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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Retirement of a Member: Lord Rodgers of Quarry Bank 1883
Questions
Financial Stability: Private Equity Firms 1883
Loot Boxes in Video Games 1887
Refugees: Homelessness 1890
Limiting Global Temperature Increase 1894
Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023
Motion to Approve 1898
Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023
Motion to Approve 1898
Investigatory Powers (Amendment) Bill [HL]
Committee (2nd Day) 1898
Agriculture (Delinked Payments and Consequential Provisions) (England) Regulations 2023
Motion to Approve 1922
In-patient Mental Health Care: Learning Disabilities and Autism
Question for Short Debate 1934

Grand Committee
Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 ....GC 287
Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 ....GC 300
Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 ....GC 301
Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 ....GC 306
Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 ....GC 311
Equality Act 2010 (Amendment) Regulations 2023 ....GC 311
York and North Yorkshire Combined Authority Order 2023
Considered in Grand Committee ....GC 314

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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

Wednesday 13 December 2023

3 pm

Prayers—read by the Lord Bishop of Gloucester.

Retirement of a Member: Lord Rodgers of Quarry Bank

Announcement

3.06 pm

The Lord Speaker (Lord McFall of Alcluith): I should like to notify the House of the retirement, with effect from yesterday, of the noble Lord, Lord Rodgers of Quarry Bank, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much-valued service to the House.

Financial Stability: Private Equity Firms

Question

3.07 pm

Asked by ***Baroness Bennett of Manor Castle***

To ask His Majesty's Government what assessment they have made of risks to financial stability from private equity firms experiencing difficulty in the current high interest rate environment.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, the Bank of England's Financial Policy Committee is responsible for identifying and addressing risks to the stability of the UK's financial system. The committee's most recent judgment is that the system of market-based finance, which includes private equity, has so far been able to absorb recent changes in macroeconomic conditions.

Baroness Bennett of Manor Castle (GP): My Lords, I thank the Minister for her Answer; I think the key words in it may have been "so far". If multiple private equity companies experience financial stress simultaneously, it could have systemic implications. This is especially true if those companies operate in interconnected industries, leading to a potential domino effect of financial distress that could spread to the broader economy. The UK is the second largest private equity market in the world, with nearly £80 billion of private equity going in in the last five years. Are the Government really assessing the situation and considering whether there need to be restrictions on the role of private equity in our economy and society, given how many companies have been taken over by private equity and subsequently closed down?

Baroness Vere of Norbiton (Con): I am afraid I do not recognise the picture the noble Baroness paints, nor do I agree that private equity needs to be closed down. The Bank of England monitors the situation across the entire market-based financial system. The noble Baroness may be interested to know that the Bank of England is conducting a system-wide exploratory scenario, which will be a world first and will look at all the elements of the financial system and stress-test them in quite severe circumstances to ensure that there is no contagion. The noble Baroness is not right to say that there is a massive risk of contagion. The private equity sector is a very small part of our financial system.

Lord Leigh of Hurley (Con): I agree with my noble friend's comments in respect of the private equity industry. I am sure she is aware that the private equity industry raised £70 billion last year but has £145 billion in dry-powder capacity in case of financial instability. Is not the real possible instability for companies in the UK the threatened changes to employment laws, which currently allow firms to respond to market conditions? I refer your Lordships to my registered interests.

Baroness Vere of Norbiton (Con): My noble friend is absolutely right. We need the right flexible employment laws to ensure that private equity can continue to steward companies that employ millions of people. Indeed, the British Private Equity & Venture Capital Association estimates that private equity-related companies employ 2.2 million workers.

Baroness Kramer (LD): My Lords, the Minister should take the Question from the noble Baroness, Lady Bennett, very seriously. A very large part of the private equity market is heavily overleveraged, although that is often disguised through complex financial engineering; it is not just Thames Water. At the same time, there are serious questions about the condition of the public debt market, with gilt rates so dependent on volatile foreign buyers for their gilt sales. Has the Treasury looked again at the stress tests being used by the Bank of England to see if they encompass potential issues in these two markets? There is a real risk that not just one but both could have serious problems at the same time, with systemic consequences.

Baroness Vere of Norbiton (Con): I reassure the noble Baroness that the Treasury works with the Bank of England and other regulators to monitor the system.

Lord Sikka (Lab): My Lords, private equity is part of the £131 trillion shadow banking system, which is largely unregulated even though it is much bigger than the regulated retail banking sector. Recently, IOSCO has said that the high leverage of private equity poses a threat to the world economy, so it is hard to see why the Minister is dismissing that. I ask the Minister to do two things: first, apply the banking prudential regulations to private equity; and secondly, end tax relief on corporate interest payments and thereby reduce private equity's capacity to increase leverage and cause the next financial crash, which will inevitably be caused by private equity.

Baroness Vere of Norbiton (Con): My Lords, there are £250 billion of private equity assets under management in the UK, versus £10.3 trillion of total assets under

[Baroness Vere of Norbiton]
management. It is a smaller part of the financial system. The noble Lord is not right to say that it is unregulated: UK private equity managers are regulated under the alternative investment fund managers regime. They must also comply with the senior managers and certification regime.

Lord Londesborough (CB): My Lords, I declare my interests as set out in the register. It is hardly surprising that private equity is struggling to do deals and sell its portfolio companies in a climate of high interest rates and low growth. In fact, it is zero growth, as October's dismal GDP figures show that we have seen no growth at all in the last quarter. In view of capital's recent flight to quality, does the Minister agree that our lack of an economic growth strategy is the biggest drag on private equity in this country?

Baroness Vere of Norbiton (Con): I do not agree with the noble Lord. As he will have seen in the Autumn Statement, the Chancellor set out significant tax cuts to encourage growth. That is where we are focusing our firepower at the moment.

Lord Young of Cookham (Con): My Lords, further to the original Question about high interest rates, at the last general election the Green Party was committed to borrowing an extra £95 billion to pay for its commitments. What would this have done to interest rates?

Baroness Vere of Norbiton (Con): I would not wish to speculate; however, I am not sure it would have been good things.

Lord Rooker (Lab): If private equity is so keen on employing people in this country, how come it is not so keen on paying the pensions? The private equity owners of Boots have just got rid of the pension responsibilities.

Baroness Vere of Norbiton (Con): The noble Lord mentions a situation I am not aware of, but I will say that all owners of UK companies must abide by the Companies Act and their obligations therein.

Lord Forsyth of Drumlean (Con): My Lords, has my noble friend been following the speeches and articles written by the noble Lord, Lord King, the former Governor of the Bank of England, in which he suggests that it is so important for the Bank to concentrate on inflation and the price mechanism that it does not make sense to add to those responsibilities a green agenda, which will distract it and draw it into political activity?

Baroness Vere of Norbiton (Con): I have not been following those interventions from the former governor, the noble Lord, Lord King, but I shall certainly look at them.

Lord Livermore (Lab): My Lords, the Bank of England has recently warned of the risks to financial stability posed by artificial intelligence and machine learning, with the bank's Financial Policy Committee identifying the potential for system-wide risk, herding behaviour and increased cyber risk. Does the Minister believe that regulators have sufficient powers, and that existing powers are sufficiently future-proofed, to deal with emerging risks to financial stability from rapid technological advances, including but not limited to AI?

Baroness Vere of Norbiton (Con): I accept that the AI regulatory system is still in development, but that is not unique to the United Kingdom. The AI summit convened by the Prime Minister made good steps in the right direction.

Lord Foulkes of Cumnock (Lab Co-op): Can we send our deepest sympathies to Sir Jacob Rees-Mogg on the demise of Somerset Capital Management, and hope that this will now enable him to spend more time looking after his constituency?

Baroness Vere of Norbiton (Con): I am not aware that there was a question there—but if the noble Lord wants to send his sympathies, I am sure they will have been heard.

Lord Watts (Lab): Given the recent problems with the Truss Budget, was the Bank of England informed of the Budget before it was announced—and if not, why not?

Baroness Vere of Norbiton (Con): I am afraid that the noble Lord speaks about things I have no knowledge of.

Lord Hodgson of Astley Abbotts (Con): I declare an interest in that I am involved in the private equity industry. If we in the industry do not calculate the risks properly, build into our modelling the necessary degree of leverage and allow for it, is it not right that we should be allowed to fail? We should not just be kept alive when we have shown incompetence.

Baroness Vere of Norbiton (Con): I completely agree with my noble friend. Private equity is all about risk and returns, and not all firms will succeed in perpetuity. That is the way of a capitalist market, and it allows the correct allocation of capital within the system.

Baroness Bennett of Manor Castle (GP): My Lords, I am glad that the noble Lord, Lord Young, pays such attention to the Green Party manifesto; it is pleasing to see. On the reference to so-called green environmental investments, does the Minister agree with me that it is essential for the future of the British economy, in meeting the needs of British society, that we invest in renewable energy and warm, comfortable, affordable-to-heat homes in order to effect the transformation we need for a healthy society?

Baroness Vere of Norbiton (Con): Actually, I would flip that around the other way. I had a long conversation with the head of ESG at the FCA about this, and it is the public and investors in pension schemes who want

to see investments in higher rated ESG organisations. That is the key driver: it is ensuring that the capital goes to the places the investors want to invest it in.

Loot Boxes in Video Games

Question

3.18 pm

Asked by ***Lord Foster of Bath***

To ask His Majesty's Government what measures they are planning to take to mitigate the risks caused by loot boxes in video games.

Lord Foster of Bath (LD): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I declare an interest as chairman of Peers for Gambling Reform.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): We welcome new industry-led guidance to strengthen player protections in relation to loot boxes. We have agreed a 12-month implementation period, during which we expect the industry to work with players, parents, academics, consumer groups and government bodies to implement this guidance in full. We are working closely with academics to support independent scrutiny of these new measures, and we will provide further updates and keep under review our position on possible future legislative options.

Lord Foster of Bath (LD): My Lords, I thank the Minister for his reply. There is a very long list of those calling for tougher action on loot boxes, which computer games players purchase to have a random chance of getting items to help them win—each an expensive gamble. The Government's own research review showed a

"consistent association between loot box use and problem gambling",

yet they still leave parents and the games industry itself to deal with these problems. The Select Committees in both Houses and many other people believe that loot boxes should be treated and regulated as gambling. Can the Minister explain why the Government rightly regulate the gambling industry but do not regulate loot boxes, which cause similar harms to individuals and society?

Lord Parkinson of Whitley Bay (Con): Research has provided evidence that loot box purchases may be linked to a variety of harms. In particular, there is robust evidence of an association with problem gambling, as the noble Lord mentions, but research has not established whether a causal relationship exists. There are a range of plausible explanations. We have developed and published the video games research framework to support high-quality, independent research into video games, including into loot boxes. If new evidence becomes available, we will consider it.

Lord Vaizey of Didcot (Con): My Lords, I heap praise on the noble Lord, Lord Foster, who has been a great supporter of the video games industry, although I do not agree with him on loot boxes. I am sure that he and the Minister will have seen the recent report from the Association for UK Interactive Entertainment, the trade body for video games, showing how this industry, which is bigger than film, television and music put together, has huge benefits for our wider economy, including the automotive and health sectors. Does the Minister agree with me that it is important not to overregulate such a successful industry? I refer to my entry in the register.

Lord Parkinson of Whitley Bay (Con): My noble friend is right to point to the huge success of the UK consumer games market. It is currently valued at more than £7 billion, which is more than double its size in 2013—during my noble friend's heyday as the Minister responsible for it. The industry employs 27,000 people across the country, with nearly 80% of those people based outside London; there are video games clusters in Dundee, Sheffield, Manchester, Guildford and Royal Leamington Spa. The growth has of course been accelerated by generous tax reliefs, including those on which my noble friend worked in government. We are very proud of the impact that it has on our wider creative industries.

Lord Winston (Lab): My Lords, I congratulate the Minister on his careful Answer to this Question. Is it not a fact that this research has been done at Loughborough University with, I think, only 42 families participating, with children from five to 17? We know from other studies on computer games in general that long-term harm is not clearly established with most of these games. It may of course be different with loot boxes, but I rather think that it is important to continue research before one comes to legislation.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lord for those comments. As I said in both my original and subsequent replies to the noble Lord, Lord Foster, we are working closely with academics to support independent scrutiny of the industry-led measures that are being taken, and we want to see how those work and bed in. We have developed and published a research framework so that there can be independent and rigorous analysis to give us the evidence that we need to inform policy-making.

Viscount Colville of Culross (CB): My Lords, players who buy loot boxes, including young people, are often victims of well-known psychological techniques to nudge them towards purchasing ever-greater features in the loot boxes. These include special, time-limited offers, price anchoring and the obfuscation of costs. Is the Minister satisfied that self-regulation will stop these behaviours in the loot box market?

Lord Parkinson of Whitley Bay (Con): As the noble Viscount will know, we have taken action more widely to ensure that people at risk of gambling harm, including children and vulnerable people, are protected. We want to ensure that people are able to play video games safely online and to enjoy them, but also to be protected against any harms that may occur. That is why we are keen to see the industry-led guidelines being implemented and why we will monitor their impact closely.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, has any action been taken to prevent the gambling industry targeting compulsive gamblers who are trying very hard to stop?

Lord Parkinson of Whitley Bay (Con): Yes, we have taken action including strengthening the land-based age-verification regime; we have taken steps to target online adverts away from children; and, of course, we have increased the minimum age to participate in society lotteries and football pools to 18. The Committee of Advertising Practice also updated advertising rules last year, so that gambling adverts cannot be designed in a way that has a strong appeal to children.

Lord Kamall (Con): My Lords, the noble Lord, Lord Winston, referred to research at Loughborough University that focused on a sample of children from five to 17. Is my noble friend aware of research on older age groups? We know that people continue to play games well into their 40s, 50s and 60s, and that will have an impact on potential addiction not only to games but to loot boxes.

Lord Parkinson of Whitley Bay (Con): I am not, but I shall take my noble friend's very good question back to the gambling team at the department and encourage it to make sure that we are pursuing research that will add to our understanding of the implications for all age groups.

Lord Bassam of Brighton (Lab): My Lords, whether it is the two-year gap between the Government's call for evidence and their response, or the further year-long wait for the games industry to announce guidelines, efforts to tackle child access to loot boxes and other in-game features with gambling-like features have been far too slow, in our view. Like others, we hope that voluntary arrangements will work, but if they do not, can the Minister confirm whether the Government have a specific regulatory approach in mind? If so, how long might implementation take?

Lord Parkinson of Whitley Bay (Con): We think the industry-led guidance on loot boxes has the potential, if fully implemented, to improve protections and to meet the Government's objectives. We expect the games industry to implement the guidance in full and we will monitor that carefully. If the industry is unable to meet our objectives, there are a range of options that the Government may consider, but we would like to see how they bed in first.

Lord Addington (LD): My Lords, will the Minister give us a little opinion? If he had to buy something else via a lucky dip, such as shirts or socks—it may happen at Christmas, we may think—would he be happy? The fact of the matter is that we are actually saying, "You are not buying what you think you are buying; you may have to go back again and again to get that product". Even without the gambling element here, or the gambling similarity, that cannot be right.

Lord Parkinson of Whitley Bay (Con): Under the terms of the Gambling Act, gambling is defined as

"playing a game of chance for a prize"

of money or something of money's worth. The prizes that can be won via most loot boxes do not have a monetary value; they cannot be cashed out and they are of value only within the context of the games. They do not meet the definition, and I do not think they quite meet the analogy that the noble Lord made.

Lord Hampton (CB): My Lords, is the issue of loot boxes not just part of the wider issue of in-app purchases in games? Does the Minister agree that we need more transparency on the whole idea of games and how they are funded?

Lord Parkinson of Whitley Bay (Con): Yes, we are committed to ensuring that video games can be enjoyed safely and responsibly by everyone. To support that, we are working closely with the Games Rating Authority, which ensures that all games are appropriately rated. That includes information for those who buy them on what they can expect from their purchases. We have also, as I say, developed and published the video games research framework to support high-quality, independent research into games, and that is an important tool to augment our understanding of the impact of playing video games.

