fibrosis Trust makes reference to about 15%. That led, in part, to the Government's establishment of their own Organ Utilisation Group, which reported in 2023 and highlighted a wide variety of practice in both the type of organs and between different units.

We have also seen barriers to utilisation that can happen for non-clinical reasons—for example, the absence of a theatre where the operation can be performed. Arising from that report were 12 recommendations. It would be useful if the Government could indicate whether they are committed to all 12 of those recommendations, and any progress they have made on their implementation.

With cystic fibrosis we concentrate very much on the issue of organ donation supply, but demand is also critical. We know that the modular treatment developed in the past few years can reduce the pressures of demand. Agreement was reached in 2019 between the NHS and those providing medications that lead to modular treatment. On the face of it, the initial reports suggest there is clear clinical evidence that it is of benefit. For example, 96 people joined the cystic fibrosis transplant waiting list in 2019, while in 2022 the figure was just 22. What is concerning is that the initial conclusion drawn is that this provides something clinically effective, but there is a question mark over value for money. It is critical that this be resolved, because it is leaving many families in a very difficult position.

This highlights that widening the pool of people giving consent for organised donation is critical for individual families. That is only one part of the picture—the other issues of utilisation of organs and demand is critical as well. That provides us with the full picture and jigsaw, and I am interested in the Minister's response on those issues.

7.08 pm

Lord Allan of Hallam (LD): My Lords, I am very grateful to the noble Lord, Lord Hunt, which takes me back more than a decade to when I worked at Facebook. That may seem like a weird connection, but back in those days when Facebook was connecting people for social good—before we went on to destroy democracy—one of the programmes we ran was encouraging the uptake of organ donor registers. There were people

[LORD ALLAN OF HALLAM]
connecting on the social media platform to arrange donations and we extended that and said that it was great to use our platform to get out there and encourage people to sign up. There was a slight flaw in that this was all designed from the US perspective, where of course it is an opt-in register that you sign up to when you get your driving licence. That worked for the US because nearly everyone has a driving licence, but when we tried to roll it out across the world I had to tell colleagues that the US model is not always present. We started to look at the variation across different systems and recognised that there was opt-in, opt-out and 99 different varieties of organisational structures for organ donation.

Fast forwarding to where we are now, the law has certainly moved on since those days, not least thanks to the efforts of the noble Lord and others who took through the law change in England. As he pointed out, a lot of those shifts in the law are predicated on assumptions about an uplift that will happen. He cited the figures, which I also saw, that there would be a shift from 61% of people consenting to donation to 78%, yet the numbers show us that it has not happened and that the change has been much less dramatic.

Of course, Covid intervened, so the data we have, for England in particular, is not especially helpful and will not be for a little while as we get back to more of a "business as usual" situation. But there is really interesting data from other countries. Part of the fascination of being a spokesperson in this place is that it does encourage you to learn and read about things that you did not understand before, and to take that curiosity.

I found a fascinating 2021 paper from an academic called Harriet Etheredge in the *Risk Management and Healthcare Policy* publication, which I recommend, if noble Lords have not read it. She goes through the difference between opt-out and opt-in systems in a very readable and accessible way. The short version of her summary is that a shift to opt-out is not the silver bullet many people hope it will be. Rather, she concludes that actual rates of donation—which is what we are concerned about at the end of the day, not the rates of who has opted in or out; it is ultimately about the number of organs that end up being donated—relate to many other factors in a country's healthcare system. She says it is very much about looking at specific local barriers and building local trust.

I want to build on the comments of the noble Lord, Lord Hunt, and to address the specific barriers in England in particular—that is what we are talking about in this debate—thinking about what builds trust in England.

The data in the House of Lords Library note, which was again helpfully supplied for this debate, tends to reinforce the view that it is not all about opt-in or opt-out. It tells us that the top-rated countries are the United States and Spain, the United States being an opt-in country. In the paper, Spain is described as not pure opt-out; it is seen as an opt-out country but in fact it is more of a hybrid model. Again, as the noble Lord, Lord Hunt, described, the Spanish example is very instructive because it is not necessarily the register that has got Spain to those levels. Academics suggest that it took Spain 10 years from moving to the hybrid opt-out model to get to those high rates. It got there by investing in the transplant services and in family counselling in particular, in order to get ahead of the moment when a decision is made. When you know someone is likely to be a donor, you start the conversation with the family at that stage, so that when the decision has to be made, a lot of the work has already been done and people have a much greater level of understanding.

Harriet Etheredge does, in passing, talk about the hard opt-out model whereby families cannot overrule—I think that was introduced in Brazil—but suggests that there was a significant backlash. So, there are major concerns about a model whereby families cannot overrule if there has not been an express wish. That is worth considering. I can instinctively see why it does not take many negative stories about families who really object to being overruled for the whole system to fall into disrepute; that was certainly the situation in Brazil.

The paper looks at other national situations. Harriet Etheredge highlighted Singapore, which is interesting because it is ethnically, religiously and culturally very diverse. Referring again to the comments of the noble Lord, Lord Hunt, there may be some really interesting lessons to learn from Singapore. It has an advanced healthcare system, but people's social attitudes are quite diverse. For example, it has a large Islamic community, which has traditionally been more sceptical about and had more concerns about organ donation. Singapore has managed to work through those, and there may be something important for us there.

The importance of education and trust in the system cannot be overstated. That is particularly true for the families. We can educate ourselves, as potential donors, but the other critical parties are the families who are sitting around us if ever it comes to the point when that donation may be about to be made. Perhaps we do not focus enough effort on educating families about how they should approach that situation. They are in an incredibly distressed state at the deathbed of a relative, and that is the time to finish the conversation about organ donation, not start it. A lot of education upfront would be very useful.

It is essential to have staff who have the time to do this very labour-intensive work; again, the noble Lord, Lord Hunt, talked about blood and transplant services. It is incredibly labour-intensive to sit with people for perhaps hours as they say, "Yes. No. Yes. No", going backwards and forwards, as we all might do in that situation. That is not something our NHS is traditionally geared up to do; it is more a case of "make a decision and move on". Co-ordination is also labour-intensive; it is very on/off, and it requires many hours of people's time. I will be interested to hear from the Minister where this fits into the workforce plan, given that we need this particular skillset and capacity.

The other key flag raised relates to transparency and accountability. If we are going to have public consent, there needs to be some understanding of the system as a whole, not just individual decisions. We can see how trust can be lost, given the range of stories we read every day about organ harvesting, unfair access to transplants, failed transplants and so on. We need to be mindful of that: for people to buy into the

system, they have to see that the benefits outweigh the negatives. We all understand why, in many cases, the negatives are more newsworthy, but I do worry that trust is lost. Every time there is an organ harvesting story, we may say that that has nothing to do with the NHS and organ transplanting, but people out there start to associate transplants with something dark and negative, rather than positive and life-giving. I will be interested to hear how the Government intend to address that.

It would be unwise to assume that everybody will always see transplants as a priority. This touches on the points made by the noble Lord, Lord Weir. A double lung transplant, for example, requires a huge amount of resource. Probably all of us involved in this debate believe that we need to make that investment, and that it is a valid one for the NHS. But in order for people to understand the system as a whole, the Government need to keep repeating why investing in transplants—which will benefit a small number of individuals compared to other services that will benefit many more people—is critical and deserves to happen.

The noble Lord, Lord Hunt, set out six brilliant areas of focus, and I hope the Minister is able to work through those and, in his usual fashion, give us some meaty responses.

7.17 pm

Baroness Merron (Lab): My Lords, I pay tribute to my noble friend Lord Hunt, not just for securing this important debate and raising so many issues in a clear and methodical fashion, but for his work in taking the Bill through to fruition to become an Act. Of course, he continues to champion this very important cause, and for that, he deserves all our thanks.

Before the Organ Donation (Deemed Consent) Act came into force in 2020, it did receive cross-party support. Of course, there were concerns, but it was agreed across the parties that the previous law needed to be changed. The Act was praised as a key part of shifting the debate on the commitment to and resourcing of organ donation: an Act that would push forward thinking—that we should look beyond that legislation coming on to the statute book. As was highlighted then, and as we must highlight again now, the campaign to increase the number of organ donors did not end with the Act; it was always intended that the Act would push it forward, and that is what we are talking about tonight.

On the impact of the Act itself, the Government have already said in an Answer to a Written Question that

"it may never be possible to distinguish the true impact of opt-out legislation due to the impact"

of the pandemic. To some extent, that is completely understandable, because Covid-19 was disruptive in so many ways, but particularly with donation numbers decreasing by some 25%. However, perhaps the Minister can explain why, as time goes on and we are more distanced from the pandemic, that picture will not become clearer. Is it because Covid-19 disrupted attitudes towards organ donation, or because the disruption itself meant that processes were not put in place to correctly measure the difference? Or was something else going on? It would be helpful to understand that.

Is there a reason to believe that organ donation levels, putting the Act on one side, would not have evened out, either by now or at some point in the future. At what point should we be able to see the proper impact of the Act?

Regardless of the causes, it is, of course, as my noble friend Lord Hunt said, disappointing that the consent rate of 61% remains significantly lower than the predicted 78%, simply because there remain many more people waiting for organs than there are receiving them. In simple language, more donations are required.

Again, as my noble friend said, the latest NHS report said there were almost 7,000 people waiting for a transplant at the end of March, with almost a further 4,000 temporarily suspended from lists. This is an increase of 47% on the previous year, while the number of donors went up only 2% on the year before. This sadly means that some 439 people died who were on the active list, while a further 732 were removed from the list, mostly because they became ineligible due to deteriorating health. It is not a situation that we expected to see when the Act came in.

The noble Lords, Lord Allan and Lord Weir, spoke about families and their importance in all of this. It is interesting to note that the main reasons for families not supporting organ donation are: first, that the patient previously expressed a wish not to donate; secondly, that the family may feel that the length of time for the donation process is just too long; and, thirdly, that the family are not sure whether the patient would have agreed to donation. What is striking about that list is that none of those reasons requires further legal changes if we are seeking to improve the number of donors, especially where patients are unsure.

I think this debate has touched on that, and I would like to refer to two of the points that have already been raised. The first is about communication. During the passage of the Bill, the need for a comprehensive communications strategy and media campaign, as well as for increased resources for our healthcare structures, was raised, in order that everybody has the information they need to make what is a very important choice in an informed fashion. It would be helpful to hear from the Minister what the Government have been doing in these areas, particularly since the Act came into effect. What assessment has been made about what still needs to be done in terms of communication?

We know a number of people have said that the process is just too long. What is being done to make the process shorter and less burdensome, in order to reduce the number of people who opt out of choosing to donate organs for that reason?

The other area that has been raised in this debate and needs to be addressed is the disparities in representation in organ donation. NHS Blood and Transplant has stated that, despite an increase in the proportion of opt-in registrations from BAME donors over the past five years—with the work done to improve that engagement being praised, and we should add our praise to that—there remain under-representation and lower consent rates. So I hope the Minister can highlight what steps are being taken to deal with this continuing disparity, as well as the disparities that are so evident regionally. London has a consent rate of 51%, compared

[Baroness Merron]
with 72% in the south-west. With the average in England and Wales being 61%, bringing regions such as London and the Midlands, with their lower consent rates, up to the average, could save lives.

Looking to the other end of the process, it is welcome that the Government announced earlier this year that they would be taking forward recommendations from the Organ Utilisation Group, to reduce the number of organs that are not properly utilised and to provide more consistency in the levels of performance and care that patients receive. While demand for organs exceeds supply, these efficiencies are especially important to tackle. So perhaps the Minister could also update your Lordships' House on the progress in implementing these recommendations and, while I would not expect there has been any noticeable impact at this stage, what difference do the Government project that these changes will make?

For me, this debate is an important one; it keeps the issue in focus. I am sure that the Minister shares many of the concerns that have been raised this evening and I look forward to hearing his response on how we how we can work to save more lives through organ donation.

7.26 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): I add my thanks, particularly for all the work that the noble Lord, Lord Hunt, has done, not just in bringing this debate today but, obviously, in putting the Act through in the first place. On a personal note, one of the pleasures of this job is looking into an area that is fascinating and something we are all involved in and have experiences of in our everyday lives. There are lots of hard things about the job, but sometimes these are the fun bits.

Coincidentally, I am visiting the NHS blood transfusion service's Bristol operation on Thursday—so this is very timely. I will put a lot of these challenges directly to them. Obviously, I am speaking personally here, but what we have seen is a mixture of the disruptions of Covid and quite a change in the leadership of the blood transfusion service. The service has been undergoing quite some changes, and it would be good to test the temperature to see just how much it is on this.

One of the things I would probably like to do is set a challenge—"Where are you on this?" Maybe they will give us some fantastic answers; it is always best to hear things from the horse's mouth. As I say, there is a relatively new CEO and maybe they will give us some fantastic answers and I can just report back to the House—that would be fantastic. I suspect what we really need to do is to say, "You have a couple of months"—or whatever—"to take this away. These are all the issues that were raised. Come back and make a presentation to us". We could do that as a round table, because I think that is something we would all find illuminating—putting them through their paces.

The noble Baroness, Lady Merron, reminded us of the Churchill quote—it is not the end, or even the beginning of the end; it is the end of the beginning. My gut feeling is that the Act was almost a case of "Right, we've done this now and it will all look after itself". Of course, there is a lot of underlying issues from there. We had Covid, and suddenly everyone was focusing on other things. This is why this debate is very timely: we need to turn our attention back on this and say, "Actually, now, thankfully, we are getting back to normal. How do we need to look at this?"

As many noble Lords have picked up, the real disparity seems to be in the involvement of the family. If the person has consented anyway through other processes, they are much more likely to follow those wishes and rates go up to 90%. If they have not given their consent, and so the family do not know, it is much more like 60% or 61%.

That real disparity, I have been told, means that we need to do comms campaigns all around increasing the level of people proactively going out to do that. It could be when they apply for driving licences or passports, or in other interactions. By doing that, it is much easier for the family; they know that that person made their wishes perfectly clear. As I say, 90% of the time the family then go with it, because they understand those wishes. That is really the thinking on the major facts in the comms campaign.

Within that, it is also about trying to make it as easy as possible. A new lens needs to be used for looking at the whole customer journey, for want of a better term, to make it as user-friendly as possible. The noble Lord, Lord Allan, mentioned some of his Facebook experiences about how you do this. There is a complicated process for which organs you can opt in and out on. Is that needed? Again, there is an argument for giving people choice. I am told that people have an aversion to giving corneas. They will approve a lot of things but are more disturbed by the thought of giving their eyes. I think people like having that choice, but this is almost about having a "yes to all" tick box as the automatic default option here.

Before I reply formally to some of the questions, another observation I make is that, although I am not saying that this should be driven by economics, the economics are clear: transplants save a lot of money as well, particularly in the case of kidney transplants. That is because you have people who are having a lot of dialysis and other treatments. In my research for this debate, I was told that the economics are very clear. It is worth investing in the resource behind this, because the transplant is not only much better for ongoing life; it actually saves the NHS money, because patients are not having to go for those future treatments.

I mentioned my meeting with the staff. The noble Lord, Lord Weir, made points about the recommendations of the Organ Utilisation Group. I am told that DHSC, the blood transfusion service and NHSE have accepted those recommendations and are working towards ensuring that they are implemented. A lot of the time, this is about trying to make sure that we are maximising it. As the noble Baroness, Lady Merron, said, it is not just the number of people who consent but the utilisation. They have managed to increase the number of organs used to about two and a half per person right now. It is about not just converting those people who have consented but how you utilise it, so they are working on that.

On the resource for this, at the moment there are 330 specialist nurses—it is accepted that you need a specialist nurse to do this—and 55 clinical leads. Clearly,

that should be one of the things we challenge when we meet on this, given that the economics are clear. On the marketing, again, attention is being turned more towards that. After Organ Donation Week, the impact of that campaign was a 22% increase in registrations. As I said before, it was very much focused on trying to persuade people to proactively go out and consent, because it is much more likely that the families will go along with that when they do so.

There are a lot of small things in this; there is no silver bullet. It is about trying to get across them all. As was mentioned by the noble Lords, Lord Weir and Lord Allan, there is quite a disparity for black and ethnic-minority people, which we need to understand further. I was wondering about the point made by the noble Baroness, Lady Merron, on the disparities between regions. My hunch when looking at that sort of data is that there are younger populations in London and the Midlands and an older population in the south-west, so is there something going on with the age profiles? Perhaps those are driving a difference in behaviour, so maybe the comms campaign needs to try to target certain people some more.

Some international comparisons were mentioned. For me, the biggest lesson is in another point made by the noble Lord, Lord Allan: these things are so cultural as well. From my understanding, it took Spain a good 10 years or so to really do this. We need to think about all those cultural aspects in our campaigns. Just saying, "Now that we've changed the Act, it will go ahead and happen" is not a silver bullet. What we have really learned from all this is, as the noble Baroness, Lady Merron, said, that it is just the start. It is not the end of the journey. As the noble Lord, Lord Allan, said, it all comes down to trust in people—and trusting that the process is all there.

I hope I have managed to pick up most of the questions as I have gone through this. To me, the biggest thing is about putting the challenge down to the NHS blood transfusion service and giving it the time to do it properly. We can then invite its people back, and at that point we could invite all the noble Lords who are here today. I really appreciate this being brought up today, as we could do a lot more on it.

House adjourned at 7.37 pm.

Grand Committee

Tuesday 12 December 2023

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Viscount Stansgate) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bell rings and resume after 10 minutes.

Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023

Considered in Grand Committee

3.45 pm

Moved by ***Baroness Swinburne***

That the Grand Committee do consider the Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee

Baroness Swinburne (Con): My Lords, these regulations, which were laid before the House on 7 November 2023, will be made under the powers provided by the Retained EU Law (Revocation and Reform) Act 2023, known as the retained EU law Act. They are concerned with the definition of "fundamental rights and freedoms" in the data protection legislation and making sure we continue to have a meaningful definition beyond the end of the year, when the retained EU law Act takes effect.

In several areas, the data protection legislation—specifically the Data Protection Act 2018 and the UK general data protection regulation, which I will refer to as the UK GDPR from now on—requires the Government, the Information Commissioner and organisations using personal data to consider people's "fundamental rights and freedoms" in certain situations. For example, Ministers must consider such rights and freedoms when creating new exemptions or permissions for the use of people's special category data, and data controllers must consider them when relying on the "legitimate interests" lawful ground for processing under Article 6(1)(f) of the UK GDPR. It is vital that, in circumstances such as this, the rights of individuals continue to be carefully considered and protected.

Prior to EU exit, references to fundamental rights and freedoms in the data protection legislation were taken to mean rights described in the EU Charter of Fundamental Rights—which I will refer to as the charter. Following the European Union (Withdrawal) Act 2018, some of these rights were retained by Section 4 of that Act. Given that Section 4 of the European Union (Withdrawal) Act will be repealed at the end of 2023 by the retained EU law Act 2023, action is needed now via this statutory instrument to replace the definition of "fundamental rights and freedoms". Without action, there would be a lack of clarity about what these references mean. This could cause significant difficulties for organisations trying to apply the data protection legislation, risking inconsistent approaches, legal uncertainty and insufficient protection of data subjects' rights.

That is why, through the draft regulations, the Government are clarifying that references to fundamental rights and freedoms in the data protection legislation mean rights under the European Convention on Human Rights, known as the ECHR, as defined by the Human Rights Act 1998. By doing this, the Government are ensuring that there is a clear, legally meaningful definition to rely on. This will provide consistency and certainty for organisations which are subject to data protection legislation, as well as continued protection for people's rights. It is important to note that these regulations themselves do not remove any EU law rights; it is the European Union (Withdrawal) Act and the retained EU law Act that do that. These regulations are simply designed to replace references to EU law that would become meaningless at the end of this year.

I thank the Secondary Legislation Scrutiny Committee and European Statutory Instruments Committee for their views on these regulations. I have noted their concerns that rights protected by domestic law under the Human Rights Act might not provide the same level of protection as rights protected by EU law under the Charter of Fundamental Rights of the European Union. The matter of protection of people's rights is of utmost importance, and I take this opportunity to reassure the Committee that the changes we are making via these regulations will not significantly affect the way the data protection framework works or indeed erode the protections it affords to people. Prior to EU exit, EU law rights protected by the charter included, for example, the right to respect for private and family life, the right to protection of personal data and the right to freedom of expression. The new definition will be based on rights protected by the ECHR, which includes the right to respect for private and family life and the right to freedom of expression.

The committee and others have raised a concern that the regulations remove reference to the specific right to data protection that was a feature of the charter. It is true that there is no such free-standing right under the ECHR. However, case law on this issue shows that data protection forms part of the protection offered by the right to respect for private and family life in Article 8 of the ECHR. It is further protected by our data protection legislation, which provides a comprehensive set of rules for organisations to follow and rights for people in relation to use of their data. The stand-alone right to protection of personal data was a feature of EU law and its removal is a result of EU exit legislation, including the retained EU law Act, rather than these regulations, which merely replace outdated terminology to recognise the new position.

I inform the Committee that we have formally consulted the Information Commissioner's Office on the drafting of these regulations, and it recognises why the data protection legislation cannot continue to refer to rights that have been repealed. I hope that noble Lords will join me in supporting the draft regulations. I beg to move.

Lord Clement-Jones (LD): My Lords, I welcome the Minister to this crowded box-office occasion—over the years it has been for aficionados, by and large.

I thank her for setting out the purpose of these regulations. Originally, they were to be approved by the negative procedure. It is to the great credit of the Secondary Legislation Scrutiny Committee that, in its 53rd report, it recommended an upgrade of the instrument to the affirmative procedure because of concerns about a potential reduction in rights protection. I heard what the Minister said in her introduction.

In its report, the committee quoted the Department for Science, Innovation and Technology, which stated that

> "the impact on organisations and individuals as a result of the proposed changes was expected 'to be minimal'",

and that the changes

> "replicate the current position 'as far as possible', but it was unable to rule out entirely potential differences in the rights and freedoms".

In those circumstances, I need to thank the Minister and the Government for bringing back these draft regulations for affirmative approval—in other words, for listening to the committee.