Lord Greenhalgh (Con): My Lords, sadly I do not have any relevant interests to declare in the way that my noble friend Lord Vaizey of Didcot has. He is right about the importance of the video game industry but, as a parent of three children, I am pleased that the noble Lord, Lord Foster, has raised this issue, because my son, at not much more than 10 years of age, suddenly spent several hundred pounds on a video game precisely because of this sort of entrapment. We need to keep a weather-eye on this. I encourage the Government to realise that when your child plays a video game, you expect them to play a video game, and when they gamble, you expect them to gamble. At the moment, the lines are too blurred.

Lord Parkinson of Whitley Bay (Con): I point my noble friend to the response the Government issued to the extensive call for evidence on loot boxes. We were very clear that loot boxes should not be purchased by children unless enabled by a parent or guardian; that all players should have access to spending controls and transparent information about what to expect; and that better evidence and research should be developed to inform future policy-making. We are taking all those steps forward as we look to see the industry implementing the guidance over the next 12 months.

Refugees: Homelessness

Question

3.28 pm

Asked by ***Baroness Thornhill***

To ask His Majesty's Government what steps, if any, they will take to mitigate the prevalence of homelessness among refugees, and its impact on local authorities, over the Christmas period.

Baroness Thornhill (LD): I beg leave to ask the Question standing in my name on the Order Paper and declare my interest as a vice-president of the Local Government Association.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, in line with the practice every year, individuals who have received a decision on their asylum claim will not be moved out of asylum accommodation over the Christmas period. For this year, the dates are 23 December to 2 January inclusive.

Baroness Thornhill (LD): I thank the noble Lord for that Answer. My concern was with recent Home Office data showing that around 90,000 outstanding decisions on older cases are forecast to be made before the end of December. Quite clearly, that would have a significant impact on certain councils, so will he please inform me, either now or in writing, what has happened in respect of that cohort? Does he agree that, with the demand for temporary accommodation at an all-time high, any increases are likely to overload the system and increase street homelessness? Will the Government consider increasing the notice time given to people in hotels from 28 days to 56 days, as in the Homelessness Reduction Act? Will there be a cessation over the Christmas period and in the colder weather so that plans can be put in place with the councils that are most impacted by this? Asylum distribution among councils is not equal; some councils are severely impacted.

Lord Sharpe of Epsom (Con): The noble Baroness has asked me a number of questions. The Prime Minister committed in December 2022 to clear the historical asylum backlog by the end of this year. Those are the legacy cases, and provisional data to the end of November 2023 suggest that 80% of them have already been dealt with. It is nowhere near the figure that the noble Baroness suggested. I will write. I am reluctant to give provisional figures for obvious reasons—they still need to be verified.

On extending the 28-day move-on period, the asylum accommodation estate is under huge strain, as the House is well aware, so increasing the move-on period would exacerbate those pressures. There are currently no plans to extend the prescribed period of 28 days for how long individuals remain on asylum support once they have received the grant of asylum. We are engaging with the Department for Work and Pensions and DLUHC on ensuring individuals can move on from asylum support as smoothly as possible.

Lord Bird (CB): My Lords, what are the Government doing about the increasing antagonism between UK people who are homeless and people who are refugees? We need to address this, because we do not want the outbreak of racism and all those other chauvinisms that are happening down at the bottom end of society.

Lord Sharpe of Epsom (Con): I agree with the noble Lord; we absolutely do not want those. The Government work closely with police forces and other agencies to ensure that sort of thing does not happen.

Lord Dubs (Lab): My Lords, the Minister talked about a period over the Christmas holidays when refugees would not be thrown out on the streets. How many are going to be thrown out on the streets when that period is over?

Lord Sharpe of Epsom (Con): My Lords, obviously, I cannot predict what that number will be, as those asylum cases are still being processed.

Lord Lancaster of Kimbolton (Con): My Lords, I declare an interest as someone who will be hosting a Ukrainian family for consecutive Christmases in our family home with my wife, and they are very welcome. It does, however, raise a medium-term problem: like many Ukrainian families, they came here on a three-year visa, and after 20 months, they are understandably thinking about what comes next. Our Ukrainians are happily settled here, working and contributing to the economy, and, if I am honest, probably do not want to go home, like many. President Zelensky desperately wants them to go home and contribute to the reconstruction of Ukraine. What will the approach of the Government to them be as they come towards the end of their three-year visa?

Lord Sharpe of Epsom (Con): I commend my noble friend for his generosity in hosting the Ukrainian family and I associate myself with the remarks on how they are needed back in Ukraine—they will be needed when the reconstruction efforts in that country commence. Regarding what the Government are planning for the Ukrainian visa system, I do not have that information to hand but will come back to the House as and when it is available.

The Lord Bishop of Gloucester: My Lords, given what has already been said about the inadequate notice period, can the Minister give an assurance that no notice to vacate will be implemented when a severe weather emergency protocol has been announced?

Lord Sharpe of Epsom (Con): I would take slight issue with the right reverend Prelate on whether the notice period is inadequate. I think that 28 days is more than enough, and there is huge pressure on our asylum system. As the House will be aware given that we talked about it the other day, the asylum and immigration system is costing this country £4 billion a year. However, ministerial agreement has been given to pause evictions for up to three days when a local authority has activated its severe weather emergency protocol due to poor weather conditions. This reduces the risks to life and enables the individual and/or local authority to find alternative accommodation arrangements.

Lord German (LD): My Lords, the biometric residence permit gives successful asylum claimants access to public services, including, crucially, access to cash and funding for housing. What progress has the department made in bringing the notice to vacate closer to the time when it provides the permit? Bringing those closer together would give people the full time available to them to find appropriate housing because they

[LORD GERMAN]
would have the cash available. Without it, they cannot find the cash. I know the Government intended to make progress on this; what progress has been made in bringing those two dates together?

Lord Sharpe of Epsom (Con): My Lords, the noble Lord is quite right. The move-on period is linked to when a biometric residence permit is issued and received because, as he points out, individuals generally require that BRP to access mainstream support—benefits, local authority housing, right to rent, bank accounts and so on. They are linked.

Lord Watts (Lab): My Lords, during the Covid crisis, a lot of homes were made available for homeless people. Why have the Government let that slip and gone backwards rather than forwards?

Lord Sharpe of Epsom (Con): My Lords, Covid presented a very different set of challenges to those we face today. We are attempting to relieve the pressure on the enormously overburdened hotels, and all the rest of it, that are costing this country £8 million a day and £4 billion a year.

Lord Scriven (LD): My Lords, following on from my noble friend's question, the Minister is correct that the Government are trying to align the permit period but, once a permit is received, it takes at least another five weeks before universal credit and housing benefit applications can be dealt with. Will the Minister go back to the department and look at the broader picture to align the two timescales so that people are not made homeless because they cannot claim those benefits?

Lord Sharpe of Epsom (Con): I will take that up with DWP colleagues, as it sounds very much like it is for their department. I cannot answer the question.

Baroness Chakrabarti (Lab): My Lords, in the spirit of Christmas, will the Minister reflect on his answer to the right reverend Prelate that 28 days is "more than enough" for a recognised refugee about to be evicted, whose knowledge of English may be minimal, who may have children and who might have suffered trauma back home?

Lord Sharpe of Epsom (Con): Yes, I think so, because the refugee will have been processed under a legacy asylum case and will therefore have been in that accommodation for a very long time—over a year. They would have had ample time to learn English and embed themselves to some extent into British society. An extra month is perfectly generous.

Lord Ponsonby of Shulbrede (Lab): My Lords, some of those in Home Office asylum care will be under 18. How confident is the Minister that none of those under-18s will ever be made homeless and that they will find their way into some form of social care provided by local authorities?

Lord Sharpe of Epsom (Con): Obviously, there have been a number of recent examples where things have gone wrong, but I am as confident as I can be that they have now been fixed. As has been said many times from this Dispatch Box, we are working carefully and closely with the local authorities concerned.

Lord Roberts of Llandudno (LD): My Lords, this morning, I had the privilege of attending a fundraising effort by voluntary organisations, which help so much, especially at this time of year, with refugee problems. What acknowledgement do we give those many voluntary organisations and all the people involved for all the effort they give at this time of year to make refugees feel at home and able to enjoy Christmas?

Lord Sharpe of Epsom (Con): The noble Lord raises a very good point. I am happy to add my congratulations, thanks and general appreciation to all those organisations involved in charitable activities of whatever sort at this time of year.

Limiting Global Temperature Increase

Question

3.39 pm

Asked by ***Lord Whitty***

To ask His Majesty's Government whether (1) the position of the OPEC states, and (2) the lobbying of fossil fuel companies, at the Dubai COP 28 have made it more difficult to achieve the goal of limiting global temperature increase by 2050 to 1.5 degrees Celsius above pre-industrial levels.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, the UK Government do not comment on the positions of different groups and countries. The UK worked tirelessly with all parties to push for an ambitious outcome at COP 28 that keeps 1.5 degrees within reach, and we welcome the deal reached this morning, which is the first time that there has been a global agreement to transition away from fossil fuels. It maintains the Paris Agreement to limit global warming to 1.5 degrees centigrade.

Lord Whitty (Lab): My Lords, I join with the Minister in accepting that the current draft is a darn sight better than the dreadful draft presented two days ago, but it is still, sadly, deficient. In the run-up to the COP, we not only saw the petrostates and fossil-fuel companies trying to derail any reference to fossil fuels in the agreement; we also saw the IPCC and the scientists warning us that we were well off the Paris trajectory towards 1.5 degrees, to which we are all supposed to be signed up. Perhaps we also ought to acknowledge that any improvement due to the UK Government's intervention was down to our own Minister, the noble Lord, Lord Benyon, with the actual leader of the British delegation being called back from saving the world to saving the Prime Minister. Is not this Government's moral authority to persuade smaller, more vulnerable

and poorer nations to adopt a net-zero policy sadly undermined by our continued licensing of oil and gas extraction in the North Sea and other retreats from our green policies? Can the Minister give us a date for abandoning those polices?

Lord Callanan (Con): There was a whole series of questions in the noble Lord's statement. This was an international agreement, involving almost 200 countries. Is it perfect? Is it everything we would have wanted? No, but it is certainly a great achievement by our extremely hard-working negotiating team. I do not agree with the noble Lord on the second part of his question about licensing and increased production in the North Sea. Even if they come on stream, the output in the North Sea will still continue to decline and we are still committed to phasing out oil and gas production.

Lord Naseby (Con): Will my noble friend reflect that it is not just carte blanche? There will be situations where an oil company finds a new field, perhaps like the one 200 miles north of the Falklands, where the quality of the oil is far better than the oil that we produce in the North Sea, and it would make economic sense to substitute one for the other in the future. Then at some stage, that field will be reduced. It is not absolutely static, is it? We now want a situation where the industry decreases but at the same time improves the product.

Lord Callanan (Con): My noble friend is right, in that different circumstances will apply to many countries, but we are very clear about the trajectory that we are on. We need to bear in mind that this is a transition. It cannot happen overnight, but we are clear on the direction in which we are travelling.

Earl Russell (LD): My Lords, do the Government now regret their decision to recall our Climate Change Minister 6,831 miles to London, putting party before planet? As a nation, we were not adequately represented at the crucial point in these negotiations. Is it not the truth of the matter that the Conservatives have prioritised their own local difficulties over crucial negotiations to tackle the climate emergency?

Lord Callanan (Con): I am sorry, my Lords, but that really is a nonsensical question. Graham Stuart is a Member of Parliament and has duties to perform in Parliament. The negotiating team were in constant contact with him, all the time. He flew back out to COP last night. Our own Minister, my noble friend Lord Benyon, was there as well, occupying the UK chair, alongside the fantastic team of negotiators, who held the pen for many of the negotiations and secured some far-reaching commitments in line with UK's policy objectives.

Baroness Boycott (CB): Now that we have reached an agreement in Dubai, is the Minister sill completely confident that the UK will reach our target of a 68% reduction on NDC by the end of 2030? As has been mentioned often in this House, we have rolled back on some of our commitments, such as those on electric vehicles and various other things, and I cannot believe they will not have an impact on that target. Can I have the Minister's reassurance that he will publish the Government's evidence base that the things which have recently taken place, in terms of rollback, will not affect the crucial outcome?

Lord Callanan (Con): I can happily tell the noble Baroness that we remain committed to all our targets.

The Lord Bishop of Oxford: My Lords, I assume the Minister will be aware of the large amount of lobbying taking place, not only at the COP but around the COP through social media. One oil company is estimated to have spent $1.8 million on TikTok videos alone, seen by millions of people across the world, and helping to spread climate disinformation. Does the Minister think the Government should be doing more through the Counter-Disinformation Unit to challenge climate disinformation, given the scale of what is happening and the risk to the world of the failure to curb emissions?

Lord Callanan (Con): I understand the point that the right reverend Prelate is making, but one person's disinformation is another person's free choice and free speech. There is always robust debate about all of these issues. There will be continue to be robust political debate about it, and I think that is right in a democratic society. We are very clear on the policy that we should be following and that we are committed to. We are committed to net zero; it is a legal obligation. The Government are committed to that trajectory.

Baroness Sheehan (LD): My Lords, the agreed wording of COP 28 in the small hours of this morning does not go far enough, given that scientific consensus is strongly in favour of a phase-out of fossil fuels. Nevertheless, this is what we have signed up to. Can the Minister say whether the Government will publish a plan to say how they will meet our commitment to

"Transitioning away from fossil fuels in energy systems, in a just … and equitable manner, accelerating"

—and that is a key word—

"action in this critical decade".

Lord Callanan (Con): We are into semantics and wording, but a transition away with clear deadlines is, in our view, a phase-out in all but name. It is not the language that we would have preferred, but in a multilateral negotiation there has to be compromise. We are very clear on the trajectory we are following. We have published numerous plans about our transition. We are accelerating the rollout of renewables and reducing our use of oil and gas, and that will continue.

Baroness Blake of Leeds (Lab): My Lords, I too recognise today's COP agreement as an important moment for the world. It is the first time there has been a global commitment to a transition away from fossil fuels. There will always be those vested interests pushing back, as there was at COP. The reality is that limiting global warming to 1.5 degrees still requires much to change. Despite the Minister's attempts to reassure us, it was disappointing that, when their leadership was most needed at COP, our Government

[BARONESS BLAKE OF LEEDS]
put their party infighting first. To keep 1.5 degrees alive, they will need to do better and lead by example. Therefore, as a result of the statement released this morning, what plans do the Government have to show strong international leadership and to make sure that we bring in the changes of direction needed? Are there any plans for changes at this moment in time or not?

Lord Callanan (Con): I repeat the answer I gave earlier: these statements demean the noble Baroness. The UK provided fantastic leadership. We have an official, Alison Campbell, who co-chaired a number of the panels. She was the penholder on a number of these negotiations. We succeeded in all of our aims. There was robust political leadership; Graham Stuart was there. For a lot of the time, our own Minister, my noble friend Lord Benyon, was there. There were many other Ministers who were also there. There was no gap in UK representation or in the agreements that we achieved.

Baroness Fox of Buckley (Non-Afl): My Lords—

Lord Kirkhope of Harrogate (Con): My Lords—

The Earl of Courtown (Con): My Lords, it is the turn of the noble Baroness, Lady Fox.

Baroness Fox of Buckley (Non-Afl): My Lords, whatever about the lobbyists from the fossil fuel companies, do the Government have any assessment of the cost in terms of CO_2 used to travel to Dubai, or in terms of public money paid to facilitate the tens of thousands of pro-net zero lobbyists, NGOs and consultants who attended COP 28? Can the Minister reflect on the impact for developing countries of not using fossil fuels when they are so essential for enabling their citizens to achieve the prosperity of western economies?