However, our conclusion is that the regulations fail to contain damaging uncertainty and inconsistency in this area, which is exactly what concerned the SLSC. I am afraid it will be clear from our debate next week on the Data Protection and Digital Information Bill, as it was when we recently debated the Digital Government (Disclosure of Information) (Identity Verification Services) Regulations 2023, that data is a really weak spot for this Government—as if they needed any more.

I am afraid that it is clear that these regulations by themselves are insufficient to stabilise the UK's data protection frameworks once what has been called the tsunami of legal uncertainty unleashed by the retained EU law Act—REULA—engulfs us on 31 December 2023. The Minister lightly skipped over that. When the UK stopped being subject to the EU treaties at the end of 2020, the European Union (Withdrawal) Act 2018—EUWA—saved the rights and obligations which applied in domestic law as a result of the UK's EU membership. This meant, in essence, that the EU GDPR became the UK GDPR. The Data Protection Act 2018 remained on the statute book. The rights and obligations became part of retained EU law—the vast body of law saved from the EU legal framework on the UK's departure. Retained EU law was to be interpreted as it had been while the UK was an EU member state. This created continuity and certainty as to what the law meant.

The Court of Justice of the European Union—CJEU—case law from before the end of 2020 was also preserved in domestic law, as was domestic case law interpreting EU rights and obligations. The general principles of EU law, which include fundamental rights and the protection of personal data, were retained as an aid to the interpretation of our data protection frameworks. The principle of the supremacy of EU law was preserved. This meant that, in a conflict between the provisions in the UK GDPR and the DPA 2018, the UK GDPR took precedence. This was confirmed in the case of R (on the application of the Open Rights Group) v the Secretary of State for the Home Department and the Secretary of State for Digital, Culture, Media and Sport. In this case, the retained principle of supremacy was relied on by the Court of Appeal to find that the overly broad exemption in the DPA 2018 from data subject rights in an immigration context was unlawful. Yesterday, the Court of Appeal ruled that the Government must amend the immigration exemption in Schedule 2 to the Data Protection Act because it is incompatible with Article 23 of the UK GDPR. This sort of argument will no longer be possible after the end of this month because the exemptions in Schedule 2 to the DPA will take precedence over the UK GDPR.

The EU Charter of Fundamental Rights was not saved into the domestic statute book. The Government's view was that this made no substantive difference because the charter simply listed the rights found in EU law, so because the rights and obligations listed in the charter were being saved into domestic law through the European Union (Withdrawal) Act, no rights would be lost. Further, the EUWA clarified that retained case law which referred to rights in the charter should be read as referring to the underlying rights and obligations listed in the charter. This ensured that case law which referred to the charter would still be applicable.

Nothing in EUWA prevented Parliament legislating to change the UK GDPR and the DPA 2018. Indeed, the White Paper on the EUWA stated that, after the UK's exit from the EU:

> "It will then be for democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate".

As we will be discussing next Tuesday at its Second Reading, the UK's data protection frameworks are being changed through the vehicle of the Data Protection and Digital Information Bill. As I have indicated to the Minister, the noble Viscount, Lord Camrose, these Benches do not welcome those changes and regard them as dilutions of data subject rights.

However, there are also fundamental changes to the UK's statute book being made at the end of this year through the REULA, which will sweep away the retained EU general principles, including fundamental rights and the requirement to interpret retained EU law in accordance with those principles. Further, the principle of the supremacy of EU law is being deleted. The default position is that domestic law whenever enacted will trump the law which came from the EU.

Changes introduced by REULA are bound to create legal uncertainty. In terms of the UK GDPR and the DPA 2018, EU fundamental rights are the underpinning foundation of the law. If they are simply deleted—the default position under REULA—the UK GDPR and the Data Protection Act 2018 will become more difficult to interpret. This is, of course, why the regulations have been introduced. They are intended to ensure that, as the Minister said, references to fundamental rights and freedoms in the UK GDPR and the DPA 2018 are read as references to fundamental rights and freedoms as set out in the European Convention on Human Rights as implemented through the Human Rights Act 1998.

On one level, this makes sense. Article 8 of the EU's Charter of Fundamental Rights—the right to the protection of personal data—is based on Article 8 of

the ECHR on the right to private and family life, but it is not certain that the rights under Article 8 of the ECHR provide exactly the same protections as the right to data protection in the EU legal order. First, this is because the ECHR has no specific fundamental right to the protection of personal data. In the case of R (Davis & Watson) v Secretary of State for the Home Department, the High Court held that Article 8 of the charter goes further and is more specific than Article 8 of the ECHR. Secondly, the charter contains general provisions explaining how the relevant rights should be interpreted, and Article 52 of the charter confirms that, when rights in the charter correspond to the rights in the ECHR, the meaning and scope of those rights should be the same as in the ECHR, although the EU is not prevented from providing more extensive protections. Whether EU fundamental rights provided more extensive protection than those under the ECHR will be tested in the courts over the coming years, but there is likely to be uncertainty in relation to this point from the end of this year.

4 pm

Another area of significant uncertainty will be how, if and to what extent CJEU case law still applies when interpreting the UK GDPR and the DPA 2018. Much of the CJEU case law on data protection references EU fundamental rights, as set out in the charter. If EU fundamental rights have been deleted, it is not clear that the case law still applies. Again, we will have to wait for cases to reach the courts to understand whether and to what extent the case law is still applicable. The Explanatory Memorandum and Explanatory Note make no attempt to answer whether the Government consider that they do, other than stating that

"no, or no significant, impact"

is foreseen by the implementation of the regulations.

Given what I have said so far, this looks a rather complacent and even misleading statement, especially when Sir John Whittingdale in the Commons said of these regulations that

"they simply tidy up the existing statute book as a result of the UK's withdrawal from the European Union".—[*Official Report*, Commons, Second Delegated Legislation Committee, 4/12/23; col. 8.]

In fact, looking closely at the wording of the Explanatory Memorandum, we see that there is no unequivocal statement to the effect that there is "no, or no significant, impact" on individual human rights as such. I think that the Minister, when she introduced those regulations, actually used those words—that there is no significant impact on human rights as such—but I hope that she will reassure us by repeating those and that she anticipates that there will be no significant impact.

The deletion of supremacy also turns the relationship between the UK GDPR and the DPA 2018 on its head. If there is a conflict between the UK GDPR and the DPA 2018, the DPA 2018 will take precedence. That is the opposite of the intention of the legislation when it was drafted and may have unforeseen consequences. There is a limited exception to the general rule that REULA introduces, that domestic law will trump retained direct EU legislation. This exception operates in the context of data protection rights. Data subject rights under the UK GDPR will generally take precedence over rights or obligations in other domestic law. However, the rights and obligations in chapter 3 of the UK GDPR, relating to the rights of the data subject, are subject to the exceptions in Schedule 2 to the DPA 2018.

It appears that there is no scope under REULA to disapply the Schedule 2 exceptions on the basis that they are overly broad, as happened in the Open Rights Group case; instead, the courts would need to make an incompatibility order under Section 8 of REULA, which may delay, explain, remove or constrain the consequence of the Schedule 2 condition trumping data subject rights, but this is a less certain remedy than would have existed before. Under EUWA or when EU law still applied, it would have been clear that the UK GDPR had precedence and that overly broad exceptions in Schedule 2 to the DPA 2018 were unlawful. In practice, this means that data subject rights in the UK will be less certain and potentially less protected than before.

The significant uncertainty caused by the changes that REULA makes to the statute book could have been remedied by the Government using powers in REULA. The powers in Section 11 of REULA could have been used to turn the effect of EU fundamental rights and supremacy back on. Alternatively, the current relationship between the UK GDPR and the DPA 2018 could have been restored by using the power in Section 7. For instance, the Government could have clarified that established case law still applies, but they have chosen not to do so. The regulations seek only to cure the problem of deleting EU fundamental rights by replacing those references to fundamental rights under the ECHR, using the powers in Section 14, but this creates new uncertainties as outlined above.

I think noble Lords would agree that all this potentially makes the head spin, but I have not even got to the point where we might need to talk about the consequences if the UK withdraws from the ECHR or repeals the Human Rights Act, as so many Conservative MPs seem to want to do. Lowering the standard of data protection rights in the UK creates obvious risks to the continuing UK data adequacy decision, which rests on data protection rights being essentially equivalent to those rights in the EU. If the Conservative Party campaigns to leave the ECHR or repeal the Human Rights Act at the next election, then this will simply magnify the uncertainties. The substitution that the regulations make of ECHR human rights for EU fundamental rights may be short-lived. Lowering the standard of protection of personal data in the UK also risks failure in delivering the trusted data regime, which purports to be one of the underpinning foundations of the UK's ambition to become a technology superpower by 2030.

There are clearly major questions to answer, which the Explanatory Memorandum and the Minister's introduction come nowhere near answering. Perhaps she will now make a bit of a stab at this—although I would be perfectly happy for her to write with a response. We should be very grateful to Eleonor Duhs for her SOAS ICOP policy briefing and to Professor David Erdos for raising these issues in the first place.

In addition to all the foregoing, Professor Erdos also raises the question of ultra vires. I hesitate to raise this at this stage, having said quite a lot already, but he raises the fundamental issue concerning what appears

[LORD CLEMENT-JONES]

to be a problem with the draft regulations' legal basis—I expect that the Minister has been briefed on this. This is stated to be issues relating to Section 14 of the Retained EU Law (Revocation and Reform) Act 2023.

There is a case to answer, in a number of respects. I hope the Minister can give us some assurance on all of these issues, and I certainly hope that the chickens do not come home to roost.

Lord Bassam of Brighton (Lab): The Minister will probably be relieved to know that I do not have a speech as long as that of the noble Lord, Lord Clement-Jones, but I share many of his concerns. I would very much appreciate some of the detailed questions that the noble Lord asked being put to the test in an essay to us, perhaps in the form of a letter. That might be very helpful.

As the noble Baroness said, the regulations propose to replace the definition of fundamental rights and freedoms contained in the UK general data protection regulation and the Data Protection Act 2018. As the SLSC noted, these are currently defined by reference to rights contained in retained EU law.

I share the concern of the noble Lord, Lord Clement-Jones, that the regulations were originally to be under the negative procedure. I am glad that the Minister and officials have decided that that was an unwise course, because it would have given us very little control over the process and would not have enabled the sort of scrutiny that we in this House have come to expect.

I also share the noble Lord's concern about the data protection framework being a weak spot. There is not much question about that. As he says, this acts as a curtain-raiser to our discussions and debates on the Bill coming forward next Tuesday. The data protection framework is undoubtedly being changed and not, it seems, for the better. These regulations foresee a time when there will be a weaker level of data protection, and I do not think that is in the public interest.

The DSIT colleague, as the noble Lord, Lord Clement-Jones, said, told the SLSC that

"the impact on organisations and individuals as a result of the proposed changes was expected 'to be minimal', … but … was unable to rule out entirely potential differences in the rights and freedoms".

As the SLSC concluded, while DSIT had

"not identified any discernible impact, any changes in this sensitive area may be regarded as politically significant"

and something on which, quite rightly, the House would want to comment.

We welcome the work of the sifting committees and that, as a result of their reports, the SI is being debated as it should be. We do not oppose the statutory instrument. We share the sifting committees' concern about changes brought by the repeal of EU-derived rights at the end of the year and that these may, directly or indirectly, lead to a lower overall level of protection for individuals. However, we note that, while we are debating the SI only a short time before the Christmas Recess, the department did publish draft regulations in September. This has given relevant parties time to prepare for the changes, which has not always been the case under different iterations of His Majesty's Government.

As highlighted by the Commons debate, we must consider this SI in the context of broader changes to domestic data protection law, and the potential long-term consequences of these changes on our relationship with other jurisdictions. As I said earlier, your Lordships' House will shortly begin consideration of the Data Protection and Digital Information Bill. Concerns have already been voiced that this will lower data protection standards and thresholds and, as a result, put our EU data adequacy decision at risk when it comes up for review.

We will have the opportunity to discuss those issues in more detail next week, but we would be grateful to the Minister if she could distance herself from the unfortunate comments of Minister Whittingdale in the Commons, who accused my colleague, Sir Chris Bryant, of appearing to see conspiracy where none actually exists. We do not believe that is the case; we believe these concerns are rightly stated. It is our role to scrutinise His Majesty's Government and to ask legitimate questions that are of concern to the public. We are doing so at a time when there are live debates within the Conservative Party about the extent to which the UK should adhere or even remain signatories to international human rights treaties.

So, while we support the SI's passage, as it will keep the statute book in order as parts of retained EU law are swept away, the department has a lot more work to do to convince us and other noble Lords of its broader approach to data protection law. I give notice today that we will be following very closely the debates next week scrutinising legislation at Second Reading and, with colleagues, will no doubt be submitting amendments to the legislation to toughen it up. It is clear to us that there is a direction of travel, and it is not one that we agree with.

Baroness Swinburne (Con): I thank noble Lords, who are very well versed in this topic and have obviously spent a lot of time thinking about it. I have had some flashbacks to my time in the European Parliament, where I did the original GDPR. I am glad that people now think it was a perfect piece of work. At the time, people were very critical of what we did.

Lord Clement-Jones (LD): I did not realise that this was punishment.

Baroness Swinburne (Con): It is definitely not punishment, but it has taken me back, and I am on a steep learning curve here. I thank noble Lords for their interventions. I will try to do some justice to them. As was suggested, if I have not covered the topics adequately, given that the questions were incredibly detailed, I will respond in writing so that noble Lords will have the detail.

As I mentioned in my introductory remarks, it is important to note that these regulations themselves do not remove any EU law rights. Parliament has already agreed to do that in passing the European Union (Withdrawal) Act and the retained EU law Act. If we support these regulations today, instead of allowing references to EU law rights in the data protection legislation to lapse without replacement, we will instead

ensure that the relevant organisations continue to consider analogous rights under our domestic law where it is appropriate to do so.

The overall effect of the changes made by these regulations will neither undermine protections for individuals nor increase the regulatory burden for organisations. There could even be some benefits for organisations in the sense they will only need to consider how the rights of individuals are protected by rights recognised in domestic law rather than trying to comprehend how retained EU law protected those rights.

4.15 pm

I turn to some of the specific questions raised. The noble Lords, Lord Clement-Jones and Lord Bassam, suggested that the regulations could undermine protections. As noble Lords will know, the current definition of fundamental rights and freedoms refers to those rights retained in Section 4 of the European Union (Withdrawal) Act 2018. The EU Charter of Fundamental Rights was not retained under that section, although many of the rights found in the charter were retained because they existed in other EU law. There is no authoritative list of these rights, which means that deciding which rights are caught by this definition is a question of complex legal analysis. The ECHR, by contrast, contains a specific and defined list of rights, which are already familiar in the domestic context. We accept that there may be differences between the rights under EU law and the convention rights described and given further effect in the Human Rights Act, but where these differences are in areas relevant to data protection, we consider that there are analogous rights and protections, even if phrased differently.

The noble Lord, Lord Clement-Jones, also raised the issue of supremacy. The purpose of the REUL Act is to ensure that the UK has control over its laws. However, we acknowledge the importance of making sure that data processing provisions in wider legislation continue to be read consistently with the data protection principles in the UK GDPR. That is why Clause 49 of the DPDI Bill, which will be debated in due course, will make sure that any new data processing provisions continue to be subject to the data protection legislation, unless Parliament decides otherwise. Replication of the effect of UK GDPR supremacy is a significant decision, and we consider that the use of primary legislation is the more appropriate way to achieve these effects, such as under Clause 49 where the Government consider it appropriate.

The noble Lord, Lord Clement-Jones, also raised the retention of EU case law. Any further effect on the application of retained case law by domestic courts will be governed by Section 6 of the European Union (Withdrawal) Act 2018, as amended by Section 6 of the REUL Act once that section is commenced, rather than by this SI. It is not possible to state precisely, of course, how the courts will treat each individual piece of retained case law. However, it is unlikely that a court will depart from a decision simply on the basis that it refers to the right to the protection of personal data where the relevant interest is also protected by Article 8 of the ECHR.

The noble Lord also raised the issue of withdrawal from the ECHR. In these regulations, we are referring to rights recognised in UK law as it currently stands. The changes we are making refer to rights currently given effect in UK domestic law under the Human Rights Act.

We note that the noble Lord's concerns about vires were not shared by the Joint Committee on Statutory Instruments.

The noble Lord, Lord Bassam, asked if there were any adequacy concerns about these provisions. We do not believe that there are concerns about adequacy. These are technical changes, designed to ensure legal certainty and protect the coherence of the data protection framework following the commencement of the REUL Act. As we are seeking to provide for continuity as far as possible, we do not think that the measures in the regulations pose a material risk to the EU's adequacy decisions. Indeed, if we did not have a definition of fundamental rights and freedoms, this could weaken rights protections, which could itself be an adequacy concern.

Lord Clement-Jones (LD): My Lords, before the Minister sits down, I want to pose a brief question to her. The Explanatory Memorandum states:

> "As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023, no review clause is required".

Does that mean that absolutely no review will take place for these provisions and how they work out in future? Or is the implication that it is wrapped inside all the impacts of REULA and therefore that there will be an assessment of how REULA has affected domestic law in general? I would be quite happy if the Minister writes to me on that.

Baroness Swinburne (Con): Given the specificity of that question, we will write to the noble Lord with an answer.

Motion agreed.

Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, C, D and H and New Code I) Order 2023

Considered in Grand Committee

4.21 pm

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

That the Grand Committee do consider the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, C, D and H and New Code I) Order 2023.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, C, D and H and New Code I) Order 2023 was laid before this House on 16 October 2023. This debate follows a debate that I took part in on 4 December regarding three instruments related to the National Security Act that were also laid on 16 October.

[LORD SHARPE OF EPSOM]

Turning to the order we are discussing today, Section 66 of the Police and Criminal Evidence Act 1984, or PACE, requires the Home Secretary to issue codes of practice which govern the use of police powers, including the associated rights and safeguards for suspects and the public in England and Wales. The revised and new codes of practice before us ensure that those codes reflect the provisions of both the National Security Act 2023 and the Public Order Act 2023.

Before getting into the detail of the changes, I begin by noting that, as per Section 67(4) of PACE, two separate consultations on these changes were carried out, one in relation to each of the new Acts. These were carried out from 20 July to 31 August this year. The responses were generally positive about the changes proposed and the Government considered and incorporated suggestions for further amendments to the codes of practice following these consultations. The full details of the consultations and the Government's response can be found on GOV.UK.

I will now briefly outline the changes made through this order—first, those to PACE Code A required as a result of amendments to stop and search powers made in the Public Order Act 2023 and the Government's commitment to streamline stop and search guidance. Following Royal Assent of the Public Order Act 2023, PACE Code A required modifications to emphasise that the suspicion-led stop and search power introduced in Section 10 of the Public Order Act is afforded the safeguards contained in Code A. The suspicionless powers in Section 11 of the same Act authorise the police to stop and search individuals and vehicles to find objects made, adapted or intended to be used in connection with protest-related offences.

We are also changing PACE Code A to include provisions to improve community relations and data collection as currently found in the *Best Use of Stop and Search Scheme* guidance. Communicating the use of suspicionless search powers such as Section 60 of the Criminal Justice and Public Order Act 1994 and Section 11 of the Public Order Act 2023, where it is operationally beneficial to do so, and embedding a data collection requirement within the code, will build on the existing trust and confidence between the police and the community they serve.

Finally, changes proposed to PACE Code A include an updated start date for the serious violence reduction order pilot, which commenced in April this year, and an update to the ethnicity list found in Annexe B to reflect the latest categories from the 2021 census.

The amendments related to the National Security Act concern PACE Codes A, B, C, D and H, along with a new PACE Code I. In summary, the amendments to Code A are required to govern how searches of individuals subject to prevention and investigation measures under Part 2 of the Act should be carried out. These changes mirror the existing provisions in Code A for the equivalent terrorism measures.

The amendments to Code B, which covers search, seizure and retention powers, are required to account for the new search and seizure powers introduced by Schedule 2 to the National Security Act. They largely replicate those already contained in Code B for similar powers.

The changes to PACE Codes C and D make it clear that those codes do not apply to relevant provisions in the National Security Act or Schedule 3 to the Counter-Terrorism and Border Security Act 2019, such as detention provisions. This is because separate codes—including the new PACE Code I—deal with those provisions.

Both Codes A and D are also amended to exempt an officer having to give their name in the case of inquiries linked to national security. This extends the approach currently taken towards terrorism investigations and provides a crucial change to protect the identities of police officers from state actors who may seek to do them harm.

The changes to Code H implement recommendations made by the Independent Reviewer of Terrorism Legislation, which the Government have accepted. They largely reflect amendments to Section 41 of the Terrorism Act 2000 made via the National Security Act—for example, making it clear that time spent in detention under certain other detention powers will be accounted for when calculating the maximum period of detention.

Finally, this order brings into operation a new PACE Code I to govern the detention, treatment and questioning of individuals arrested under Section 27 of the National Security Act. This code contains various operational procedural matters, such as how to arrange for an interpreter for the suspect, what information must be documented in the custody record, how to provide cautions and what to do with the detainee's property upon arrest. The code is based very closely on PACE Code H, which provides guidance for the detention and treatment of persons arrested under terrorism legislation, including the updates I have just set out.

I point out that the changes to these codes are supported by Counter Terrorism Policing and the Crown Prosecution Service. The Independent Reviewer of Terrorism Legislation has also specifically supported the changes to Code H.

I hope I have made it clear that changes made by this order are supportive of primary legislation that has already been agreed by Parliament. These revised codes promote the fundamental principles to be observed by the police and help preserve the effectiveness of, and public confidence in, the use of their legislative powers.

I very much hope noble Lords will support these revisions to the PACE codes of practice. I commend the order to the Committee, and I beg to move.

Baroness Doocey (LD): My Lords, I thank the Minister for his introduction. As he said, the changes have already been debated at length and approved by Parliament, and we will not oppose them. However, I would like to make some specific points. Perhaps the Minister could address them in his summation.