Lord Callanan (Con): On this issue of lobbying, tens of thousands of people were at COP, representing a whole series of different shades of opinion. Of course, there were lobbyists from all sides, but that does not mean you have to agree with the position that they take. A wide range of views were represented; I said to the noble Lord, Lord Foulkes, when he asked me something similar last week, that you listen to the views, and there are lots of people having meetings around it, lobbying groupings and so on, but the negotiation is done by committed teams of officials who probably do not watch any of the TikTok videos that the right reverend Prelate referred to. However, as I said earlier, the needs of countries are also different in different environments. We are fortunate, being a relatively wealthy country, that we can transition away from fossil fuels. It is much more difficult for some third-world countries, which is why we are offering them considerable amounts of finance—we have £11.6 billion of international climate finance with which to help them with the transition. We are leading on initiatives such as the Powering Past Coal Alliance, which helps developing countries to move away from coal-fired power stations as well. So we are taking a range of different initiatives in collaboration and co-operation with a number of different other countries.

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

Motion to Approve

3.51 pm

Moved by ***Baroness Swinburne***

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

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 12 December.

Motion agreed.

Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023

Motion to Approve

3.51 pm

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

That the draft Regulations laid before the House on 25 October be approved.

Considered in Grand Committee on 6 December.

Motion agreed.

Investigatory Powers (Amendment) Bill [HL]

Committee (2nd Day)

Scottish Legislative Consent sought

3.52 pm

Clause 21: Interception and examination of communications: Members of Parliament etc

Amendment 43

Moved by ***Lord West of Spithead***

43: Clause 21, page 41, line 29, leave out "is unavailable to decide whether to give approval under subsection (2)" and insert with "is unable to decide whether to give approval under subsection (2), due to incapacity or inability to access secure communications"

Member's explanatory statement

This amendment would specify that the only exceptional circumstances in which the Prime Minister would be permitted the use of a designate is when he or she is unable to make a decision due to incapacity (ill-health) or lack of access to secure communications.

Lord West of Spithead (Lab): My Lords, this is the first of three amendments I have tabled to Clause 21 relating to the so-called triple lock for targeted interception and targeted examination of communications relating to Members of the relevant legislatures. These changes are replicated in the three amendments which I have laid to Clause 22, which we will come to later, which relate to the triple lock around the targeted equipment interference warrants.

The communications of Members of the relevant legislatures, including noble Lords in this House, should not be intercepted and read unless it is absolutely essential to do so in the most serious of circumstances. That is why Parliament added a third layer of safeguards to approve of any such warrant in the IPA, ensuring that these warrants will not only be issued by a Secretary of State and reviewed by a judicial commissioner but approved by the Prime Minister personally. This is a robust and necessary oversight mechanism, and it is important that any changes as a result of this Bill do not undermine the central three layers of approval.

Nevertheless, the ISC recognises that, on occasion, the requirement that a warrant be approved by the Prime Minister personally may disproportionately affect the operation of the intelligence agencies, where they are seeking a targeted interference or equipment interference warrant that is very time sensitive. We therefore support the intention to provide some resilience, whereby in truly exceptional circumstances, an appropriately empowered Secretary of State may temporarily deputise for the Prime Minister on these matters. However, the clauses before us go too far.

My three amendments seek to ensure that decisions are delegated only in the most exceptional circumstances, that the decision may be designated only to a limited number of Secretaries of State who are already responsible for authorising relevant warrants, and that the Prime Minister retains oversight of all warrants which have been authorised in their name through a retrospective review of the decision.

The first of those relates to the circumstances in which a decision may be delegated by the Prime Minister to a Secretary of State. This should be clearly defined and limited only to situations where the Prime Minister is genuinely unable to take a decision. My amendment specifies that the Prime Minister must be "unable", rather than simply "unavailable"—which is a rather subjective test—to decide whether to give the necessary approvals. It sets out that the only situations in which this applies are due to incapacity or inability to access secure communications—for example, if the Prime Minister is extremely ill or is abroad and unable to securely access the relevant classified documentation. This provides what the agencies require, but, when combined with the requirement that there is an urgent need for the decision, also provides the necessary assurance to Parliament that the Prime Minister's responsibility will be deputised only in specified exceptional circumstances, and ensures that the use of a delegate does not become routine.

My second amendment to Clause 21 is to specify those Secretaries of State who can act as a designate for the Prime Minister in these circumstances. As currently drafted, the Bill includes all Secretaries of State as potential designates for the Prime Minister in relation to triple-lock warrantry. However, only a limited number of Secretaries of State have any statutory responsibility for warrantry for investigatory powers: for example, the Secretaries of State for the Home Office, the Ministry of Defence, and the Foreign, Commonwealth and Development Office. Given that the authorising of a warrant that relates to a Member of the relevant legislature must be taken seriously, it is both sensible and desirable that any Secretary of State deputising for the Prime Minister on these matters should already be familiar with the process and framework for targeted interception and targeted equipment interference warrants as part of their routine responsibilities, as those are the warrants we are talking about.

This amendment therefore limits the Prime Minister to up to two designated Secretaries of State and specifies that they should be Secretaries of State who are already required in their routine duty to issue warrants under Sections 19 or 102 of the IPA. I note that my noble friend Lord Coaker has tabled a similar amendment, which would list a number of specific Secretaries of State who could be designated as deputies to the Prime Minister. We wholeheartedly support the intention behind this amendment, and our amendment seeks to achieve a similar outcome. However, I note the possible scenario whereby the evolution of departmental names, seen relatively recently with the renaming and restructuring of the Foreign, Commonwealth and Development Office, may sow confusion as to which Secretaries of State are included under Clause 21. My amendment seeks to avoid any such confusion by linking the role to existing statutory responsibilities for warrantry in the original Investigatory Powers Act. In this way, it should achieve a very similar outcome to that which was wisely proposed by my noble friend Lord Coaker.

My third amendment to Clause 21 would ensure that the Prime Minister retains ultimate responsibility for any targeted interception and targeted examination warrants which involve communications to or from Members of the relevant legislature. As I outlined earlier, the Intelligence and Security Committee considers it essential that the three planks of the triple lock not be weakened by any changes made by the Bill. Therefore, we must ensure that the Prime Minister's overall oversight of and involvement in these warrants is retained, even if, in designated cases, it could be retrospective. I have therefore tabled an amendment to provide that the Prime Minister review the decision taken by a designated Secretary of State on their behalf as soon as the circumstances have passed which prevented the Prime Minister approving the warrantry in the first place.

4 pm

That amendment would provide reassurance that the Prime Minister has sight of and input into all warrantry concerning the communications of members of relevant legislatures, even if that warrant has been authorised by a nominated Secretary of State in the first instance. It therefore upholds the original three layers of the triple lock which was enshrined by Parliament in the original legislation.

Amendments 51 and 52 are consequential on the decisions on those two, so I shall say no more on those. I beg to move.

Lord Hope of Craighead (CB): My Lords, I wish to speak to Amendments 44 and 51A, which are in the name of the noble Lord, Lord Anderson, and to which the noble Lord, Lord Fox, and I have added our names. They very neatly follow on from Amendment 43, which has just been moved by the noble Lord, Lord West of Spithead, and are based on a recommendation in the report by the noble Lord, Lord Anderson, in which he says at paragraph 8.20:

"I recommend the use of a deputy to be permitted for the purposes of the triple lock when the Prime Minister is unable"—

[LORD HOPE OF CRAIGHEAD]
I stress the word "unable"—

"to approve a warrant to the required timescale (in particular through incapacity, conflict of interest or inability to communicate securely)".

These amendments are prompted by the fact that, instead of the word "unable", which was that chosen by the noble Lord, Lord Anderson, for the recommendation in his report, and which is also used in Amendment 43, the word that appears in Clause 21 for condition A in the new subsection (3) of Section 26 is "unavailable". The same point arises with the wording of the triple lock in relation to equipment interference which Clause 22 seeks to introduce, under Section 111 of the 2016 Act. The word "unavailable" would be replaced with the word "unable" in both places by the amendments from the noble Lord, Lord Anderson.

This is all about the meaning of words. The aim must surely be to find the right word to use for describing the situation in which the Prime Minister's function of giving the necessary approval must be passed to another individual, other than the Secretary of State who has applied for the warrant. This is, of course, a very sensitive matter, and that in itself indicates the importance of choosing the right word.

The question is whether the phrase

"unavailable to decide whether to give approval"

covers all possible situations. The word "unable" includes "unavailable", but "unavailable" does not always mean the same as "unable". The word "unavailable" sets too low a bar. The Prime Minister could be unavailable simply because he or she is doing something else—whatever it might be—that is occupying their mind or demanding their attention elsewhere.

On 11 December 2023, the Minister sent a letter to the noble Baroness, Lady Drake, in response to points raised on this Bill by the Constitution Committee, which gave examples of prime ministerial unavailability. Attached to that letter was a commentary on the proposed amendments to Sections 26 and 111, in which the point is made that the word "unavailable" should be understood to mean situations—of which two examples are given—in which the Prime Minister is "genuinely unavailable" to consider the application. The introduction of the word "genuinely" demonstrates the problem with the word "unavailable" on its own, to which the noble Lord, Lord Anderson, draws attention: it needs to be narrowed down and clarified. That is what the word "genuinely" does, but it is not in the Bill.

It is worth noting that, in each of the two examples given in the commentary, "unable" is used to describe situations Prime Ministers may find themselves in which they cannot perform the function to which the statute refers:

"5.1 The Prime Minister is overseas in a location where they are unable to receive the warrant application due to the security requirements and classification of the documents.

5.2. The Prime Minister is medically incapacitated and therefore unable to consider the warrant."

The fact that "unable" is used here suggests that the word the noble Lord, Lord Anderson, used in his report really is the right one for the situations referred to in these two sections.

There is a further point that the noble Lord, Lord Anderson, would make: "unavailable" does not cover the situation in which there may be a conflict of interest. This surely is a reason why a Prime Minister, although available, should not exercise the power. Here especially, the greater clarity that the word "unable" brings to the situation really is needed.

I know that the Minister has discussed this issue of the wording with the noble Lord, Lord Anderson, perhaps several times and will, no doubt, refer to the position he and his Bill team have adopted so far during these discussions when he replies. But I hope he will feel able, especially in view of the points I have made about the commentary attached to his letter of 11 December, to agree to another meeting with the noble Lord, and possibly myself, before the Bill reaches Report. I hope that, when he comes to reply, he will be able to respond to that request.

Lord Coaker (Lab): My Lords, I am pleased to follow my noble friend Lord West and, indeed, the noble and learned Lord, Lord Hope. They have raised some important questions for the Committee to consider and for the Minister to respond to.

It may be helpful to remind the Committee and others present that Clauses 21 and 22 amend the section of the IPA that deals with targeted interception and examination warrants regarding Members of both Houses of Parliament and the devolved legislatures. These are clearly very important pieces of legislation. The safeguard on such warrants is referred to as the triple lock. As with other warrants in the IPA, the Secretary of State and the judicial commissioner must approve the warrant. But with respect to this issue, the Prime Minister must also approve warrants for the communications of Members of UK Parliaments, hence the difficulty that my noble friend, the noble and learned Lord and others have referred to. What happens with the triple lock if the Prime Minister is not available to authorise that warrant with respect to the communications of parliamentarians, not only in Westminster but the devolved legislatures?

One can see the seriousness of this problem. The Government have rightly felt it necessary to bring this measure forward, given the unfortunate situation when the Prime Minister was dangerously ill in hospital with Covid; thankfully, he recovered. This is clearly a very important issue which we need to consider.

My noble friend Lord West outlined an issue, as did the noble and learned Lord, Lord Hope, that I will speak briefly to. I say respectfully to all noble Lords that the points the noble and learned Lord made are not dancing on the head of a pin: they are very real questions for the Minister about the difference between "unavailable" and "unable" and what that means. The Government need to clarify that for us. My noble friend Lord West's amendment and my Amendment 47, on which Amendment 45 is consequential, question the wide scope the Government have within the legislation, whereby it almost seems as if any Secretary of State will be able to deputise for the Prime Minister. My noble friend Lord Murphy made the point at Second Reading, which my noble friend Lord West has just made again, that it would surely be better if that scope were narrowed to Secretaries of State with experience of dealing with warrants. My and my noble friend Lord West's amendments seek to narrow that scope to Secretaries of State who have that experience.

I take the point of my noble friend Lord West. His amendment as it stands is probing. Maybe drafting improvements could be made. The thrust of what he and others said, however, is that we need to do something to deal with the issue.

I have just a couple of questions before I move on to Amendment 55A. Who decides whether the Prime Minister is available or unavailable, or if indeed we have the Bill amended? Who decides that the Prime Minister is unable to take the decision for that triple lock? What is the process by which the decision is made that this is the case?

On Amendment 45, it is unclear to me who the senior officials are that could also make the decision. We have other Secretaries of State who could take the decision if the Prime Minister is "unavailable" or "unable"—if an amendment is passed—to take the decision. Then we have senior officials who might be allowed to take this decision. It is not dancing on the head of pin to ask "What does a "senior official" mean?" and "Who are the officials?", hence my probing Amendment 45 on who they are and in what circumstances they could take these permissions.

In preparing for Committee, I asked about what sorts of situations might arise. Of course we can think of different situations, and the Government, in the code of practice that they publish, outline a couple of scenarios that may require urgent warrants and the Prime Minister to be involved and so on. In 2011, the noble Lord, Lord Hennessy, apparently did a helpful piece of work on Prime Ministerial powers. He talked of what happens if the Prime Minister is unable to take a decision with respect to shooting down a hijacked aircraft or an unidentified civil aircraft. What happens in those circumstances? Is that the sort of circumstance that the Bill seeks to deal with as well? What we are discussing is obviously also really important because this may involve the authorisation of the use of nuclear weapons. The Minister will be limited in what he can say about that.

I do not want to create a TV drama-type situation, but these are really important questions and the Government are right to address the situation of a Prime Minister being unavailable or unable to take these decisions in some of these circumstances. Again, this gives us the opportunity to think about what areas of national security the Bill would cover.

As is said in the explanatory statement, Amendment 55A

"is designed to probe the extent to which powers in the Investigatory Powers Act 2016 have been used in relation to Members of Parliament".

As I have mentioned, I was particularly disturbed that, under Section 230 of the Investigatory Powers Act, the Prime Minister can deal directly with the Investigatory Powers Commissioner to keep under review the discharge of the functions of the Armed Forces with regard to intelligence activities. Can the Minister say what the role of Defence Intelligence is in all this? The reason that I raise the matter in this debate on parliamentary communications is due to the report in the *Mail on Sunday* on 25 November, which spoke of Defence Intelligence being involved in in the Government's response to Covid. It was involved in looking at communications—and, according to the report in the *Mail on Sunday*, some of the communications involved parliamentarians.

4.15 pm

I found that quite surprising—that is one word for it. The *Mail on Sunday* quotes the government spokesperson as saying:

"Online disinformation is a serious threat to the UK, which is why during the pandemic we brought together expertise from across government to monitor disinformation about Covid. These units used publicly available data, including material shared on social media platforms, to assess UK disinformation trends and narratives".

The Bill would get over that because it would say that these individuals have a low or no expectation of privacy, but how on earth is Defence Intelligence involved in this? As far as I am aware, Defence Intelligence is not referred to in the Bill, although MI5, GCHQ et cetera are. Can the Minister explain the report in the *Mail on Sunday* of Defence Intelligence being used to look at activities around Covid and disinformation? According to the report, it appears that certain information submitted by parliamentarians was looked at by Defence Intelligence, hence my probing Amendment 55A.

I repeat: we support the Bill. As the noble and learned Lord, Lord Hope, the noble Lord, Lord West, and I have said—I am sure that the noble Lord, Lord Fox, and others will say the same—we are seeking some clarification and certainty on some of its provisions so that it is fit for purpose and delivers what we all want it to.

Lord Fox (LD): My Lords, I rise to speak to the amendments in my name in this group. First, I shall make some brief and broadly supportive comments regarding the amendments proposed by the noble and learned Lord, Lord Hope, and the noble Lords, Lord West and Lord Coaker.