We do, of course, understand the importance of ensuring, at a time of heightened and ongoing risk from hostile state actors, that the powers we give our police are a match for those people who seek to harm us. We also appreciate the need to give officers on the ground clear guidance, but there must be a balance between allowing the police to do their job and protecting civil liberties. We welcome attempts to keep the public

informed about what the police are doing in relation to suspicionless stop and search. We hope this will go some way to re-establish trust among those citizens most commonly subjected to this practice, namely members of the black community.

We note concerns raised during the consultation process about when the public will be alerted to the use of suspicionless stop and search. The concern is that the term "operationally beneficial" is simply not clear enough to define when it will be in operation. Everyone recognises the importance of police operational autonomy, but can the Minister confirm that this particular concern has been taken into account?

We welcome the new data collection requirement in Code A, particularly given that the ethnicity of 20% of those subjected to stop and search in the year ending March 2022 remains unknown because it was not recorded. However, our key concern remains the extension of police powers to stop and search someone without reasonable grounds for suspicion. We have made our concerns clear that extending these powers now is fundamentally incompatible with the findings of the Casey review and the recent IOPC report, both of which found that progress in tackling racial disparity in stop and search still has a very long way to go.

In light of this, what signal are we sending to these communities in giving the police even greater leeway to carry on that practice, despite the well-documented racial bias still evident in it? Sadly, I suspect that, for many, it says that we are just not listening.

4.30 pm

Lord Coaker (Lab): My Lords, I thank the Minister for his introduction to these revisions to the PACE codes. He outlined the reasons for the changes, which reflect the various provisions of the National Security Act 2023 and the Public Order Act 2023. As such, the various rights and wrongs of the provisions have been debated, and they have been included in primary legislation. There is no need to rehearse these debates, but I will ask some questions about the resulting changes to the PACE codes.

PACE Code A is to be changed to include provisions to improve community relations and data collection. Given the importance, as we heard from the noble Baroness, of confidence and trust around suspicionless stop and search in particular, can the Minister say what these changes are and whether they help deal with issues such as disproportionality and the maintenance of community trust, which we all wish to see in the code? The changes say that they do that, so it would be interesting to know how.

More generally, is there any difference under these codes in the treatment of children or do they apply to everyone regardless of age? Some clarification on that would be helpful. Although the Minister said that these changes come from the National Security Act and the Public Order Act, given some of the questions around the use of stop and search, could other changes be made using this as a vehicle? One example mentioned here is strip-search. We have guidance for strip-search here, but we know what controversy there has been around it. I sometimes wonder whether the machine says, "We've had the National Security Act and the Public Order Act, so we need these changes to the PACE code that flow from that", but there may be a missed opportunity to reflect more widely on some of the issues around what is sensible.

I think the Minister did so, but can he confirm that the stop and search powers in Sections 10 and 11 of the Public Order Act are now fully covered by these revised PACE codes?

The revised codes also include a date for the start of the serious violence reduction order pilot. When will this start and, given that it is a pilot, where will it take place? The Minister in the other place said that this was an updated start date. What caused the delay in the first place? I think the original intention, according to the statement of the Minister in the other place, was for it to start this April.

We support the various changes in the amended codes and the introduction of the new Code I, following the National Security Act 2023. As the Minister helpfully pointed out, the consultation showed that there was general support from not only the police and the CPS but the independent reviewer for the various revisions to the codes in terms of how persons are detained and treated when arrested under terrorism legislation.

Given that terrorism legislation is not devolved, but these PACE codes deal with England and Wales, will the Minister say what discussions have taken place with Northern Ireland—I presume with officials there—and Scotland, and how the PACE codes have been updated? The Minister spent some time talking about the welcome changes that were made to the PACE codes with respect to terrorism, but these codes refer to England and Wales and not to Scotland and Northern Ireland. How has that been dealt with? It would be interesting to hear from the Minister about what has happened there.

PACE Codes A and D are amended so that an officer does not have to give their name in the case of inquiries linked to national security. I understand that—it is for sensible and obvious reasons, as the Government said—but how would it work if somebody wanted to complain or get a review of their treatment? I appreciate that the name should not be given, but could a number be given, or is there some other method by which anonymity could be protected while recognising that sometimes issues arise and somebody may wish to complain or take forward something that has occurred in an interview? They may have been interviewed and perhaps even arrested and then released and wish to make some complaint about it. How will that be dealt with?

We accept these changes and recognise the importance of striking the balance between individual rights and security. Public confidence and trust are everything, even in challenging circumstances. I urge the Government to do everything in their power to ensure that we maintain that confidence and trust with respect to the implementation of this order. We do not oppose these important codes, but some clarifications would be helpful for us all.

Lord Sharpe of Epsom (Con): My Lords, I thank both noble Lords for their contributions. I will do my best to deal with the points raised.

[LORD SHARPE OF EPSOM]

The noble Lord finished on the subject of whether it is proportionate, in effect, to allow police officers to not give their names in inquiries linked to national security, as per Codes A and D. The Government have amended Codes A and D to exempt officers from having to give their name in cases of inquiries linked to national security, which extends the approach currently taken towards terrorism investigations. It is a crucial change to protect police officers from being obliged to reveal their identity to state actors who may be highly trained and seek to use such knowledge to conduct harmful activity against them. It is difficult to see how an individual might write a complaint against an officer who is interfering with them, but I will look into it, and if I can find anything useful to enlighten the noble Lord, I will come back to him.

The noble Lord also asked whether we have been consulting the devolved Administrations. The answer is yes. We have been consulting them extensively. When PACE Northern Ireland will be published is a matter for the Northern Ireland Executive. However, they are undertaking a review of the PACE Northern Ireland codes of practice and are apparently about to revise them. As soon as I have those revisions, I will let the noble Lord know.

Lord Coaker (Lab): Given that the Executive and the Assembly are not functioning, does he mean that officials are doing that?

Lord Sharpe of Epsom (Con): I assume so, but I will find out and come back to the noble Lord.

The Government also obtained concurrence from the Lord Advocate for the part of this that applies to Scotland. We engaged with the Scottish Government and Scottish policing throughout the process of creating this code. I believe that one or two of the changes made reflect Scottish policing's comments on it.

On disproportionality, which was raised by the noble Baroness, Lady Doocey, as well as the noble Lord, of course I understand the concerns around disproportionality and the impact of stop and search, particularly on members of the black community. Nobody should be targeted because of their race. Extensive safeguards such as statutory codes of practice and body-worn video exist to ensure this does not happen.

It is worth pointing out that, although disparities in the use of stop and search remain, it is positive that they have continued to decrease for the past four years. The proposals set out in these changes, such as the communication of the suspicionless stop and search authorisation will, in my view, improve the relationship between black and ethnic minority groups and the police. Of course, the phraseology behind that—"where operationally beneficial" in particular—was very carefully considered to sort out this issue.

It is also worth saying that the Home Office now publishes more data than ever before on police powers, including the use of stop and search. As part of the inclusive Britain strategy, the Home Office Race Disparity Unit and Office for National Statistics have worked to improve the way stop and search data is reported and to enable more accurate comparisons to be made between different police force areas. The proposed change on data in this updated code would reflect the power given to the Home Secretary under Section 44 of the Police Act 1996, but this data is collected and published online as part of a statistics bulletin.

The noble Lord, Lord Coaker, asked about protections for children. There are safeguards in this code as well. Children detained will have to have an appropriate adult assigned to represent their best interests.

The noble Lord also asked whether there was a delay—there was. It was supposed to be rolled out on 17 January this year but ended up commencing on 19 April. The reason for that was the difficulty of getting the training in place in time. The four pilot areas are the West Midlands, Thames Valley, Merseyside and Sussex.

With that, I think I have answered the questions that were asked of me. I reiterate that the updated and new PACE codes of practice will help the police to use their powers in a proportionate and consistent manner in accordance with the primary legislation. As such, I commend this order to the Committee and thank both noble Lords for their support.

Motion agreed.

Immigration (Health Charge) (Amendment) Order 2023

Considered in Grand Committee

4.42 pm

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

That the Grand Committee do consider the Immigration (Health Charge) (Amendment) Order 2023.

Relevant document: 5th 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, the health charge reflects the cost to the NHS of providing healthcare to health charge payers. The increase supports the sustainability of our NHS, ensuring vital NHS services are funded and allowing wider NHS funding to be directed towards other priorities in the system.

The health charge was introduced in April 2015 to ensure that migrants contribute directly to the comprehensive and high-quality NHS services available to them from the moment they arrive in the UK. We all recognise the great contributions migrants make to help grow our economy and support our NHS; it is also important that those who use and benefit from our public services, such as the NHS, make a sufficient financial contribution towards the cost of these services.

The health charge is paid by temporary migrants applying for a visa to enter the UK for more than six months. It is paid up front, separate to the visa fee, and covers the full cost to the NHS of providing healthcare to those who pay it. Once paid, a charge-payer can access NHS services in broadly the same manner

as permanent residents without having made any prior tax or national insurance contributions. Where additional NHS charges are paid, these are consistent with those paid by a UK resident, such as prescription charges in England.

Since its inception the Health Charge has generated more than £5.1 billion for the NHS. The funds generated are shared between the health administrations in England, Scotland, Wales and Northern Ireland, using the now-familiar formula devised by Lord Barnett.

The health charge must be set at a level that broadly reflects the cost to the NHS of treating those who pay it. The current rate, introduced in 2020, as determined by the Department for Health and Social Care, does not currently do this. The new rate of health charge replaces that agreed in 2020 by this House; it reflects the increases in healthcare expenditure and revised assumptions of migrant use of healthcare services. Using more recent and representative data better reflects NHS service use by health charge payers.

The order amends Schedule 1 to the Immigration (Health Charge) Order 2015. The full rate of the charge will increase to £1,035 per person per annum, with the discounted rate for students, their dependants, those on youth mobility schemes and under-18s, increasing to £776 per person per annum. These levels are currently set at £624 and £470 respectively.

4.45 pm

Furthermore, the draft order amends Schedule 2 to formalise existing exemptions from payment of the health charge for migrants applying to the statelessness immigration route and those applying to the Ukraine schemes. I know this move will be welcomed across this House, as it places these exemptions on a legislative footing and provides clarity for applicants.

It is worth remembering that the charge does not apply to those who apply to settle in the UK, recognising the strength of their long-term commitment to our country and the contributions they have made while living here. Furthermore, safeguards exist. The Government recognise that the cost of the health charge may be unaffordable for some. On family and human rights routes a fee waiver application can be made, and a full fee waiver will be granted if it is determined that the applicant cannot afford the visa fee and the health charge. A partial fee waiver can be granted if it is determined they can afford the visa fee but not the health charge as well.

The health charge is designed to benefit the NHS and support its long-term sustainability. The government manifesto committed to increasing this charge to NHS cost recovery levels. The order delivers that commitment, and I commend it to the Committee and beg to move.

Baroness Brinton (LD): My Lords, I am grateful for the Minister's introduction to this statutory instrument, but he raises more rather than fewer questions for me. First, I point out that it would perhaps have been helpful to have debated together this SI and the Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023, debated on Monday 4 December, as many of the arguments raised by the noble Baroness, Lady Lister of Burtersett, and others in her regret Motion debate also apply here. The Home Office may see them as separate but, for the migrant, it is part of a large increase in the visa taxes that they and their dependants have to pay up front.