As we have heard, all these amendments are designed to tighten up or clarify the triple lock and the changes introduced in the Bill. As your Lordships know, the triple lock relates to circumstances where UKIC and law enforcement may obtain and read the communications of MPs, et cetera; we will talk about the "et cetera" in a minute. Currently, the usual double lock is supplemented by an unqualified requirement that the Secretary of State may not issue the warrant without the Prime Minister's approval.

As we heard from the noble and learned Lord, Lord Hope, the report from the noble Lord, Lord Anderson, explores the circumstances in 2020 when the Prime Minister was hospitalised and the triple lock was therefore rendered unavailable. The noble Lord recommends the use of a deputy for the purposes of the triple lock when the Prime Minister in unable to approve a warrant in the required timescale, particularly through incapacity, conflict of interest or an inability to communicate securely. As we heard from the noble and learned Lord, "unable" has been substituted with "unavailable" in the Bill. I really am not sure why—perhaps the Minister can explain why—but that is a different context. In his normal, forensic way, the noble and learned Lord explained the difference between those words; that is why I was happy to sign Amendment 51A, which reverts back to the originally recommended "unable".

The amendments in the name of the noble Lord, Lord West, are more probing but interesting. We will be interested to hear how the Minister responds to them; I look forward to that.

[LORD FOX]

Amendment 47 in the name of the noble Lord, Lord Coaker, seeks to limit the number of Secretaries of State who can be designated in that deputy role. This seems a reasonable suggestion. Others may want to change the list, but a senior group of Ministers should be listed; surely having three or four of them on that list should be sufficient to deal with the issue.

The noble Lord, Lord Coaker, spoke to Amendment 55A. There are elements of reporting there that are reflected in my Amendment 55, which I will come to shortly.

I will now speak to Amendments 50, 54 and 55 in my name. Amendments 50 and 54

"would require that members of a relevant legislation who are targets of interception are notified after the fact, as long as it does not compromise any ongoing investigation".

Amendment 55 seeks to ensure that the Investigatory Powers Commissioner reports annually on the operation of surveillance warrants and safeguards in relation to parliamentarians. This should include records in the annual report of the number of warrants authorised each year to permit surveillance of the Members of relevant domestic legislatures. This would ensure transparency, at least over the rate at which the power is being used.

Before talking a little more about this, it is worth recapping the history of political wiretap legislation. I am sure there are others who know it better than I, but it was helpful for me to understand the context. As we have heard, the IPA permits the interception or hacking of parliamentarians or the Members of other domestic legislative bodies via this triple-lock system, whereby the Secretary of State can issue a warrant with the approval of the Prime Minister, as per Sections 26(2) and 111(3). Until October 2015, it was widely understood that the communications of MPs were protected from interception by the so-called Wilson doctrine. This protection extended to Members of the House of Lords in 1966, and was repeated in unequivocal terms by successive Prime Ministers. Tony Blair clarified in 1997 that the policy

"applies in relation to telephone interception and to the use of electronic surveillance by any of the three security and intelligence agencies".—[*Official Report*, Commons, 4/12/1997; col. 321W.]

Despite this clear and unambiguous statement that MPs and Peers would not be placed under electronic surveillance, an October 2015 decision by the Investigatory Powers Tribunal held that the doctrine had been unilaterally rescinded by the Executive. We pick up from there, so it is an interesting evolving power and we are part of that evolution in this Bill.

This evolution has also coincided with the meteoric rise in electronic communication that now offers the possibility of vastly more information being unearthed than was the case with a simple wiretap back in the Wilson days. First, there are clearly times when this sort of interception is necessary, and that is why the triple lock is such an important safeguard. But I have a couple of modest suggestions contained in these amendments. I must say now that I am in a state of deep trepidation, as not only has the noble Baroness, Lady Manningham-Buller, given me notice that she is on my case but she has actually moved five Benches closer than she was on Monday, so my boots are shaking.

These amendments would introduce a post-notification procedure to inform parliamentarians where they have been affected by targeted surveillance powers, but only if it does not compromise any ongoing investigation. Clearly, they would have to be deemed innocent or beyond suspicion for that notification to happen. I agree that it would be unfortunate, to say the least, if, for example, the announcement of any investigation revealed confidential sources that led to the initial investigation. I had hoped that my wording implied that, but I will be very happy to work with the noble Baroness on improving the wording on Report if she deems it necessary.

We got to the fourth group of amendments to the Bill without my raising the European Convention on Human Rights. Now is the time. Happily, I am sure that the Minister has been reading up on this for other reasons, and he will no doubt be familiar with this important bastion of freedom. I refer in particular, in this case, to Article 8: the right to respect for private and family life, home and correspondence. I feel sure that most surveillance interventions would meet the terms of Article 8, which are summarised as:

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

As I say, it is unlikely that the activities we have been describing will break that.

In the unlikely event that they do and there is a misstep, in order to bring a case under the Article 8 right it is necessary for a person to know that their privacy was breached in the first place, hence Amendments 50 and 54. I refer the Minister to two Article 8 rights cases heard by the European Court of Human Rights: Klass v Germany in 1978, which was reiterated in Weber and Saravia v Germany in 2006.

Amendment 55 is a bit simpler. It would ensure that the Investigatory Powers Commissioner's annual report provides information about the operation of safeguards in relation to surveillance of Members of Parliament et cetera, as is already required for journalists. It would mandate that

"information in particular about warrants … considered or approved"

that are targeted at MPs et cetera is included, further to the requirement to provide information on general targeted interception and hacking warrants. I believe that is not a controversial ask, and I hope the Minister agrees.

I would like to use these amendments to do some probing as well as changing words, by confirming the "et cetera" part of MPs et cetera. My understanding, which I am sure is correct, is that as things stand that includes Lords and elected Members of the devolved authorities. But our democratic system is changing and evolving as we go. We now have very powerful elected mayors with very large electorates—much larger than any MP's. I wonder whether there is an argument that they too should be included within the triple-lock umbrella going forward. I have one additional question in this vein. Once out of office, do all these individuals no longer attract triple-lock protection? Are ex-First Ministers, ex-MPs and ex-Prime Ministers all no longer subject to the triple-lock safeguards?

This sort of legislation breeds suspicion. The two measures I propose here are sincere attempts to help tackle some of these suspicions and create sufficient transparency to allay the fears that there is widespread and extensive activity of this type—assuming, of course, that this activity is indeed a rare occurrence.

Baroness Manningham-Buller (CB): My Lords, the noble Lord, Lord Fox, is quite safe; I am not going to come and hit him, but I am going to try to demolish a few of his arguments.

I will start with the word "transparency", which appears again in some of the amendments in the name of the noble Lord, Lord Coaker. The work of the security and intelligence agencies can never be transparent. It is in the interests of those agencies that as much as can safely be known of what is done in their name is known, which is why my organisation sought law in the 1980s. But there will always be things that cannot be made public because, if they are, we might as well pack up and go home.

Appealing as the amendments in the name of the noble Lord, Lord Fox, might be on the surface, for a start, telling people that they have been subject to interception would require us to alter earlier parts of the IPA because it would be illegal. To do so would also risk sources and methods. Of course, they would not be itemised, but let us consider a speculative case of a Member of the other House who has a relationship with a young Chinese lady. Let me emphasise strongly that this is not based on any knowledge of anything. Indeed, when I was director-general of MI5, we still operated the Wilson doctrine. Somebody in that MP's office approaches my former colleagues and raises concerns with them. A warrant is obtained, signed by the Prime Minister, and subsequently it becomes clear that the concerns of the individual in the office—the source of the information—were absolutely justified. Now, we cannot tell that individual at any stage whether he or she is acquitted of any wrongdoing or ends up care of His Majesty's jails. We cannot at any stage tell him because it risks sources and methods.

4.30 pm

Lord Fox (LD): I do not think I was saying that.

Baroness Manningham-Buller (CB): No, this is what I want to establish. Just saying that he has been intercepted will lead that person to wonder how, so we cannot act covertly if there is any danger of sources being revealed or future operations being compromised.

Additionally, it raises the question of why Members of legislatures should have the privilege of being told that they have been subject to interception when members of the public never are. It is wrong, as it was, to treat parliamentarians as a particularly special case. Of course, such cases are highly sensitive, hence the triple lock; hence, I suggest, the rarity of this, but I think Amendments 50 and 54 are potentially damaging. I will shut up now.

Lord Hogan-Howe (CB): My Lords, I apologise that I did not speak at Second Reading, but I was here. Perhaps for the same reasons, I strongly support what the noble Baroness, Lady Manningham-Buller, has just said. It is secret that telephone interception is in place. If someone is aware, directly or indirectly, that the only way the Security Service or the police will discover a certain piece of information is by a telephone call, then it could be revealed, so it would require the law to be changed.

I have four worries about this amendment. First, at the point at which an interception is stopped, it is very difficult to predict whether the investigation will continue and/or be resumed. If the suspect is advised of the existence of the investigation, it gives them the potential to destroy evidence, which may frustrate the investigation in the long run, so I do not think it is wise to advise any suspect that they have been under investigation.

Secondly, there are two types of investigation: overt ones, where the person knows they are under investigation, and covert ones, where they do not. There is a general convention whereby if an investigation concludes without a charge, we have never told the person that they were under investigation. I am not sure why we would breach that principle merely because intrusive surveillance was in place.

Thirdly, as the noble Baroness mentioned, why would we do that only for Members of the legislature? It could be put in place, but there have to be some strong reasons. I do not think Members of a legislature can just say, "We deserve extra protection". There has to be a stronger reason, because, otherwise, the rest of the public could rightly say, "Well, why can't we have that protection?" For that reason alone, you would have to think very seriously about it.

Finally, sometimes Members of the legislature might be under investigation for things in their private capacity and sometimes for a mixture of the two; it might overlap into their legislative acts. Before anything like this was considered, I would take an awful lot of persuasion and I do not think the argument was made for why this needed to happen only for Members of the legislature.

Lord Murphy of Torfaen (Lab): My Lords, I support the points the noble Baroness, Lady Manningham-Buller, made about Amendment 50 regarding the revelation of whether someone who is in a legislature has been tapped. I do not think that is possible. I think it has all sorts of practical difficulties which she rightly outlined, and that situation is something that I could not in any way support.

I want to come back to the issue of "unable" or "unavailable" with regard to the Prime Minister. I think that it is right that it should be "unable", because of the gravity of the business of tapping the phone of a Member of Parliament or a devolved legislature. I suspect that such a possibility is hugely remote; it might not happen for years and years. However, when it does happen, it is exceptionally serious, because you are not only depriving that Member of Parliament of liberty—you are in many ways saying that the person who has been elected by his or her constituents as a Member of Parliament or of the Senedd, or whatever it may be, is now in some doubt as a public representative. That is hugely serious, so the triple lock is important, but the word "unable" is more serious a word than "unavailable", and I support changing the word in the Bill.

[LORD MURPHY OF TORFAEN]

I also very much agree with the noble Lords, Lord West and Lord Coaker, about the nature of the Secretaries of State who should be the substitute for the Prime Minister if the Prime Minister was unable to perform his or her duty with regard to tapping the phone of a parliamentarian. I tapped phones for three or four years almost every day, except at weekends—occasionally at the weekend, but mainly on weekdays—and I took it very seriously. I knew that I was depriving someone of their liberty and privacy; generally speaking, they deserved to be deprived of their liberty because of the horrible things that they might do. Sometimes, although very rarely, I would not sign them, because I was not convinced of the argument put to me.

Someone who has the experience over the years of dealing with warrants has an idea of the nature of the act of signing the warrant and how important it is. It is not simply about reading it and putting your name at the bottom—you have to think about it very seriously. Your experience develops as time goes by. In fact, when I was unable or, more likely, unavailable to sign warrants as Northern Ireland Secretary—if I was on the beach somewhere in the Vendée, as I occasionally was—somebody else would sign the warrants that I would normally have signed. It was generally the noble Lord, Lord Blunkett, who was then the Home Secretary—and when he went on holiday somewhere, I signed his. The point about that was that, technically, almost every member of the Cabinet—because by then nearly every member was a Secretary of State—could have signed. But I knew, when the noble Lord, Lord Blunkett, signed mine, that he knew what he was doing—and vice versa, I hope. Therefore, there should be some way in which we designate Secretaries of State who are used to signing warrants to be a substitute for the Prime Minister.

The other issue, on which I shall conclude, is that the debate so far is evidence of why it is so important that the Intelligence and Security Committee puts its views to this House, through the noble Lord, Lord West, and that the committee should look carefully at these matters.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have spoken in this debate, which was fascinating. I shall start by addressing the amendments and points raised on the circumstances in which the alternative approvals process would be used—that is, for urgent warrants when the Prime Minister is not available. First, it is worth reminding noble Lords that we have set out a non-exhaustive list of such circumstances in the draft excerpt of the relevant code of practice published last week. I shall come back to that in a moment.

I start with Amendments 44 and 51A, tabled by the noble Lord, Lord Anderson of Ipswich, and spoken to by the noble and learned Lord, Lord Hope of Craighead, which seek to widen the situations in which the alternative approvals process could be used to include situations where the Prime Minister is "unable" to consider a warrant—not only when they are "unavailable". As the noble and learned Lord indicated, the amendments would extend the circumstances where the alternative approvals process could be utilised to expressly include instances where the Prime Minister has a conflict of interest in considering a warrant application.

I remind noble Lords that the Prime Minister, like all Ministers, is expected to maintain conduct in line with the Nolan principles in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. When a Prime Minister has a conflict of interest in approving a warrant, due to any personal or professional connection to the subject of the warrant, they are expected to continue to act in the public interest. Therefore, in these situations, the Government consider that the alternative approvals process is not required.

When drafting the Bill, the Government considered at some length whether to make further provision for conflict of interest, along the lines of the noble Lord's amendment, and concluded that they should not. The primary reason is that, in order for a conflict of interest provision to function, a Secretary of State or unelected official involved in the warrantry process would have to be granted the ability, in certain situations, to take from the Prime Minister a personal power given to them alone by Parliament. Unlike the provisions in Clause 21, which permit the Prime Minister to delegate their power to approve these warrants if they are unavailable, this would require a subjective decision to be made on whether the Prime Minister could, in theory, be judged able to approve the warrant. A conflict of interest provision would also have significant implications for Cabinet hierarchy and the constitution. This is because a Secretary of State or an unelected official would have to determine that the Prime Minister had a conflict in approving the warrant and was therefore "unable" to be made aware of the warrant request. It is for these reasons that the Government decided that a conflict of interest provision should not be included in the Bill.

I have referred to the draft code of practice, and the noble and learned Lord, Lord Hope of Craighead, referred to my letter. I can confirm that many of the words in that letter appear to have reappeared in the code. Paragraphs 5, 5.1 and 5.2 state that:

"Prime Ministerial unavailability should be understood to mean situations in which the Prime Minister is genuinely unavailable to consider the application. For example (non-exhaustive) … The Prime Minister is overseas in a location where they are unable to receive the warrant application due to the security requirements and classification of the documents … The Prime Minister is medically incapacitated and therefore unable to consider the warrant".

I am very happy to share the code of practice further with all noble Lords, if they would like to see a copy.

I have noted that this conflict of interest provision is specifically not included in the similar Amendments 43 and 51, tabled by the noble Lord, Lord West, which seek to limit the circumstances in which the alternative approvals process can be used due to

"incapacity (ill-health) or lack of access to secure communications".

As the code of practice sets out, these are two of the key scenarios for which the measure is required, but an amendment of this nature would not cater for unforeseeable events and would leave an unacceptable level of vulnerability in the system. Given that the aim is to increase the resilience of the process, these amendments feel opposite in intent. The moment that a circumstance arises in which the Prime Minister is unable, for a reason other than the two given, to

authorise an urgent warrant application, the system would provide a blocker to the intelligence agencies being able to conduct their vital work, which is of course keeping parliamentarians and the public at large safe and secure. I therefore ask noble Lords not to press their amendments. However, I note the views expressed today and am very happy to continue discussions and to meet the noble and learned Lord, Lord Hope, and the noble Lord, Lord Anderson, again to discuss this further.