This SI, alongside all the other legislation that the Government are introducing in relation to immigration, shows that, frankly, the current system is broken. These damaging new rules mean that British employers cannot recruit people they need; more families will be separated by unfair and complex visa requirements; and public confidence in the system has, frankly, been shattered.

One sector particularly severely affected will be our universities and research councils—I declare an interest, as I worked in that sector for 20 years. They will struggle to recruit the best international students because the cost for students, whether undergraduate or graduate students, post-docs or even senior research associates, will rise, because the fees charged by this Government are becoming a real barrier.

This week, *Times Higher Education* quoted Shashi Singh, who obtained his PhD at the prestigious Indian Institutes of Technology, which is on a par with the absolute best in the world—fewer than 4% of applications to study there are accepted. He is now a senior research associate in molecular biology at the University of Glasgow School of Infection and Immunity, and exactly the sort of world-leading scientist we should be encouraging to stay. He said:

> "Last month, I paid £6,000 for settlement of my wife and daughter. When postdocs' salaries are around £40,000 a year … that's a huge strain on your family budget".

He explains that the family cannot afford a car or taxis, because that

> "money is needed to buy food or has already been used to pay for visas".

This year, he, his wife and daughter would have paid a total of £1,718 for their annual health charge. Next year, with the 66% increase, it rises to a total £2,846.

I noticed in his introduction that the Minister said very clearly that the fee was separate to the visa fee. The problem is that those being charged do not feel that it is separate. The graph in the Explanatory Memorandum shows that in fact hardly any fee waivers were granted over the past three years.

In 2021-22, international students contributed £41 billion to our economy. That means that every 11 non-EU students generate £1 million-worth of net economic impact for the UK economy. This covers fees and payments for living costs such as rent and food. The problem is that post-docs such as Shashi will consider not coming to the UK at all. This is exactly the target group whom the Government should be supporting, not trying to deter. Their contribution to their university and their local community, the quality of their research and paying taxes are everything that this Government should aim for with their repeated mantras about "world-beating research", yet it seems that the current Prime Minister has already forgotten Boris Johnson's global talent scheme. Will the Minister explain how we will attract and retain the brightest of academics, whether students or post-docs, to deliver world-beating research when the Government are charging them these very large sums for a number of visa taxes?

[BARONESS BRINTON]

Frankly, the increase in the health charge is the most extraordinary this year. The Secondary Legislation Scrutiny Committee's fifth report sets out a range of concerns relating to it. It states that the Government's methodology is "unconvincing" and does not explain with evidence the justification for this large increase. A more cynical person might feel that "made up on the back of an envelope" would be more appropriate. Certainly, if you read the detail of the Explanatory Memorandum, it is extremely difficult to find the method. The Home Office's explanation is that there are three elements to the calculation: the overall cost of the NHS, the total population and then a "factor" that adjusts for the fact that migrants tend to use the NHS less than the average person because they are younger on average. So you divide overall cost by the population then multiply by the migrant costs factor to provide an estimate of the cost of the average migrant to the NHS.

The SLSC reiterates the point that the reason the amount has increased so much is because on one of those three data points the Home Office has substantially increased the migrant cost factor, but with no evidence. It is no good turning to the Explanatory Memorandum to the instrument because that provides no details on why the charge is to be increased at a rate well in excess of national health spending. The latter has increased by 25% since the last increase in the health charge, whereas the health charge is increasing by more than two-thirds, as I said earlier. Will the Government undertake to publish the full methodology before this SI is enacted and certainly before it is implemented?

Worse, the impact assessment on page 5 of the SI bundle states:

> "Baseline volumes of visa applications are based on Home Office internal planning assumptions. The volumes used are highly uncertain and may not match actual numbers in future published statistics. The impact of increased IHS on volumes is based on assumptions of price elasticity of demand for visas".

Will the Minister say what "price elasticity" means and how it has helped the Government come to the proposed increase? Surely it must not mean an excuse for charging whatever sum the Government want to increase it by a year, but without that empirical evidence of the background data, it is almost impossible to determine this.

There is a place for immigration and nationality visa fees but they should remain affordable, and if they have to go up, the increase must not be higher than inflationary levels. It is vital for our economy that British employers must be able to hire the workers they need, and those who choose to come to the UK to work or study should be welcomed for the skills and contributions that they bring, no matter how short a time they are here for. Most do not stay; they remain for a limited period only. Everyone should be able to have confidence that the immigration system is functioning properly. Our Benches would make migration work for the UK with merit-based work visas instead of an arbitrary salary threshold, which is a further problem.

At the moment, however, the real issue is how many of our migrants are going to face this enormous surcharge in the NHS fee, which has not been justified in any of the documentation provided by the Home Office.

Lord Coaker (Lab): My Lords, as always, this SI is important. Many of the debates that led to the current system took place elsewhere. We need to seek to understand the instruments that are then put in place to make a reality of other government policies. I agree with much of what the noble Baroness, Lady Brinton, helpfully outlined. I also thank the Minister for his introduction.

This SI increases the charge payable by some migrants to access the NHS. The headline figure, for those people paying the main rate, will increase from £624 to £1,035—a large increase of 66%, compared with the 25% rise in NHS costs over the same period. There is a reduced rate for those under the age of 18, which increases from £470 to £776. Like the noble Baroness, we do not necessarily oppose the increases, or an increase, but what is the Government's justification for such a large increase, which is well above the NHS rate of inflation over the same period? We are comparing 25% to 66%, which is quite a significant disparity. The Minister will need to justify to the Committee why the Government have seen fit to do that. Can the Minister say any more than he has done about what happens to those who cannot afford the charge? Can he confirm that it is a one-off charge, not an ongoing one? I assume it is, but I would be interested in that being clarified.

What updated evidence are the Government using to justify this figure? What assumptions do they use in their papers regarding the use of services argument? The Government explain that they believe the increase will help to deter some migrants applying to enter or remain in the UK. Again, where is the evidence for that? Is it the right policy to use health charges to try to deter migrants coming into the UK? If the Government believe that it will deter them, have they made any estimates of the numbers that will be deterred, or is it just a statement that some will be deterred without any estimate? Do any working papers in the Home Office give us an assessment or understanding of what that will be? The noble Baroness asked some of these questions. Have the Government made any assessment of the impact of these changes on business?

What is the Government's answer to the Secondary Legislation Scrutiny Committee's criticism that they used questionable methodology in determining and justifying the increase? Why is that committee wrong in its assessment of some of the methodology the Government used?

It is important to understand the figures. What is the Government's estimate of the number who pay the charge currently and how much it raises, alongside future projections? I think the Minister said that it currently raises £1.7 billion, if I understood what he said. What is the projected figure over the next period?

The Explanatory Memorandum outlines and clarifies various exemptions. The Minister and the noble Baroness said something about some of the exemptions to paying the health charge. Can the Minister outline for the record what some of these clarifications and exemptions mean? How many actually receive any sort of waiver? As the noble Baroness pointed out, it appears from the charts as though hardly anybody receives a waiver or an exemption. Some clarity on that would be helpful.

Paragraph 2.2 of the Explanatory Memorandum talks about a number of different things that it would be helpful for us to understand. It talks about those on the Ukraine and statelessness immigration routes. I understand what the Ukraine immigration route is, but what exactly is the statelessness immigration route? It then talks about exemptions for "certain NHS workers". Who are those "certain NHS workers"? Has this changed at all with this instrument—in other words, has the exempted list of certain NHS workers been extended or reduced?

It also talks about exemptions for "specified protection cohorts". Can the Minister outline what a specified protection cohort is? One of the problems with migration, immigration and asylum is that sometimes it all gets mixed up—including in my own mind. Just to be clear, what is the status of Afghans, those from Hong Kong and others who come here under various schemes?

We have accepted the principle of immigration health charges and do not necessarily oppose this SI but, as the noble Baroness, Lady Brinton, and I have said, a number of questions need answering. Health charges need to be fair both in the level they are set at and in how they operate. The justification for such a large increase and the operation of the scheme alongside it are of extreme importance, which is why we have put various questions to the Minister.

5 pm

Lord Sharpe of Epsom (Con): I thank both noble Lords for their contributions to this shortish debate. I will do my very best to answer all their questions and commit to write if there are any that I cannot answer.

Those who move to a new country expect to pay towards healthcare. Countries around the world have a range of systems in place to do this, in line with individual healthcare models. It is right that we continue to prioritise the sustainability of the NHS and that temporary migrants make a financial contribution to NHS services available to them in the UK. Payment of the health charge provides near-comprehensive access to our health service, regardless of the amount of care needed, even for those with pre-existing health conditions.

I shall try to address all the issues raised. The health charge should broadly reflect the cost of treating those who pay it. However, the rates for students and their dependants, applicants to the youth mobility scheme and children under 18 will remain discounted. The increased rate of the health charge is comparable to the cost of private medical insurance here and abroad, which is a common requirement for individuals wishing to migrate to many other countries.

I think both noble Lords referred to the Secondary Legislation Scrutiny Committee. We thank it for considering the order and providing a detailed report on the legislation. Before I go into the methodology, I reassure the Committee that the Government have undertaken robust and detailed analysis of the annual cost to the NHS of treating health charge payers to determine the increased cost of the health charge. Increases to the health charge are based on the most recent data representing charge payers' use of NHS services, more accurately determining the current cost to the NHS of treating health charge payers. The Government acknowledge the delay in providing responses to the Secondary Legislation Scrutiny Committee. Unfortunately, this was unavoidable, due to factors such as the changes in ministerial teams and the need for assurances of the responses between departments.

I turn to the methodology and the DHSC calculation. As set out by the Chief Secretary to the Treasury on 13 July, the health charge rates have remained unchanged for the last three years, despite high inflation and wider pressures facing the healthcare system. The increases to the charge reflect the higher costs in healthcare budgets since 2020. Additionally, the assumptions for how intensively charge payers use healthcare services in different settings have been revised to use more recent and representative data intended to better reflect migrants' use of these NHS services. While the health charge is increasing, it is still considerably lower than the comparable average cost per capita of providing healthcare for the average UK resident, which currently stands at approximately £2,700 per person per annum.

I am aware of concerns around the combined cost of the health charge and visa fees and the impact that this may have on families and young people. The draft order maintains the reduced health charge rate for children, but the Government remain clear that migrants must pay the health charge when they make an immigration application and should plan their finances accordingly. The cost of the health charge and application fees are available online and should not come as a surprise. However, it is also recognised that, in some instances, people who are required to pay the health charge may not be able to afford it. In such instances, on family and human rights immigration routes and where it is backed by clear and compelling evidence provided by the individual, the health charge may be waived.

Where a fee waiver application is successful, the application fee and the health charge will be waived. Migrants who are granted a partial fee waiver are required to pay the application fee only; the health charge is waived in full. All the information about fee waiver applications is publicly available on GOV.UK and has been for a long time.