I turn to Amendments 48 and 53, also tabled by the noble Lord, Lord West. These would introduce a review by the Prime Minister of warrants authorised via the alternative approvals process for interception and equipment interference. Clauses 21 and 22 are set up in such a way that the Prime Minister's power is afforded to the Secretary of State for the purposes of triple-locked warrantry in specific circumstances; in effect, they are acting as the Prime Minister for the purposes of the Act, not as a deputy. As such, including a requirement for the Prime Minister to review the decision after the fact would not provide additional meaningful oversight beyond that which is provided by the alternative approver on their behalf. The decisions made by the initial Secretary of State and the alternative approver would still be subject to review by the judicial commissioner, so would have already been subject to significant scrutiny. The Government therefore cannot support these amendments.

I turn to the issue of to whom the Prime Minister can delegate this process. Amendments 47 and 49, tabled by the noble Lord, Lord Coaker, and Amendments 46 and 52, tabled by the noble Lord, Lord West, all seek to limit the Secretaries of State whom the Prime Minister can designate as alternative approvers. Directing the actions of the current and any future Prime Minister by limiting the Secretaries of State to only those mentioned in statute is short-sighted, in that it does not consider potential changes to the machinery of government, as the noble Lord, Lord West, noted.

Furthermore, I invite noble Lords to consider the scenario where, for example, the Home Secretary has provided the initial approval for the application before it is considered as part of the alternative approvals process. The Home Secretary should not then consider the application on behalf of the Prime Minister; this is because it would remove a stage of scrutiny in the triple lock process. Additionally, given the potential for there to be concurrent overseas travel of the Prime Minister and at least one other relevant Secretary of State, limiting the process in this way could fail to provide the necessary resilience. While there should not be an unlimited number of designates, it is important that there are enough alternative approvers to be prepared for these scenarios.

4.45 pm

There may also be a compelling reason for another Secretary of State to be considered as an appropriate designate outside of those proposed by the amendment of the noble Lord, Lord Coaker. For example, they may have previously acted, as the noble Lord, Lord Murphy, did, as the Secretary of State for Northern Ireland but been moved to another Secretary of State post as a result of a reshuffle. They would therefore have a good understanding of the warrantry process but might not currently be a Secretary of State for a warrant-granting department.

The code of practice is also quite clear on designation, and I will read paragraph 6.1:

> "When designating Secretaries of State, the Prime Minister should have due regard to whether a designee would have the necessary operational awareness of the warrantry process in order to carry out the role. There should also be consideration given to the number of Secretaries of State designated to ensure that there would be enough individuals to allow for a Secretary of State unavailability. This is because the Secretary of State who provided the initial authorisation could not also act on behalf of the Prime Minister as the alternative approver".

The code of practice is statutory guidance to which the Prime Minister would need to have due regard. I hope that my explanation and the information set out in the draft code provide reassurance on these various issues.

Amendment 45, tabled by the noble Lord, Lord Coaker, seeks to restrict the senior officials in the determination of the urgency of an application. We do not believe that this would be appropriate or effective. Due to unavailability of the relevant Secretary of State, a separate Secretary of State to the one associated with the warrantry team in the warrant-granting government department may occasionally need to authorise an application. For example, a warrant which would ordinarily be handled by the Home Secretary may be handled by the Secretary of State for Defence in the absence of the Home Secretary. However, it would still be Home Office officials who would brief the Defence Secretary and provide the information necessary for them to consider the application. The same is true of applications going through the triple lock process.

Furthermore, senior officials in more than one department are likely to be involved in administering the process of the warrant, including within the warrant-requesting agency, the warrant-granting department and the Cabinet Office, which is responsible for obtaining Prime Ministerial approval for triple-locked warrants. It is therefore impractical to specify that the senior official must be serving in the same department as the authorising Secretary of State. The wording at Section 30(4) of the Investigatory Powers Act 2016 provides for the signing of a warrant by a senior official and is not specific as to which department the senior official must be serving in, only that they must be designated by the Secretary of State for that purpose. The same applies to these clauses, because there is no reason to adopt a different position here.

Turning to Amendments 50 and 54, tabled by the noble Lord, Lord Fox, I must join the noble Baroness, Lady Manningham-Buller—I thank her for a very eloquent speech on this—and the noble Lord, Lord Hogan-Howe, in setting out the serious challenges that these amendments would pose to the effective work of the intelligence agencies, which is of course to keep us all safe. On the specific cases the noble Lord mentioned under Article 8, I am not familiar with them, so I will look them up and endeavour to write. I would of course note that Article 8 is a qualified article, as the noble Lord has acknowledged.

These amendments would mean that the intelligence agencies could not operate secretly, impacting on their ability to carry out their statutory functions in this area. I understand that the noble Lord has suggested

[Lord Sharpe of Epsom]
that the notification would take place once the investigation has been concluded, or once a judicial commissioner concludes that it is acceptable to do so, but these suggestions in and of themselves are inherently problematic.

The Investigatory Powers Act 2016 sets out the extent to which certain investigatory powers may be used to interfere with privacy. These powers are exercised covertly, and it is for this reason that warrants for interception and equipment interference can be issued only by a Secretary of State, with the approval of a judicial commissioner. The triple lock provides an extra level of political accountability by ensuring that the Prime Minister, or, subject to the successful passage of this Bill, their designated deputies, have additionally approved the warrant. There is a duty not to make unauthorised disclosures at Section 57 of the IPA, and Section 58 sets out the limited circumstances in which an excepted disclosure can be made.

Informing an individual that their communications have been intercepted would up-end this principle and cause potential risks to live and future operations, even if the initial investigation had concluded. The noble Lord has suggested that, to avoid potential risks to ongoing operations, the judicial commissioner could decide to postpone the notification until they judge that the risks of revealing the existence of the warrant have been mitigated against. This would inappropriately afford the judicial commissioners an operational decision-making power.

There are existing accountability routes that allow any individual, whether or not they are a Member of a relevant legislature, to challenge the activities of the intelligence services. Foremost among these is the Investigatory Powers Tribunal, which provides a cost-free right of redress to anyone who believes that they have been the victim of unlawful action by a public authority using covert investigative techniques. I therefore hope that the noble Lord will not pursue these amendments.

I turn to Amendment 55, proposed by the noble Lord, Lord Fox, which would require information on surveillance of parliamentarians to be included in the Investigatory Powers Commissioner's annual report. Including information about the use of the triple lock in the IPC's annual report would risk exposing some of the most sensitive operations and damage the work of the intelligence agencies in protecting democracy and those who engage with the UK's democratic institutions. Given the limited number of Members of relevant legislatures—which is defined in Section 26 of the current Act, and covers Members of both Houses of Parliament and Members of the devolved legislatures, including the Scottish Parliament—providing statistics on the use of the triple lock may lead to uninformed accusations against Members, and also allow inferences to be drawn on the identity of those who have been subject to such measures. This could impact on ongoing or future investigations, and it would simply not be appropriate to include this type of highly sensitive information in the annual report.

The noble Lord, Lord Coaker, has also proposed Amendment 55A, which seeks a dedicated report on the use of interception and equipment interference powers in respect of communications of Members of Parliament since the passage of the original Act. As we have discussed, to provide further detail which reveals how the powers have been used would risk revealing sensitive information about investigations and could jeopardise important national security or serious crime operations. The law applies equally to everybody, and this includes Members of Parliament. However, in light of the Wilson doctrine, to which the noble Lord, Lord Fox, referred, the triple lock provides the necessary additional safeguards for when these powers are used in relation to Members of Parliament. Furthermore, the already produces an annual report on the use of investigatory powers, which he sends to the Prime Minister. The Government therefore cannot accept this amendment, because it is unnecessary and potentially detrimental to national security and serious crime operations.

Before I conclude, the noble Lord, Lord Coaker, asked me a specific question about a *Mail on Sunday* story about the Defence Intelligence situation. The Ministry of Defence did provide some analytical capability to augment capacity in government departments during the pandemic. This was done through established government processes: military aid to the civilian authorities—MACA—which allows for military support to government departments in exceptional circumstances, such as the pandemic. My noble friends in both DSIT and the MoD would be happy to follow up on any further questions on that.

Lord Fox (LD): I am anticipating the Minister sitting down shortly. I remind the Minister that I asked a specific question on directly elected regional mayors, their rise, and the role that they play in democracy, which is so different to when the IPA was originally conceived. The Minister may not have an answer now, but a written answer would be very helpful.

Lord Sharpe of Epsom (Con): I am happy to acknowledge that the noble Lord is right: their powers have expanded, as have their influence and celebrity over the years. I do not have an answer now, but I will come back to the noble Lord on that.

The objective of these clauses is to provide greater resilience in the process. It is critical that we do not undermine this from the off. I therefore hope noble Lords feel reassured by the explanations given, and the information set out in the draft code of practice, which is the appropriate place to set out the detail of this alternative process.

Lord Coaker (Lab): May I say to the noble Lord that the answer he gave to me with respect to the *Mail on Sunday* story was a really good answer? I am seeking transparency, which we will come on to in the next set of amendments, where Ministers can provide it without compromising operational security, as the noble Baroness, Lady Manningham-Buller, rightly pointed out. The Minister went as far as he could to say that the story needs to be looked at, it raises particular issues and I can pursue those outside of the Chamber. That was an extremely helpful comment and shows what I am trying to get at with respect to transparency—rather than just dismissing it and saying we cannot talk about it. I am very grateful for the response and thought it was very helpful.

Lord West of Spithead (Lab): My Lords, I absolutely support what my noble friend has said. I was about to leap up and say that this should not be discussed in this forum because some of it is so sensitive. The Minister handled it extremely well, but we are getting quite close to the margins.

Lord Sharpe of Epsom (Con): I thank both noble Lords for their thanks. I have forgotten where I was, but I had pretty much finished.

Lord West of Spithead (Lab): I beg leave to withdraw my amendment.

Amendment 43 withdrawn.

Amendments 44 to 49 not moved.

Clause 21 agreed.

Amendment 50 not moved.

Clause 22: Equipment interference: Members of Parliament etc

Amendments 51 to 53 not moved.

Clause 22 agreed.

Amendments 54 to 55A not moved.

Clauses 23 to 25 agreed.

Clause 26: Exclusion of matters from legal proceedings etc: exceptions

Amendment 56

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

56: Clause 26, page 44, line 22, at end insert—

"(3) After paragraph 24 insert—

"25 "(1) Nothing in section 56(1) prohibits—

(a) a disclosure to a relevant coroner conducting an NI investigation or inquest, or

(b) a disclosure to a qualified person—

(i) appointed as legal adviser to an inquest conducted by the coroner, or

(ii) employed under section 11(3) of the Coroners Act (Northern Ireland) 1959 (c. 15) ("the 1959 Act") by a relevant coroner to assist the coroner in an investigation conducted by the coroner,

where, in the course of the investigation or inquest, the relevant coroner ("C") has ordered the disclosure to be made to C alone or (as the case may be) to C and any qualified person appointed or employed by C as mentioned in paragraph (b).

(2) A relevant coroner may order a disclosure under sub-paragraph (1) only if the coroner considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.

(3) In a case where a coroner ("C") conducting, or who has been conducting, an NI investigation or inquest is not a relevant coroner, nothing in section 56(1) prohibits—

(a) a disclosure to C that there is intercepted material in existence which is, or may be, relevant to the investigation or inquest;

(b) a disclosure to a qualified person appointed by C as legal adviser to the inquest or employed by C under section 11(3) of the 1959 Act to assist C in the investigation, which is made for the purposes of determining—

(i) whether any intercepted material is, or may be, relevant to the investigation, and

(ii) if so, whether it is necessary for the material to be disclosed to the person conducting the investigation.

(4) In sub-paragraph (3) "intercepted material" means—

(a) any content of an intercepted communication (within the meaning of section 56), or

(b) any secondary data obtained from a communication.

(5) In this paragraph—

"the 1959 Act" has the meaning given by sub-paragraph (1);

"coroner" means a coroner appointed under section 2 of the 1959 Act;

"NI investigation or inquest" means an investigation under section 11(1) of the 1959 Act or an inquest under section 13 or 14 of that Act;

"qualified person" means a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland);

"relevant coroner" means a coroner who is a judge of the High Court or of a county court in Northern Ireland.

26 (1) Nothing in section 56(1) prohibits—

(a) a disclosure to a relevant person conducting an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (2016 asp 2) ("IFASDA 2016"), or

(b) a disclosure to a qualified person appointed under section 24 of that Act to assist a relevant person in the inquiry,

where, in the course of the inquiry, the person conducting the inquiry has ordered the disclosure to be made to that person alone or (as the case may be) to that person and any qualified person appointed to assist a relevant person in the inquiry.

(2) A relevant person may order a disclosure under sub-paragraph (1) only if the person considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.

(3) Nothing in section 56(1) prohibits—

(a) a disclosure to a relevant person conducting an inquiry under IFASDA 2016, or

(b) a disclosure to a qualified person appointed under section 24 of that Act to assist a relevant person in the inquiry,

that there is intercepted material in existence which is, or may be, relevant to the inquiry.

(4) In sub-paragraph (3) "intercepted material" means—

(a) any content of an intercepted communication (within the meaning of section 56), or

(b) any secondary data obtained from a communication.

(5) In this paragraph "relevant person" means—

(a) a sheriff principal,

(b) a temporary sheriff principal, or

(c) a sheriff or part-time sheriff (but not a summary sheriff or part-time summary sheriff) designated as a specialist under section 37(1) or (3) of IFASDA 2016.

(6) In this paragraph "qualified person" means an advocate or solicitor; and "advocate" and "solicitor" have the same meaning as in IFASDA 2016 (see section 40 of that Act).""

Member's explanatory statement

This amendment inserts into Schedule 3 to the Investigatory Powers Act 2016 (exceptions to exclusion of matters from legal proceedings etc) exceptions about disclosures to inquiries or inquests in Northern Ireland or Scotland into a person's death. The exceptions are similar to existing provision in relation to England and Wales.

Lord Sharpe of Epsom (Con): My Lords, I will speak to government Amendments 56, 59 and 60. As I set out in my letter to all noble Lords on 4 December, these small amendments will ensure that the legislation works effectively.

Government Amendment 56 amends Schedule 3 to the Investigatory Powers Act 2016 to provide exceptions for disclosures of intercepted materials to inquiries or inquests in Northern Ireland and Scotland into a person's death. This will create parity with existing provisions for coroners in England and Wales by putting relevant coroners in Northern Ireland and sheriffs investigating deaths in Scotland on the same footing as their counterparts in England and Wales. Where necessary in the interests of justice, intercepted materials can be considered in connection with their inquiry or inquest.

Government Amendments 59 and 60 will maintain the extent of the IPA 2016, as set out in Section 272 of that Act. They amend this existing power to ensure that the measures in the 2016 Act, as amended by this Bill, can be extended to the Isle of Man or the British Overseas Territories, thus ensuring consistency across the legislation. If the Government sought to extend any provision to the Isle of Man or any of the British Overseas Territories, this would require an Order in Council and the Government would, of course, consult the relevant Administrations well in advance. I ask noble Lords to support these amendments.

Lord Coaker (Lab): My Lords, I will speak to my Amendments 57 and 58. They are obviously probing amendments but may generate a little discussion because they are none the less important.

Let me begin by saying that I accept absolutely what the noble Baroness, Lady Manningham-Buller, said about the important of ensuring the secrecy of much of what our security services and others do. That is an important statement of principle, and it was reinforced by my noble friend Lord Murphy when he recounted, as far as he could, some of the responsibility he had in his posts, particularly as Secretary of State for Northern Ireland. It is important to establish that I accept that principle.