Evidence suggests that migrants are aware of the fee waiver process due to the volumes of migrants on eligible routes utilising fee waiver applications. For example, in the year ending September 2023, there were 46,470 visa fee waiver applications, which I would argue does not constitute "hardly any". The Government are also committed to supporting vulnerable cohorts; there are a range of exemptions from the payment of the health charge, including for individuals in protected cohorts. That includes asylum seekers, looked-after children and victims of modern slavery and trafficking. This draft order extends the range of exemptions to migrants applying to the statelessness immigration route and to the Ukraine regime. In answer to the question from the noble Lord, Lord Coaker, about the statelessness route, it is basically for migrants who are unable legally to reside in any other country—so very similar to refugees.

Lord Coaker (Lab): The Minister has just correctly defined statelessness and protected cohorts. To those who wrote the Explanatory Memorandum, all this is perfectly obvious, but for people like me and many others who read it, it would be extremely helpful if,

[LORD COAKER]
instead of putting "protected cohorts", they could add "such as" and do the same for "statelessness". It would be helpful if that was done sometimes in an Explanatory Memorandum.

Lord Sharpe of Epsom (Con): The noble Lord makes a very strong case for footnotes, and I hope that my officials are paying attention to that.

On the questions raised by the noble Baroness, Lady Brinton, about the deterrent effect on migrants, the UK continues to welcome talented individuals from around the world who want to study and work here. It is difficult to isolate the impact of the health charge increase on visa demand, due to the 2020 increase coinciding with the Covid pandemic and EU exit, but evidence from visa applications over the period following the increase to £624 does not suggest any significant impact on application volumes. Visa application volumes are monitored and there remains a substantial demand for visas across the majority of the immigration routes. All fee levels across the immigration system, including the health charge, are kept under review and evaluated where appropriate.

The Government's science and technology framework sets out 10 key actions to achieve the goal of becoming a science and technology superpower by 2030. The global race for science research, technology and innovation is becoming increasingly competitive. The Government are committed to making the UK the best place in the world to work for top scientists, researchers and innovators, and we are delivering the biggest increase in public R&D investment, including training our next generation of doctoral and post-doctoral RDI talent, having already committed to investing £20 billion in R&D in 2024 and 2025.

Baroness Brinton (LD): I know that we are not discussing this today, but I referred to the increase in the income threshold to £38,500. If that is the case, why was it set at that level, when post-doc salaries start at £35,000, immediately making that important group of people unable to come here?

Lord Sharpe of Epsom (Con): I was about to say that the Government launched the global talent network in 2022 to support recruitment of exceptional talent in priority areas, such as artificial intelligence, with direct support and information on attractive opportunities in the UK. The noble Baroness is right that this question is not germane to this instrument. We dealt with the increase in salary levels last week. I cannot remember the precise exemption for doctoral students, but there was a PhD exemption.

Baroness Brinton (LD): Was that for post-doctoral students?

Lord Sharpe of Epsom (Con): I will have to come back to the noble Baroness—I cannot remember.

Baroness Brinton (LD): Perhaps the Minister could write to me afterwards. I am talking about post-docs, who arrive with a PhD on a salary of £35,000. They now have a problem because of the level at which this has been set. The point I was making is that this large increase and the other visa fee increases make the whole thing impossible. That is the real worry of universities.

Lord Sharpe of Epsom (Con): As I said, I will write, because I cannot remember the precise details and I do not want to say anything that I will have to correct.

It is also important to highlight that, although current comparisons can be made, other countries do not have healthcare systems that are directly comparable to the NHS. However, when comparing the total healthcare costs and the costs as a proportion of salary, analysis shows that the health charge at its new rate is broadly equivalent to that in Germany.

We are not trying to deter migrants and reduce net migration by increasing these charges. The health charge simply reflects the cost to the NHS of providing healthcare to health charge payers. It supports the sustainability of the NHS. It is not a tool to reduce net migration. It is a public sector fee and cannot exceed the cost of providing treatment for health charge payers. The health charge cannot be used for any purpose other than to fund healthcare for health charge payers.

Migration volumes have increased since the current health charge rates were introduced in 2020. The direct impact that the health charge increases have had on migration are difficult to determine due to the factors that I mentioned earlier and the impact of the Covid pandemic coinciding with the recent increases, but they certainly do not appear to be statistically significant, although that is probably over-egging it a little.

Regarding the Government's assessment of the impact of the current rates of health charges on visa volumes, no formal review has been undertaken to assess their impact on immigration. That is partly due to the 2020 increase having coincided with the pandemic and EU exit. However, we monitor visa application volumes, which have been at record highs, as noble Lords will be aware, across the majority of immigration routes. All fee levels across the immigration system, including the health charge, are kept under review and evaluated where appropriate. To answer the specific question about price elasticity, it is basically about migrants' willingness to apply for a given visa given an increase in price. This is derived from published academic research. I can provide links as required.

In terms of impact assessments, we have considered this; a full regulatory impact assessment estimating the impact of the IHS increase was published alongside the legislation. The Government have considered the impact that increases to the health charge will have on visa volumes, as I said. The regulatory impact assessment published alongside this estimates the potential impact on visa volumes using different scenarios. The Government have considered the impact that the health charge increases will have on specific types of immigration. The regulatory impact assessment estimates the impact on migrants and visa volumes for each individual liable route. As I said, the immigration health surcharge is not a net migration policy. The published regulatory impact assessment provides estimates for the potential impact on visa demand under different scenarios.

I think I have answered most of the questions asked of me. I will write on those that I have not answered and the specific points raised during the debate. I finish by saying that the NHS was founded to care for every citizen in their time of need. We have to cherish and preserve that principle, but it is right that migrants granted temporary permission to be in the UK make a financial contribution to the running of NHS services available to them during their stay. On that basis, I commend the order to the Committee.

Motion agreed.

Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023

Considered in Grand Committee

5.15 pm

Moved by ***Lord Bellamy***

That the Grand Committee do consider the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023.

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

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, around a quarter of homicides in this country are domestic homicides, where one spouse or partner, or ex-spouse or ex-partner, is killed by the other. In recent years, there has rightly been a considerable focus on these tragic cases. We have had a number of particularly tragic instances, such as when Poppy Waterhouse and Ellie Gould were killed by their ex-boyfriends in 2018 and 2019 respectively, and that of Sally Challen, who killed her husband after years of domestic abuse and whose conviction for murder was replaced by a conviction for manslaughter in 2019.

The law of murder in such cases is currently being reviewed by the Law Commission at the request of the Lord Chancellor. Today, we are concerned not with the law itself but with sentencing. The statutory framework for sentencing in murder cases is to be found in Schedule 21 to the Sentencing Act 2020, replacing earlier legislation, as supplemented by guidelines of the Sentencing Council. However, hitherto, nothing in Schedule 21 has specifically addressed domestic homicide.

In the light of all this background, in 2021 the Government asked Clare Wade KC to conduct an independent review of domestic homicide sentencing. The Wade review was published in March 2023, and the Government's final response was published in July 2023. Today's instrument takes forward Clare Wade's recommendations 5 and 8.

Regulation 3 of this statutory instrument deals with a murder that has occurred where there is coercive and controlling behaviour in a domestic context by the offender. It provides that such behaviour will be an aggravating factor for the purposes of paragraph 9 of Schedule 21, which sets out the statutory framework for dealing with aggravating factors. The instrument further provides that, where the situation is the other way round, and the coercive and controlling behaviour has been on the victim's part—typically, where it is the woman who has killed the man—the fact that the woman has killed having been subject to coercive and controlling behaviour shall be a statutory mitigating factor for the offender subject to such behaviour for the purposes of paragraph 10 of Schedule 21.

In addition, regulation 3 of the draft instrument implements recommendation 8 of the Wade report, which deals with a situation known in shorthand—and, I must say, completely inadequately described—as "overkill". This arises in cases, particularly at the end of a relationship, where the offender, typically the man, kills the woman in circumstances of extreme violence, defined in the instrument as "sustained and excessive violence". That too will be a statutory aggravating factor. As I understand it, some 40% of domestic homicide cases occur at the end of a relationship, when the rage and anger are so intense that these very unfortunate and excessive situations arise.

Lord Beith (LD): My Lords, I am sorry to interrupt the Minister while he is introducing the regulations. I am slightly worried that there is confusion over the ending of a relationship, which was a separate recommendation of the Wade report that is not dealt with in these instruments.

Lord Bellamy (Con): My Lords, I thank the noble Lord, Lord Beith, for that intervention. There is a further aspect of information that I would like to share with the Committee to deal with the very point the noble Lord has raised, for which I thank him.

I have explained the statutory instrument before us, but I need to complete the picture for the Committee. In the Criminal Justice Bill, which is already before the other place, there is a provision that deals explicitly with murders committed at the end of a relationship, defining it as in itself an aggravating factor. Your Lordships may well ask whether it seems a little bit piecemeal that we have this statutory instrument and something in the forthcoming Bill. That point was quite understandably made by the Secondary Legislation Scrutiny Committee in its consideration of this instrument. What happened was that the two recommendations that we are dealing with were accepted in the Government's interim report by the previous Lord Chancellor, and when the present Lord Chancellor succeeded to the post he thought that we should go further. Therefore, it is in the forthcoming Bill.

However, that is not quite the end of the story—this is a continuing story—so I tell your Lordships for information and by way of background that there is another aspect of the sentencing exercise called the starting point: the level of the "tariff" at which you start. For these kinds of domestic murders, the Government commenced a consultation in November to consider the possible reform of the provisions dealing with the starting point in Schedule 21 to the 2020 Act. I should say that these developments are in response to continuing concerns by stakeholders, particularly victims and their families, about the response of the law to these very difficult cases. The Government are listening to those concerns and continuing to address the issue. However, as I indicated, the statutory instrument before us

[LORD BELLAMY]
adopts the two recommendations of the Wade report. I therefore commend the instrument to the Committee and beg to move.

Lord Beith (LD): I am very grateful to the Minister for his introduction and his helpful and illuminating response on the matters that I raised in my intervention. As he said, these regulations carry out the intention to address murder related to domestic violence and coercion. The intention was expressed in Schedule 23 to the Sentencing Act 2020 and follows the Clare Wade report. We support these provisions, which take into account the context of controlling and coercive behaviour in relationships, treating them as an aggravating factor in sentencing for murder or, in the case of a murder by a victim of a controlling relationship, as a mitigating factor.

The regulations introduce the concept of overkill—a word which bothers me as much as it did the Minister as being inadequate to describe the use of violence in excess of what would have been required to kill the victim—as an aggravating factor, not least because of the deeply distressing impact of some of these horrific murders on victims' families.

However, I have some concerns. I begin with those raised by the Secondary Legislation Scrutiny Committee, one of which has been referred to by the Minister. The reference to consultation with the Sentencing Council blandly and misleadingly fails to mention the council's concerns, including about the wording of the overkill provision. The Explanatory Memorandum should explain using all the relevant facts. It should not obscure by omission. I presume the revised wording has met some of the council's concerns, but I would be grateful for some clarification of that as it was raised quite forcefully by the scrutiny committee.

The scrutiny committee also questioned the failure to include other provisions proposed in the Government's response to the Wade review. We had a helpful explanation from the Minister that things are moving on and that the new Lord Chancellor has indeed taken up the concerns and included them in draft legislation. Indeed, I was a bit surprised by the Government's defence that the earlier omission of some of the recommendations was because these statutory instruments were an interim response, but I will not criticise further because there is obviously progress on that front. I rather agree with the committee that

"in general, it is better policymaking to make all related changes at the same time".

More than that, I argue that it makes for more coherent legislation if you put things in the same piece of legislation.

In supporting these provisions, I must, however, make clear what they cannot do. In the first case, they cannot and should not remove the judge's ability to take into account all the relevant circumstances of the case when passing sentence. Justice should not be blind or deaf to the many different issues that may emerge in evidence or in mitigation. The judge must justify deviation from the guidelines but must be free to do justice.

Secondly, we should not deceive ourselves or the public with the pretence that these provisions will have a powerful deterrent effect. Justice has many purposes, including punishment and rehabilitation, but deterrence is scarcely a major factor for this kind of crime. Someone who, having used enough violence to kill the victim, carries on to inflict more violence is not going to think, "Oh, I'll get a slightly longer sentence, won't I, because of that statutory instrument?" That is not the real world; it is not the mindset of those who would carry out such terrible and vengeful acts.

That brings me to my final point. For the murders we are talking about, the murderers need in many cases to be imprisoned for long periods for public safety, including the safety of other potential victims of the same kind of crime, but adding a few more years to the sentence may only marginally, if at all, add to public safety and will do nothing to protect safety when they are eventually released. The extra years are added to recognise the greater severity of the offence, and we add them because they are almost the only means we know of recognising that severity and marking it with a more severe penalty. It would appear ethically bland if we treated different murders in exactly the same way, but what we actually do is allocate significant resources to keeping somebody in prison for a bit longer in a hopelessly overcrowded prison system, in which resources are desperately needed for rehabilitation to reduce the risk of reoffending when offenders are released.

As a society, we need to look for more effective ways of recognising and challenging crimes of varying degree and asserting that they will not be tolerated, otherwise we are condemned to endless sentence inflation because sentences for one crime affect sentences for another. It will not be long before comparison is made between these crimes and some other crimes and an argument for longer sentences for them. We have a problem as a society in finding ways of recognising the greater severity of some crimes than others that do not simply commit resources in an ineffective way when those resources are needed to secure public safety.

As I said, we support these provisions, but room must be left for judicial discretion and there must be some recognition that we do not cure crimes simply by passing statutory instruments such as this.

Lord Ponsonby of Shulbrede (Lab): My Lords, I, too, thank the Minister for introducing this statutory instrument. The Labour Party supports these regulations.

As we have just had explained to us, the instrument introduces two additional statutory aggravating factors and one additional statutory mitigating factor in the determination of the minimum term relating to the mandatory life sentence for murder. The new aggravating factors are the fact that the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive and the use of sustained and excessive violence towards the victim. The new mitigating factor is the fact that the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive.

5.30 pm

The noble Lord, Lord Beith, very adequately covered the points made by the Secondary Legislation Select Committee on its reservations about the piecemeal approach to these various changes. The Minister answered those points and acknowledged the point made by the SLSC, so I will not dwell on that point again.

However, I want to dwell on some of the points that the noble Lord, Lord Beith, made in his speech just now. We all come at this with different experiences of the criminal justice system. As noble Lords know, I sit as a magistrate and have done so for about 18 years now. I see domestic violence permeate so much of the work I do as a magistrate. I see that in youth courts, family courts and adult courts. We are more conscious of it than when I first started 18 years ago. Of course, we are talking about an extreme here—murder—but it is absolutely not unusual for women, usually, to make allegations about partners or former partners, and that is a dominating factor in the cases which we hear in those various environments in which I sit.

I agree with the point which the noble Lord made about how these guidelines should not remove the ability of judges to sentence and deviate from the guidelines. Of course they should give reasons if they do that, but each case is different, and guidelines are guidelines, not tramlines, as we all know. That point is worth repeating. I also agree with the point made by the noble Lord, Lord Beith, that in these particular cases, deterrence is unlikely to affect the ultimate outcome. We need to be realistic about that. It is difficult to acknowledge, but it is reality, that different types of murder need to be treated differently, and the way the judge sums up the murder and gives the reason for the sentence reflects society's view of the way that murder should be treated. So this is useful for judges. Of course, they make extremely difficult decisions, and guidance which is up to date and acknowledges the reality of many people's lives, particularly women's lives, is a good thing.

In conclusion, I will talk about sentence inflation. In fact, just before this session, I listened to the Lord Chancellor addressing the All-Party Parliamentary Group on Penal Affairs about his general approach. I think it is fair to say that everyone in the room thought it was a breath of fresh air compared to some recent previous Lords Chancellor. There are some very real and substantial problems within the wider prison estate, and there is a problem with overcrowding, of which we are well aware. I was comforted by the fact that the Lord Chancellor understands these problems very well. As I said, the Labour Party is happy to support these changes which we are talking about in this SI because it is right that the overwhelming importance of domestic violence should be acknowledged and properly reflected in sentencing guidelines. As the Minister said in opening—I will just repeat the stat he gave—one-quarter of all homicides in this country are domestic-related. That is a terrible fact, but I suspect it has not changed for many, many years, although it has been acknowledged more only in recent years.

Lord Bellamy (Con): My Lords, I thank noble Lords for their important contributions. I venture to suggest that we all in many ways share an analysis of the nature of the problem and that we are working, I hope collaboratively, to arrive at solutions on very difficult issues.

I will deal in so far as I can with the various points made. I can tell your Lordships that there was a very full exchange with the Sentencing Council. As I understand, it was concerned among other things with exactly how "overkill" is defined, or that sort of point. The question is: how far should you go into all that in the Explanatory Memorandum? Maybe it was a bit skimpy; if so, the Government will take that very much into account. However, the Sentencing Council's views have been fully taken into account and they are reflected in the instrument. I do not anticipate any disagreement from the Sentencing Council's point of view with this statutory instrument.

Secondly, as both noble Lords have rightly said, these regulations do not in any way cut down the discretion of the judge in a particular case to consider all the circumstances that he thinks fit. They will always take into account all relevant circumstances, but they provide important statutory reinforcement of the approach that should be made in domestic homicide cases. As the noble Lord, Lord Ponsonby, rightly said, and as I think is common knowledge, we have had domestic violence cases as a substantial proportion of all murder cases for years and years—probably for centuries. However, we have become much better informed. I nearly said we have also become much better equipped, but I do not quite mean that; we have become much more able to understand the situation—I will put it like that—and draw appropriate conclusions than perhaps has been the case in the past.

As I think I said in opening, this is still work in progress. We are still working on aspects of this—on sentencing and, in due course, we will be working on aspects of the law of murder itself, whether we should have just one law for murder, or ways of distinguishing better between different circumstances. That, I think, is a question for another day.

On the general question of sentencing, I want to say, respectfully, that I acknowledge the force of the careful remarks made by the noble Lord, Lord Beith, on this issue. I think, respectfully, that today is not the day for a general debate on sentencing policy, but we have very difficult issues in this area. There are always the questions of public safety, deterrence and rehabilitation, but there are also questions of public outrage and anguish. How do we deal with those?

From a personal point of view, it is very nearly impossible to disregard public outrage and anguish as factors in the circumstances when the court comes to consider what it should do. That is a fact. We are certainly in a situation where, for some time now, sentences have been growing longer. That has produced pressures on the prison estate, which have been further complicated by Covid and by the increased numbers of police officers, who are arresting more people than they were before. We have all sorts of things to deal with. These are difficult matters, which will merit full debate on another occasion. I have endeavoured to deal as far as I can—otherwise, I hope your Lordships will forgive me—with the points made this afternoon. I commend this instrument to the Committee.

Motion agreed.

Legal Services Act 2007 (Approved Regulator) Order 2023

Considered in Grand Committee

5.39 pm

Moved by ***Lord Bellamy***

That the Grand Committee do consider the Legal Services Act 2007 (Approved Regulator) Order 2023.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I have to confess that I struggle to find anything interesting to say about this statutory instrument.

Under the Legal Services Act 2007, the Legal Services Board oversees various approved regulators for persons providing legal services. They are designated under Schedule 4 to the Act. In 2009, the Association of Chartered Certified Accountants—ACCA—was designated for the regulation of probate activities. It did not embark on any regulatory activities until 2018, when it found that the uptake was extremely low: it granted authorisations for probate to only 99 persons. At that point, the association discovered that the costs of regulating were very high and it therefore determined that it would withdraw from that activity. It applied to the Legal Services Board in October 2021 to cease to be designated as an approved regulator. The Legal Services Board approved that request on condition that the 99 persons already approved had either ceased to practise or been transferred to another regulator, mainly CILEx Regulation. That condition having been fulfilled, the Legal Services Board asked the Lord Chancellor to regulate the situation by removing the designation of the ACCA under the Act. This statutory instrument now rounds off that process and terminates its authorisation, which is to all intents and purposes redundant anyway. I beg to move.

Lord Beith (LD): My Lords, it is indeed difficult to find many interesting things to say about this instrument, except perhaps that it has taken more than two years to get to this point after the ACCA decided that its members did not want to be either engaged in or regulated in respect of probate work. However, I have a question about CILEX that puzzles me.

The transitional arrangement is that some people will be or have been transferred to CILEx Regulation. CILEx Regulation is itself the subject of a consultation, which ended in November, because it has been proposed that it should be transferred to the Solicitors Regulation Authority—a much larger body. What will that mean? Will accountants, or staff of accountants' offices, be transferred to CILEx Regulation by the Solicitors Regulation Authority, or will some other transitional arrangement be made for them? The Minister is studying his papers; I hope he has an answer to the question.

Lord Ponsonby of Shulbrede (Lab): My Lords, the noble Lord, Lord Beith, has done much better than me, because I could not find anything of interest to say, so I will say nothing.

Lord Bellamy (Con): My Lords, I think I have only one question to deal with, on the transitional arrangements for the 99 persons with whom we are concerned. My understanding—I will write to the noble Lord if my understanding is wrong—is that these persons have already been or are being transferred, so they are subject to an appropriate regulatory structure.

There is an issue in that there is some kind of dispute between CILEX and CILEx Regulation, which regulates it. That is an ongoing matter that will be resolved in due course by the Legal Services Board, or perhaps it will recommend a solution to the Minister. As I understand it, it is not appropriate for the Government to comment at this stage on how that will be sorted out. CILEX wants to be transferred to the Solicitors Regulation Authority, whereas CILEx Regulation is resisting that. It is an unresolved, ongoing dispute that is separate from the issue we are discussing, but the Government's position is to stand away from it while the regulatory bodies sort it out between themselves. I do not know whether I have managed to approach the noble Lord's question—

Lord Beith (LD): I thank the Minister for his helpful answer. It would be helpful to have reassurance from the Government that, in so far as there are still people from this background engaged in probate work, they will continue to be regulated and know by whom they are regulated.

Lord Bellamy (Con): As far as I am aware, I can reassure the noble Lord that they will continue to be regulated appropriately. If there is any further information that I need to convey, I will write to noble Lords accordingly.

Motion agreed.

Committee adjourned at 5.46 pm.