5 pm

With respect to my amendments, we are not talking about anything that would seek to compromise that fundamental principle. I was moved to table these amendments because of what the noble Lord, Lord Anderson, said in his excellent review, which we have all accepted. He spoke about the need to think about how we generate public understanding and support around what the intelligence services do. I thought it was important to explore that a little. Those of you have read the report will know that the noble Lord goes into quite significant detail about the importance of trying to generate that understanding. As I have said before about the noble Baroness, Lady Manningham- Buller, and her contribution, and that of the noble Lord, Lord Evans, and others, including the current Director General of MI5, they have tried to move into the modern world and to put out what they can, as far as is reasonably possible. All I am trying to say is that, in a democracy, there is a responsibility on government to try to explain some of the things that happen—even to explain why some things cannot be put out into the public domain. People will understand that, but they deserve the effort on our part.

As the noble Lord, Lord Anderson, says:

"It helps if there is some general understanding in political and media circles about the sorts of activities digital spies undertake, and why. These words are a standing reminder that in areas of legitimate public debate, particularly where fundamental rights are at stake, silence on the part of those with privileged knowledge is a comfort zone that needs to be continuously challenged".

I think that is right. By challenging that, it forces the system to think about and understand what could be put out there to advance our understanding. It is not only about transparency; it is about understanding why that work takes place. The police and others often say that, where the public understand that, it creates a better atmosphere within which activities can take place, and better support for them. That is all I am seeking to do with the amendment: to understand the Government's view of the points made by the noble Lord, Lord Anderson, in his review.

I cannot resist quoting "the Ronan Keating doctrine" —I am not going to sing it—where the noble Lord, Lord Anderson, refers to

"the false comfort taken by some security professionals in the traditional notion that 'you say it best when you say nothing at all'".

You can see why I did not sing it, but it makes a very serious point in a humorous way.

It is important for us all to consider that sometimes in a democracy its strength is where you draw the line between what the security services can quite rightly keep secret so as to operate in a way which protects their work and, as far as possible, trying to explain to the public what is happening and why it is happening. For example, until a few years ago, I do not remember it ever being put in the public domain how many incidents had been prevented by the work of the security services. It is helpful that they tell us that X number of attacks have been prevented as a result of what they have done. That was always kept secret in the past, and is now put in the public domain.

I will not detain your Lordships much with respect to Amendment 58. Again, it is based on what the noble Lord, Lord Anderson, included within his report. All it seeks to do is ask where we go to next and what the Government's thinking is with respect to this. The noble Lord, Lord Anderson, points out the pace of technological change and the interaction between all of us—look at our own mobile phones compared to a few years ago. I do not know quite how legislation will keep pace with all of that and give our security services, counterterrorism police and others the tools that they need to operate and be effective as technology is changing. The noble Lord, Lord Anderson, almost points to the fact that a whole new block of legislation is needed. That is probably true. Whatever happens at

the next election, there is a need for the Government of the day, whoever they are, to look at what is happening and at whether changes are needed, and at whether the legislation is as effective as it might be. As I say, the mobile phone is the obvious example, but it is very difficult to know where we are going with respect to artificial intelligence and what that means for the legislation, the work of the security services and how we ensure that they have the tools necessary to conduct their operations and keep us safe.

The last point I will make is that it always seems to me that the interconnectivity of the world must be really difficult when it comes to the legislative process. The movement of data and telecommunications across continents, let alone between countries and jurisdictions, must be incredibly difficult. As I say, Amendment 58 is simply another probing amendment to ask the Government what their view is and what their thoughts are about where the legislation goes to next.

Baroness Manningham-Buller (CB): My Lords, I want to make a couple of comments in response to what the noble Lord, Lord Coaker, has just said. I can speak only for MI5, but, for many years, it certainly has been a desire of the organisation that, as far as safely possible, the British public—it needs their support every day of the week to do operations—have an understanding of what is done in their name to protect democracy.

I want to counter slightly the comment—I cannot now remember who made it—that there was much suspicion of this sort of activity. I may have misheard, because I am rather deaf. In my experience, when members of the public are approached by MI5 for help—such as, "Can I sit in your bedroom with a camera?"; something I would have deep suspicion of—they nearly always say yes and agree to co-operate. In my experience, when we are talking about transparency in this area, the public who I have encountered completely understand the role of secrecy. They do not want their role exposed, and, in particular, the identities of those brave men and women who we now clunkily call covert human intelligence sources need to be protected for ever. I want to counter the idea about public opinion. Of course there are concerns, but a lot of people are extremely supportive and deserve our thanks on a day-to-day basis.

Lord Murphy of Torfaen (Lab): My Lords, when I started life in politics a long time ago—50 years or so ago—when the general public, or people who had political ideas, thought about the security services they were generally criticised because they were spying on people who should not be spied on, such as political activists and all the rest of it. By the time the noble Baroness, Lady Manningham-Buller, and myself worked together with the intelligence and security agencies, the criticism that would come was whether the intelligence services had not done enough to protect us. That is the way in which things have changed over the last 40 or 50 years, so we have to be very careful how we balance this idea of accountability on the one hand and inevitable secrecy on the other. How do we do it?

There are reports by the Investigatory Powers Commissioner and the intercept commissioners. When I had to intercept, I was overseen by a commissioner every year. I had a meeting with him—a former judge—on whether I did this or that right, and on whether this or that was important. I come back to the point I have made in the last two days of Committee about the Intelligence and Security Committee itself. That is the vehicle by which Parliament holds the security services accountable. My noble friend Lord Coaker has been making that distinction all the time: the services being accountable to Government for what they do is very different from being available to Parliament.

Of course, details of who has been tapped and details of intelligence operations cannot come here, to this House or the other House—of course not. However, they can go through the committee which both Houses have set up, which meets in private, is non-partisan, and which has Members of both Houses who have great experience on it, to deal with these issues. That is why I appeal to the Minister—we had the debate on the issue on Tuesday—to think again about using the ISC to answer some of the issues that my noble friend Lord Coaker quite rightly raised.

Lord Fox (LD): My Lords, I shall be brief. Just on the subject of suspicion, which I think I raised it, I was thinking—perhaps I did not articulate it well—that it was at the political-class level. It is not hard to construct a suspicious scenario where a Westminster-based Executive are hacking an Edinburgh-based politician—I am sure that suspicion would apply there. However, the noble Baroness is right about the public.

The amendment in the name of the noble Lord, Lord Coaker, is important, not because this sort of thing needs to go into primary legislation, but because his point around emphasising public understanding and support which has come out is really important. He picked out the fact that a number of officeholders have worked hard at generating a positive profile for the services, and for that they should be thanked and congratulated. I would add GCHQ, the public profile of which probably did not even exist a decade or so ago. I have several very sad friends who can hardly wait with excitement for the annual GCHQ quiz to arrive. Things like that essentially draw attention to the nature of the work that such organisations do. I laugh at those friends but then I cannot solve it and they can, so perhaps they are the winners there. Those sorts of things do not shed light and throw open the doors on the things the noble Baroness and others fear should not be public, but they create an ambience around those services which is important.

Nobody has mentioned the amendments in the name of the noble Lord, Lord Sharpe, which I guess is exactly what he wanted, and I have nothing to add to them either.

Lord Sharpe of Epsom (Con): My Lords, I thank the Committee very much indeed for the points raised in this short debate, which eloquently explained the fine balance that needs to be struck in this area. As this is the last group, I take this opportunity to thank all the men and women in all the security services, who do so much to keep us safe.

Noble Lords: Hear, hear.

Lord Sharpe of Epsom (Con): It is nice to hear that the Committee reflects that sentiment.

[LORD SHARPE OF EPSOM]

I appreciate the sentiment behind the amendments in the name of the noble Lord, Lord Coaker, but the Government cannot accept them. He is right that public trust and confidence in public authorities' use of investigatory powers is of course essential. The Investigatory Powers Commissioner, along with his judicial commissioners, fulfils that very important function, as does the Investigatory Powers Tribunal. The IPC provides independent, robust and transparent oversight of public authorities' use of investigatory powers. The safeguards in the Act are world-leading in that regard. The IPT, meanwhile, provides for a redress mechanism for anyone who wishes to complain about the use of investigatory powers, even if they have no evidence of potential wrongdoing.

As the noble Lord is aware, the Investigatory Powers Commissioner is already required to produce an annual report, which is published and laid in Parliament. One of the purposes of this public report is to provide transparency around how the powers are used, any errors that have been reported on public authorities' compliance with the legislation, and where he considers that improvements need to be made. Amendment 57 would not really provide meaningful or additional oversight over and above what is already in place, and would in many areas be duplicative.

On Amendment 58, the noble Lord, Lord Coaker, is seeking to introduce a similar requirement to that in the original Act, in that case requiring a report on the operation of the Act to be produced five years after it entered into force. That report was published by the Home Secretary in February this year and formed the basis for the Bill, along with the report from the noble Lord, Lord Anderson. As set out in the Home Secretary's report—and noted by the noble Lord, Lord Anderson—it is the Government's view that future legislative reform is likely to need to keep pace with advancements in technology and changes in global threats.

It is not necessarily helpful to put a time limit on when these updates should be made. The Bill makes urgent and targeted amendments to the IPA, and it is important that there is adequate time to implement those changes and assess over an appropriate period whether they are sufficient. As I said, the Government are well aware that future legislative reform is likely and, if I may channel my inner Ronan Keating, "Life is a rollercoaster". I hope that my explanations have reassured the noble Lord, Lord Coaker, on the existing process in place and invite him to not press his amendment.

Amendment 56 agreed.

Clause 26, as amended, agreed.

Clause 27 agreed.

Amendments 57 and 58 not moved.

Clause 28 agreed.

Clause 29: Extent

Amendments 59 and 60

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

59: Clause 29, page 45, line 12, leave out "to subsection (2)" and insert "as follows"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 45, line 14.

60: Clause 29, page 45, line 14, at end insert—

"(3) The power under section 272(6) of the Investigatory Powers Act 2016 may be exercised so as to extend to the Isle of Man or any of the British overseas territories any amendment or repeal made by or under this Act of any part of that Act (with or without modifications)."

Member's explanatory statement

This amendment provides for the power in section 272(6) of the Investigatory Powers Act 2016 (extent) to be capable of being exercised so as to extend to the Isle of Man or any of the British overseas territories any amendments of that Act made by this Bill.

Amendments 59 and 60 agreed.

Clause 29, as amended, agreed.

Clauses 30 and 31 agreed.

House resumed.

Bill reported with amendments.

Agriculture (Delinked Payments and Consequential Provisions) (England) Regulations 2023

Motion to Approve

5.17 pm

Moved by ***Lord Benyon***

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

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

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, I declare my farming interest as set out in the register. This instrument is part of our agricultural transition in England away from the common agricultural policy towards our environmental land management schemes. It introduces delinked payments in 2024, which are a simpler type of payment, in place of direct payments under the existing basic payment scheme in England.

Unlike the basic payment scheme, delinked payments will not be based on the amount of land someone has. Instead, they will be based on the basic payment scheme payments, made in a reference period. This will reduce administrative burdens as we phase out the payments by the end of 2027. There will be no need for an annual application form, as the Rural Payments Agency will already hold the data needed to check eligibility for the payments. This will mean that farmers have to spend less time filling in forms compared to the current scheme.

Delinked payments will be made to those farmers who claimed and were eligible under the basic payment scheme in England in 2023. The payments will be based on a reference amount. This will be the average payment made to the business for the 2020-22 basic payment scheme. To provide flexibility for farmers, we are allowing reference amounts to be transferred between businesses. They can do this during a transfer window from February to May next year.

This will particularly help businesses that have changed their structure since the start of the reference period. For example, if two or more businesses have merged, the reference amount could be transferred from the original businesses to the current business. Special rules apply to inheritance cases. The Government intend to reduce the payments each year by applying percentage reductions to gradually phase the payments out. This will continue to free up money to be invested in our new farming schemes. The reduction percentages will be set in future secondary legislation, which will be debated by the House. We intend to make the payments in two instalments each year to help cash flow. Ending the basic payment scheme also means that the associated cross-compliance system no longer applies; this is a system that our farmers have widely disliked as being over-bureaucratic.

I will move on to the regret amendment. When cross-compliance ends, farm standards will be maintained through existing and ongoing domestic regulations that protect the environment, the public, animal and plant health and animal welfare. These regulations will be enforced in a fair, consistent and proportionate way by our existing regulatory authorities. The rules within cross-compliance that are not in underlying domestic legislation will have cover through existing and forthcoming guidance, regulation or incentives. We will deliver a fair, clear and effective system to regulate agriculture. Defra is working with regulators to implement a more preventive, advice-led approach to monitoring and enforcement.

The introduction of delinked payments is an important step in our transition to payments that deliver better environmental outcomes. For example, we have used the money freed from direct payments to establish the slurry infrastructure grant to help livestock farmers tackle pollution from slurry. This includes committing to spend more than £200 million in ongoing grant support for equipment and infrastructure. We are also funding our expanded sustainable farming incentive, which rewards farmers for practices that help produce food sustainably and protect the environment. This includes funding for grass margins for protecting our rivers, for legume fallows to improve soil health and for grassland without fertiliser inputs. We continue to fund our successful Countryside Stewardship scheme and our landscape recovery scheme, which is already funding the restoration of more than 400 miles of rivers.

In conclusion, by introducing delinked payments, this instrument enables us to pay former basic payment scheme recipients for the rest of the agricultural transition but without the bureaucracy associated with the current scheme. It does not mean an end of protections for the environment, animals and plants. Our agricultural reforms are about delivering better outcomes, so that the countryside and wildlife that we all so value can be protected for future generations. I beg to move.

Amendment to the Motion

Moved by ***Baroness Hayman of Ullock***

At end insert "but that this House regrets that the draft Regulations 2023 will revoke Basic Payment Scheme cross-compliance provisions regarding environmental, animal welfare and other standards before a new compliance scheme has been completely established; and notes the risk of (1) regulatory gaps, and (2) increasing uncertainty for farmers and landowners."

Baroness Hayman of Ullock (Lab): My Lords, the Minister has explained clearly in his introduction that the draft regulations propose to introduce the delinked payments to replace direct payments, so I will not go into the detail of that. They also propose to revoke the law relating to the basic payment scheme, including the associated cross-compliance requirements, which is what much of our discussion will be about. The delinking of agricultural payments was clearly advertised in the agricultural transition plan, so this is no surprise to anybody. We also believe that it is a necessary step to move to a new, fairer system of payments based on the principle of public money for public good, so we will not oppose this instrument.

However, I have brought forward the regret amendment because I am concerned, as is the Secondary Legislation Scrutiny Committee, about whether all relevant cross-compliance requirements that will be revoked by this instrument are replicated fully in domestic legislation, and whether there will be any regulatory gaps. Existing cross-compliance policy is being removed prior to the complete establishment of the new regulatory framework, yet some elements of the new compliance regime are still work in progress, and other cross-compliance requirements will be set out in guidance, codes of practice or, indeed, incentive schemes. To us, this raises questions as to whether they can be enforced as effectively as the current statutory requirements. Is the Minister confident that this will be the case?

Regarding concerns about the regulatory gap related to the legacy payments element of the changes, Defra has stated, as the Minister has just assured the House, that the majority of rules under cross-compliance are already in domestic law. We suggest that this still means that, with the removal from 1 January, there will be regulatory gaps across hedgerows, soil cover and watercourse buffer strips that will not be covered by the farming rules for water. We are also concerned that it risks enforcement gaps on compliance with regulations, such as the domestic public rights of way, that benefit from the conditionality for payments. Again, that falls away from 1 January.

I acknowledge that Defra has made some really good progress on hedgerows. There was a consultation on new protective requirements in summer 2023, but this has not been undertaken in sufficient time to prevent the regulatory gaps between 1 January next year and the enactment of additional protections. We also do not believe that the consultation on hedgerows was expansive enough to cover other gaps in cross-compliance such as soil and watercourses protection. In its August response to the SLSC, Defra notes that

[Baroness Hayman of Ullock]
there are existing measures to provide ongoing protections, but there have been continued delays, lack of clarity and uncertainty, and we believe that these undermine the potential effectiveness of these measures.

I will briefly look at the impacts if these gaps are not dealt with. From January, agriculture hedgerows will be left unprotected from inappropriate management, removing the obligation to leave a buffer between hedgerows and cultivated areas and to cut only outside bird nesting season. Our concern is that this could endanger threatened hedgerow-reliant farmland species—the corn bunting springs to mind—and risk carbon release through hedgerow damage.

I am aware, as I said, that Defra has consulted on the gaps relating to hedgerow protection, but it has not yet introduced the provisions to avoid any potential damage next year, including during the bird breeding season. Defra has said that there are no other gaps, but this has been disputed by a number of groups, including in a report produced by the Institute for European Environmental Policy, which also points out:

"It is notable that many of the identified gaps (i.e. in relation to soil management) have implications for water pollution".

I am sure that the Minister would not want to see further water pollution.

That brings me on to rivers. There will no longer be a requirement to create buffers that protect rivers and streams from agricultural pollution or to keep a farm map that marks water sources, apart from in the nitrate-vulnerable zones. We are concerned that this could expose already overloaded watercourses to increased nutrient and chemical pollution and, again, further have the impact of degrading habitats and wildlife.

Finally, most requirements to prevent soil erosion could also be lost, with only minimal protection afforded by the farming rules for water. Removing the obligation to keep green cover such as crops and grass on soils over winter risks increasing the amount of soil lost through wind erosion and leading to degrading overall soil health, on which our farmers depend. Many of these domestic standards are guidance and voluntary frameworks that do not apply to all farmers, so we do not consider them to be appropriate replacements for enforceable rules under regulatory conditionality. We are also concerned that an unlevel playing field will be created between farmers, with a risk that those who comply with voluntary standards are then disadvantaged commercially.

5.30 pm

The absence of a formal impact assessment for the removal of cross-compliance and regulatory conditionality is also a problem. I ask the Minister whether he thinks that an impact assessment should have been carried out, alongside a habitats regulations assessment and a strategic environmental assessment, to look at those particular issues.

The NFU, which I know has been working very closely with the Government on this and has made some good progress in areas of concern, has also raised concerns about supporting farming businesses with the need for a form of stability payment, for example. But it is also very concerned about how farmers will be inspected, how sanctions will be applied and how inspections will be co-ordinated after the end of this year when cross-compliance ends. We could end up with a range of different Defra farm bodies going out on to the farms on an unco-ordinated basis using their own selection criteria for what they are looking at. It is important for the Minister to outline how Defra sees inspections being co-ordinated going forward, as this will be of concern to a number of farmers.

My final concern is on enforcement. While it is true, of course, that some standards under cross-compliance will continue to apply to farm activities through various bits of independent domestic legislation, the way in which this is monitored and enforced in the future is likely to be undermined by this SI and others that are linked to it. Under cross-compliance, the Government have a legal obligation to establish an effective monitoring and enforcement scheme to ensure that these standards are adhered to by payment recipients. Current RPA-led inspections and enforcement penalties that result from cross-compliance breaches arguably act as the primary deterrent to breaching environmental regulatory standards on farms. By their very nature, they protect important environmental features from harm over much of England. I would be interested to hear what the Minister thinks about this, but our concern is that the effect of the SI could well be to remove this important RPA-monitoring enforcement role in ensuring compliance with environmental regulatory standards on farms. It would be good to understand better how the department sees that going forward. When Defra responded to the SLSC's concerns on this, it said that

"Existing regulators will continue to be responsible for monitoring, inspection and enforcing".

The concern, however, is that there is no further detail. What is the ongoing role going to be of the RPA, for example? Is the role going to be passed on or added to other regulators—the Environment Agency, for example? We want to get a better understanding in order to allay people's concerns in this area.

One of the biggest changes will be the move away from penalties being applied for non-compliance. For example, due to cross-compliance ending, there will be no more penalties applied to direct payments or agri-environmental payments for farmers. How will enforcement be conducted? Presumably, that will be through education and support in the early instances, which makes sense, with penalties being reserved for more serious or unco-operative individuals—presumably, criminal prosecution will still remain for the most severe violations of domestic rules. It would be interesting if the Minister could provide more clarity about how the management of, for example, hedges and animal health and welfare matters are going to be enforced through the new system.

Any new system of farm regulation needs to support farmers, while also protecting the rural environment by reducing our agricultural pressures on soil, water, air, landscape features, hedgerows and stone banks—the Minister is very aware of this and I know he believes that this is very important. But one other thing that has come up is the lack of general awareness within the farming community about the transition from BPS to delinked payments. Again, it would be interesting

to know, as we move into the new system, how the Government are looking to raise awareness of farmers' obligations under the new system. Farmers need clarity, and they need to know how to plan for the future, so I am looking to the Minister for further assurance that the instrument will neither lead to a reduction of proper enforcement nor introduce regulatory gaps that could result in undermining our existing environmental protections. I beg to move.

Earl Peel (CB): My Lords, I declare an interest as the manager of an upland estate in North Yorkshire. I am grateful to the Minister for explaining the new regulations, although, like many other people, I still find them vague and difficult to comprehend. The noble Baroness, Lady Hayman, raises some fundamental issues. Under the previous regulations—under the basic payment scheme and Pillar 1—there was a general standard of environmental well-being throughout the countryside, which was generally welcomed by most farmers. Under the new ELMS arrangement, that will be lost. It strikes me that a lot of public money has gone into Pillar 1 under the original system that will now be lost, and I cannot see that that is good value for money. My question is this: under the new ELMS system, is there any way to have a basic standard of cover, like the original standards under the basic payment scheme, so that that money is not perceived to be lost and the general standards are maintained throughout the countryside? There are some interesting developments under the new scheme, which will be worthy of the countryside, but my main concern is around this loss of basic standards throughout under the new scheme. If the Minister could give us some assurance that that could be covered through the new ELMS, I would be extremely grateful.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend the Minister for bringing these regulations before us this afternoon in what has been a particularly busy week for him at COP 28. Most of the concerns that I was going to raise regarding the potential for regulatory gaps have been covered at some length; I am grateful to the noble Baroness, Lady Hayman of Ullock, for that. I am delighted to follow the noble Earl, who also resides in North Yorkshire.

I am a frequent visitor to the mart at Thirsk. I have a small number of shares in it; no one else was going to buy them so I thought that they must be good value and that I should buy them. I suppose that I must declare an interest: I have one lot—not a lot but one lot—of shares in Thirsk mart, of which I am immensely proud. North Yorkshire has one of the two largest fat-stock marts in the whole of England and plays a pivotal role in livestock production, not just in the north of England but in Scotland and other parts of the UK. The message that I get from farmers when I visit the mart and other parts of North Yorkshire is that they are deeply concerned about one aspect of the changes being made. In preparing for this SI, I consulted the Tenant Farmers Association in particular, which believes that the Government have carried out what they committed to do in implementing the regulations in a way that protects the value of payments to tenant farmers. My noble friend the Minister will be aware that that is one of my main concerns.

Increasingly, however, whether they are landowners, tenant farmers or farmers on small family farms, farmers need certainty and clarity—this is the point that I think my noble friend the Minister must tell us—about when we are going to have more detail on the sustainable farming initiative. That is what is holding back a lot of investment that might otherwise be made. In his introductory remarks, my noble friend clearly stated that the delinking and the new payments that he is bringing forward through these regulations, which are welcome for the most part, mean that farmers face a situation where direct payments will be phased out before they know the real content of the SFI and all the other payments. I leave my noble friend with a thought—indeed, a plea. Can we have this information and the details at the earliest possible stage, either in another SI or just in some document that he can release to all the farmers affected?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to these regulations. The noble Baroness, Lady Hayman of Ullock, set out her arguments extremely well and I agree with the comments she has made. While the Government gave sufficient notice of their intention to delink payments from the BPS, there are some issues which need probing. Having said that, I support this SI. I am grateful to the Wildlife and Countryside Link, ClientEarth and the NFU for their briefings. I have also read the Secondary Legislation Scrutiny Committee's third report, which covers this issue.

The whole thrust of the Government's funding for agriculture has been to move away from BPS and on to ELMS. I welcome this, as a system which rewards farmers simply for the amount of land they manage does little to encourage innovation and environmental schemes. However, I was slightly concerned to find in the Explanatory Memorandum that delinking payments from ownership of land could, in Defra's words, mean that:

> "There will be no requirement for the recipient to continue to have land".

I understand that the delinked payment relates to activity that has been conducted in previous years, but if the farmer does not have or rent any land, how is he or she contributing to agriculture and thus entitled to a payment into the future? The SLSC asked Defra the rationale for delinking financial assistance from ownership or use of land. Defra's answer covered phasing out the BPS and referred to the consultation conducted in 2018. However, I am afraid I did not feel that the question asked by the SLSC had really been answered.

The Rural Payments Agency is calculating the delinked payments, as it has all the information to hand on what farmers have been paid during the relevant years. I was somewhat dismayed to see that, should a mistake in calculating the delinked payments be made, Defra would recover any overpayments with interest. It is not so long ago that farmers were really struggling to make ends meet, due to the RPA being extremely tardy in making payments to farmers, sometimes with extremely lengthy delays. I do not remember that farmers received any interest on their income which was delayed by the RPA, despite it causing severe hardship in many cases. While it is important to taxpayers for overpayments to be recovered, the mistakes are

[Baroness Bakewell of Hardington Mandeville]
likely to occur with the RPA calculating the payments, not with the farmers. A level playing field is needed for this new system to operate fairly.

I turn to the removal of cross-compliance, which has been covered very adequately by the noble Baroness, Lady Hayman. This had been clearly trailed in the agricultural transition plan. However, there are concerns that there could be regulatory gaps in this cross-compliance, including soil, water, air and landscapes with hedgerows and stone banks. All these are key elements of the rural environment and farmland. I am sure the Minister will tell the House that the majority of rules under cross-compliance are already in place in UK law. However, to quote the Wildlife and Countryside Link:

"'Majority' is doing a lot of heavy lifting in this explanation".

Defra believes that the code of practice for plant protection and the sustainable farming incentive are sufficient to protect cross-compliance, but many of these do not apply to all farmers. While many farmers will wish to comply voluntarily with the code of practice, there will be others for whom their economic situation may mean they choose to ignore compliance. As Defra was not able to produce a full transition plan on farm regulation on upholding regulatory protections, can the Minister please tell the House just how environmental protections will be secured, especially when hedgerows and stone banks are key habitats for those species of mammals, reptiles and birds that are at risk and on the list of possible biodiversity loss?

5.45 pm

The removal of cross-compliance could lead to regulatory gaps in environmental protections that are presently ensured via several good agricultural environment conditions—GAEC. This includes GAEC 1, on the protection of watercourses, which requires farmers to protect green cover and bans the use of pesticides near watercourses; GAEC 4, on soil protection; and GAEC 7, on the protection of hedgerows, again requiring the protection of green cover and not cultivating or applying pesticides or fertilisers on land near hedgerows.

The strategic environmental assessment regulations—SEA—and the habitat regulations have a role in ensuring cross-compliance and should be rigorously adhered to. Can the Minister reassure the House that this will happen? Unlike Defra, DAERA in Northern Ireland ensures that an element of cross-compliance is maintained and that all environmental assessments have been completed, as DAERA is legally obliged to do. Can the Minister give assurance that Defra will follow suit and do the same?

Finally, when reading all the relevant documents—the EM and Defra's response to the Secondary Legislation Scrutiny Committee—I got the overwhelming impression that Defra is trying to encourage farmers to take a lump sum and leave the land, thereby encouraging larger co-operatives and conglomerates. I hope I have the wrong impression, because it is the rich pattern of both large and smaller farms, many specialising in rare breeds or growing different crops, that makes the English countryside such a jewel in the crown of the UK. I hope the Minister can tell me that I have the wrong impression.

Lord Benyon (Con): I thank all noble Lords for their valuable contributions today. I will try to respond to all the points raised. I welcome that there seems to be unanimity of understanding that we need to make the transition we are making. That is of great comfort to the farming community. Regardless of the electoral cycle, there is a basic understanding that the payment system under the common agricultural policy had malign incentives.

As has been said, I have just come back from COP, where one of the things we were trying to do was remove the malign incentives and malign subsidies on production and move more towards incentives that will support nature and carbon sequestration, and lower carbon and greenhouse gas emissions. What the Government are trying to do is very much in that context. At the heart of that is having a farming sector producing food of high quality, in a regulatory framework it can understand, and which trusts the sector to make the right choices, but which also has a regulatory framework for the odd occasion that someone does break the rules. I will come on to talk about that in more detail.

As I have said exhaustively at this Dispatch Box, this Government have set rigorous targets on nature restoration. By 2030, we will see no net loss of species in England. That is in our environmental improvement plan; it is written into law. That is something we are determined to achieve. Six years is a heartbeat in nature, and we have set ourselves a target that is stretching but possible. We will not achieve it, even if we double the number of people employed in our agencies and double the amount of money available for regulation, without working with the farming community. They are the people who will deliver the reversal of the decline of species and deliver on so many of our targets.

We think now is the right time to introduce delinked payments. By 2024, we will be over half way through the agricultural transition period, during which direct payments in England are being phased out. The rules and administration currently associated with the land-based basic payments scheme would be entirely disproportionate. I note that there is an understanding of that in this House.

Replacing the scheme with delinked payments reduces that administrative burden for farmers and, undoubtedly, a serious burden for the taxpayer. The basic payment scheme did little for food production. In fact, decoupling of payments from food production took place over 15 years ago. Delinking will free up farmers to focus on running their businesses and feeding the nation while protecting the environment. It will have no impact overall on the food security of our country. The Government committed to broadly maintain the current level of food we produce domestically, in the food strategy White Paper published in June 2022. We want to see our food security increase and the proportion of food we consume that is produced here increase. The next UK food security report, which will include updated information on where food consumed in the UK is produced, will be presented to Parliament by the end of 2024.

I would also say that the basic payment scheme did little to encourage farmers to take meaningful environmental action. The introduction of delinked payments and the end of cross-compliance is a further

step in directing government spending in England to deliver more environmental benefits through our new farming schemes. When cross-compliance in England ends, farm standards will be maintained. Existing regulations will continue to protect the environment, animals and plants, and we have consulted on new hedgerow protections. We will continue to assess the impact of farming activities on the environment.

We are working closely with regulators to make sure that the regulatory system is fair, more supportive and effective at changing farmers' behaviour. For example, the Environment Agency has been working with farmers to support them back to compliance, expanding from around 300 visits per year to over 4,000 from 2022-23. We have also written to all basic payment scheme applicants so they are clear on the need to continue to meet farm standards when the cross-compliance system ends. The rules they need to meet are on the "Rules for farmers" page on GOV.UK.

I will come back later to the point the noble Baroness, Lady Bakewell, raised about whether this was going to see an inexorable move to larger farms, but the basic payment scheme did nothing for small farmers as over 50% of the money went to 10% of the largest farmers. If anything, it has seen that drift away. We feel that the system can now support small farmers and that they will have a continuing vital role. Whether they own the land or rent it—as was raised by my noble friend Lady McIntosh—they will have a future in our farming sector.

Our expanded 2023 sustainable farming incentive has attracted over 15,000 expressions of interest and, in the two months since the application window opened for the 2023 scheme, there have been over 4,000 applications. This is more than were submitted in the whole of last year. Now with over 32,000 agreements, a 94% increase since 2020, our Countryside Stewardship scheme continues to be popular. This shows that our schemes are working for farmers and delivering for the environment. The first round of our landscape recovery scheme had 22 schemes and 34 schemes are shortlisted for our second round, many of them having food production at the heart of what they seek to do.

The noble Earl, Lord Peel, raised an important point about standards, and I will come on to talk about that. I know that the way he manages land knocks the environmental improvement plan targets out of the park by precisely the kind of management we want right across the country. It is vital that he and others understand that these standards will be maintained. In response to a point raised by the noble Baroness, Lady Hayman, I say that compliance with farm standards will be monitored by the existing statutory bodies. We are working with the Environment Agency to support farmers to undertake farming activities in a way that minimises risks to environmental outcomes; with Natural England to help farmers protect and enhance protected sites and biodiversity; the Rural Payments Agency and the Animal and Plant Health Agency to protect the health of our plants and animals and to maintain biosecurity; and the Forestry Commission to help farmers protect and enhance our trees and woodlands.

Hedgerows have been mentioned in this debate. There are existing legal protections for them outside of cross-compliance. The Hedgerows Regulations 1997 prohibit the removal of countryside hedgerows without first seeking approval from the local planning authority. The Wildlife and Countryside Act 1981 contains protections for nesting birds—precisely the point that the noble Baroness raised. We have also recently consulted on the best way to maintain and improve protections after the end of cross-compliance, as well as our approach to enforcement. We will shortly publish a document summarising responses, including our next steps.

It is worth noting that in many areas there are now more hedgerows than there were before farmers got paid to take them out, in the 1970s. In our lifetime, that extraordinary perverse incentive in a drive for production is now being reversed, mainly driven by schemes, whether Countryside Stewardship or others. We are seeing farmers planting hedgerows on a grand scale—and they are vital for carbon sequestration and biodiversity.

The farming rules for water will continue to protect watercourses. This includes provisions for not applying fertilisers and manure 2 metres from a watercourse. The Code of Practice for Using Plant Protection Products also requires land managers to not apply pesticides within 2 metres of a watercourse. Furthermore, the Environmental Protection Act 1990, the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2010 protect against a land manager causing water pollution.

Our domestic farming rules for water require farmers to take reasonable precautions which prevent soil erosion, such as establishing cover crops and grass buffer strips. This helps to prevent or limit agricultural diffuse pollution of inland or coastal waters from farming and horticultural activities. Added to that, the sustainable farming incentive scheme rewards farmers for sustainable farming practices. This includes introducing herbal leys and grass-legume mixtures or cover crops that help to provide soil cover and prevent soil erosion by binding the soil, in a way that perhaps was not happening before.

The question of an impact assessment was raised, but one has not been prepared for this instrument because it is not a regulatory provision. However, the Government have already published evidence providing in-depth assessments of the impacts of removing direct payments and assessments of delinking. This includes the farming evidence compendiums published in 2018 and 2019, and our 2018 assessment of the impact of removing direct payments. We also published 2021 and 2022 *Agriculture in the UK* evidence packs.

A very good question was also raised about public money going to farmers who are not actually farming. Delinking the payments from the land means that there will be no requirement to continue to be a farmer to receive the payments as they are phased out. However, the vast majority of delinked payment recipients will continue to farm. Delinking the payments will benefit those who continue to farm, as well as those who choose not to. For example, recipients will not have to worry about the basic payments scheme land eligibility rules and associated paperwork. When farmers choose to leave the industry, this should create opportunities for other farmers who wish to expand and for new entrants.

[LORD BENYON]

It is vital to make this point. A few years ago, the average farmer was me. My friend the Farming Minister Mark Spencer burst out laughing when I said that, and he said, "No, you are not the average farmer". What I meant was that I am 63. But actually, in recent years, that age has started to fall, and it is a welcome fact that we are now seeing a younger and more dynamic group of people starting to look at farming as a career. We need to assist that.

We have a new entrant scheme. We are working hard to see whether we can develop that hand in glove with an exit scheme that assists those who feel that the new world is not for them. They need to be allowed to retire with dignity and to feel that their contribution has been made but now is the opportunity for new ideas, new techniques and new innovations to come in. Our farm innovation grants, new entrant schemes and much of the support that we are providing are targeted at those groups of people who want to see a sustainable, profitable farming business in their lives. That is what we are trying to do.

We are developing our new scheme so that there is an offer for all farm types, including smaller farms. I have already stated why the system that we are moving away from militated against smaller farms. For example, there is no minimum amount of land that can be entered into the sustainable farming incentive. From January 2023, we introduced a new management payment for the sustainable farming incentive which gives £20 per hectare for the first 50 hectares and supports the administration costs for entering the scheme.

I have done my best to address the points that have been raised, and I hope that I have answered the point about a regulatory gap. There is plenty of provision to make sure that the small minority of farmers who break the rules are still able to be sanctioned. Where we think there may be a gap, and to be absolutely sure, we are very happy to have a belt-and-braces approach—for example, in the protection of hedgerows—and we will make those changes if they are necessary. We want to work with the farming community and want to see farmers succeed in an environment of trust that allows them to run their businesses in a way that has the least impact, compared with the bureaucratic systems that have operated hitherto.

Introducing delinked payments is an important milestone in our agricultural reforms. It reaffirms the Government's commitment to move away from untargeted subsidies and to continue with our planned reforms, which will better support farmers and the environment. I commend these regulations to the House and hope that I can persuade the noble Baroness not to press her regret amendment.

Baroness Hayman of Ullock (Lab): My Lords, I apologise, as I should have declared my interest as president of the Rare Breeds Survival Trust at the start of the debate. I thank all noble Lords who have taken part and thank the Minister for his very thorough response. I also congratulate him on his resilience and commitment in coming straight from COP to this debate.

I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

In-patient Mental Health Care: Learning Disabilities and Autism

Question for Short Debate

6.03 pm

Asked by ***Baroness Hollins***

To ask His Majesty's Government what assessment they have made of progress towards achieving the target in the NHS Long Term Plan to reduce the number of people with learning disabilities and autism in in-patient mental health care by 50 per cent by March 2024, relative to 2015 levels.

Baroness Hollins (CB): My Lords, this debate follows quickly on the heels of the topical debate about my report, *My Heart Breaks*, and the debate from the noble Earl, Lord Russell, on the state of children's mental health a couple of weeks ago. This debate should be more optimistic than earlier ones, because it is about the Government's flagship programme, Building the Right Support, which launched back in 2015, and their 2022 action plan. I declare an interest, as I have been asked to continue as a member of the action plan delivery board, which I previously attended as chair of the Independent Care (Education) and Treatment Reviews oversight panel.

I am grateful to all noble Lords who have signed up to speak and to the Minister for responding to all these debates, for writing to Members about issues raised and for arranging very helpful round tables for further discussion.

To give some background, in 2015, there were 2,905 people with a learning disability and/or autism in hospital. The target in the NHS long-term plan was for this number to be halved by March 2024. There has been a 30% reduction. Also, local commissioning systems were to have no more than 30 adult in-patients with a learning disability and/or autism per million of the adult population by the same date, but for some of the 42 ICSs, more people are now in hospital than were previously recorded. Recently, His Majesty's Government have highlighted welcome progress in reducing the number of people with a learning disability in hospital. However, Mencap suggests that at the current rate of discharge it will be 2029 before the 2024 target is reached, and data shows that the number of autistic people without a learning disability has increased since 2015. So, what is the plan post March next year?

In August this year, 5,025 restrictive interventions were recorded among this group of people, 1,140 of which were used with children. That is physical, chemical and mechanical restraint and the use of solitary confinement, as described in my recent report. Lengths of stay are unacceptably high and much longer than for the general population. The average length of stay is now 5.2 years. NHS Digital data shows that 310 of the 2,035 people currently in hospital have been there for between five and 10 years, of whom 70% have a learning disability, and 360 have been detained for over 10 years, of whom 80% have a learning disability.

Let me tell noble Lords about Ash—not their real name. Ash was admitted to a psychiatric ward two years ago at the age of 14 and diagnosed with autism after admission. Ash can take joy and pleasure from

activities but on the same day become very distressed. Ash is biologically female and, like so many autistic young people, has been identifying as transgender for the past two and a half years. In primary school, Ash was described as being shy, anxious and having low self-esteem. It was challenging for Ash to move to a large secondary school, with lots of transitions to manage—moving between classes, for example.

In primary school, there had been good support from teaching assistants, but Ash felt isolated in secondary school without this support and was bullied by peers in year 7 and overwhelmed by the challenges of travelling to and from school on the bus. Ash did not share this with their parents, finding it difficult to communicate the feelings they were experiencing, and the impact of Covid-19 restrictions led to more feelings of isolation and loneliness. Ash started to self-harm and made several attempts to end their life. After being reviewed in A&E and discharged with some community support, unfortunately Ash made a further serious attempt to end their life, was admitted to the psychiatric ward and has remained an in-patient since that time.

Ash continues to engage in regular head banging and does not want to engage in therapy. Understandably, Ash's parents do not feel they can have Ash home, due to ongoing safety concerns and worries about the lack of support for them at home, despite asking for help in the past. The hospital says that it has been trying to find a new "placement" for Ash for at least 18 months—but calling it a placement may be part of the problem: it is a new home that Ash needs. Meanwhile, Ash is stuck on the ward and the uncertainty about their future just leads to further anxiety and more attempts to self-harm. One child too many is spending their teenage years on an adolescent ward, missing out on opportunities to develop independence during adolescence.

Could this admission have been prevented through earlier autism diagnosis, earlier recognition and support at school, and robust community mental health support from the start? Are current waiting lists for assessment setting the scene for more stories like Ash's for years to come, and more long admissions to hospital? The action plan summarises several cross-agency commitments, as well as providing guidance for commissioners to help them to commission for people's lives, not just to commission services for people to be fitted into.

Long-term hospitalisation is a result of failures in our social care system, in the flexibility of our community health responses and in our education system—which is too ready to exclude children with complex needs—and of a lack of suitable housing. It often follows traumatic experiences in a person's life, such as the death of a close family member or being the victim of an assault. This debate allows us to question why the target has failed and, indeed, whether it was the right target in the first place. Is it the number of people in hospital that is the issue, or the purpose of the admission and the quality of assessment and treatment that they receive in hospital? I have consulted a few leaders in the learning disability world. One suggestion is that a better target would be based on equality. For example, the proportion of people in in-patient settings and their length of stay should be no higher than it is for the rest of the population.

The truth is that there has been insufficient focus on improving community support to prevent admission. The measure of success is not about what action has been taken or what has been spent; it is about people's experiences. What is being done to address this? What investment is being made to pilot new ways of working in the community? Are evidence-based models from other countries being piloted in the UK and, if so, where?

There is significant concern that there has been a lack of focus on people providing direct support who are not part of any professional body and do not have necessary training and experience to support people in crisis. Too often, people in crisis with high support needs are supported by agency staff with minimal experience of supporting people with learning disabilities and autistic people. What is being done to improve the quality and suitability of support for people who need more specialist skills?

One central reason why the March deadline will not be met is the failure to tackle perverse incentives in the system. Social care is underfunded, and this is creating conditions in which people with a learning disability and autistic people cannot access the right support, and can then move quickly towards crisis. Very few integrated care systems have created safe spaces to avert crises, and avoid either criminalisation or hospitalisation.

My letter to the Secretary of State regarding my report set out the need for pooled budgets between health and social care providers. These are needed to break down the bureaucratic barriers that too often prevent discharge. The RedQuadrant report *Building the Right Support: An Analysis of Funding Flows* makes the same crucial point:

"Strong partnerships, pooled budgets, and joint commissioning arrangements significantly improve performance on achieving discharges for people".

We are not short of evidence. The issues are clear, as are the solutions. Action and will are needed to bring about change. Some of that is cultural change: a willingness to include people who are different in our communities, and to go the extra mile to help them to stay at home. The financial cost would be less, and just think of the improvements in the quality of people's lives. We need the change, and I very much hope the Minister will show us his will in concluding this debate and responding to the questions that I know noble Lords will ask. I beg to move.

6.14 pm

Baroness Bull (CB): My Lords, I thank my noble friend Lady Hollins for securing this important debate; we are so fortunate to have her expertise in the House, and I pay tribute to her tireless work over so many years. I have had the privilege of participating in other debates in her name on this subject since I joined your Lordships' House. I do so not as someone with personal experience or expertise in this area but as someone who cares deeply about fairness, equality of opportunity and the protection of human rights for the more vulnerable in our society.

The Joint Committee on Human Rights has made clear that the detention of individuals in the absence of individualised, therapeutic treatment risks violating

[Baroness Bull]
their right to liberty and security. It found that rights to private and family life and to freedom from inhumane and degrading treatment are frequently under threat for people with learning disabilities and/or autistic people detained in in-patient units.

The Government's 2019 manifesto committed to addressing this through reform of the Mental Health Act 1983—an important Act, but one that has failed to keep pace with changes in understanding of and attitudes towards mental health since it passed into law 40 years ago. Like other noble Lords across the House, I was deeply disappointed that the Bill failed to find a place among the legislative priorities for this Government's last Session. In its absence, we need to know what urgent action they will take now and in future to end the human rights scandal of this inappropriate and unnecessary detainment in in-patient care.

NHS data from October 2023 reveals that there are 2,035 people with a learning disability and/or autistic people in in-patient mental health units. Over half have been there for more than two years, and under half had a date planned for them to leave hospital. As my noble friend told us, Mencap's analysis of the data suggests that, at the current rate, the ambition to reduce the number of in-patients by half will not be met until 2029—a full five years after the target date.

The statistics are startling, but they are also sterile. Each number represents a person locked away from family, friends and the day-to-day opportunities and experiences that most of us are privileged to take for granted. With an average stay for current in-patients of 5.2 years, inappropriate detention in mental health hospitals is devastating not just to the person locked away but to the people who love them and want to see them thrive. The reality, as we have heard, is that too many autistic people and people with a learning disability are held in mental health hospitals not because they need in-patient mental health treatment but because of the sustained failure over many years to invest in the right community support.

The shape of the support required for those individuals to return safely to community life is set out clearly for commissioners in NICE guidance and in *Building the Right Support*. For example, it requires care providers with the right skills, suitable housing, intensive support services to help prevent and manage crisis situations and appropriate respite. Having a service model is one thing, but implementing it is another. Eight years on from its introduction, too many families still face issues in accessing the support that will enable successful discharge into the community or, better still, prevent the need for admission in the first place. The future of *Building the Right Support* is unclear. Looking beyond March 2024, can the Minister say what will happen to the associated action plan, the delivery board and the national targets? How is this being communicated across the health and care system?

At yesterday's Oral Questions, we heard once again about the woeful underinvestment in social care and the social care workforce. One effect of this is that people with a learning disability and/or autism struggle to access the right care packages and the support of staff with the appropriate skills and expertise for their needs. During the passage of the Health and Care Act, I was part of a cross-House coalition arguing for the importance of reforming and fixing social care for working-aged disabled adults and addressing the issues facing the workforce. Our amendments to address this did not make it into the Bill and, on top of this, the Government have delayed implementation of much of their social care reform programme. The hard-working and overstretched social care workforce remains on its knees. Will the Government commit to creating a national workforce plan for the social care sector that identifies and addresses the skills and the funding gap, so that people with a learning disability and/or autistic people can receive the care and support they need in the community, and reduces the likelihood of their being admitted to an in-patient unit?

Lack of suitable housing is also a key factor, and it is the other main reason cited in NHS Digital data each month for delayed discharge. What assessment has been made of the capital funding required to enable the discharge of people from in-patient units? Are the Government monitoring the provision of suitable housing to meet their needs? Without the right housing, alongside social care, too many people will continue to end up in crisis situations that see them inappropriately admitted, or readmitted, to in-patient units.

I have no doubt that we all share the same ambition: that people with a learning disability and autistic people should be able to live fulfilling lives in the community without fear of being admitted, potentially for long periods of time, to in-patient units—places where there is often excessive use of restrictive interventions, including physical and chemical restraint, and increased risk of abuse and neglect.

The 2024 target to reduce the numbers in in-patient care by 50% is an important step, but it is a step towards a broader ambition. However, I struggle to see how real progress can be made unless we get social care reform back on track. This means making sure that the social care system works for all those who need it, not just those who develop care needs in later life but working-age adults with long-standing needs, who rarely find themselves front and centre in discussions about social care reform.

I noted earlier that, in October, there were 2,035 people with learning disabilities and/or autistic people in in-patient mental health units. I am sure we would all agree that that is an unacceptably high number, but it is also surely a low enough number that, in a civilised, compassionate and relatively affluent society, if the will was there, the development of individualised pathways back into community-supported living could be an achievable goal. The right to enjoy a "gloriously ordinary life" should not be too much to ask.

6.21 pm

Baroness Jolly (LD): My Lords, we have heard two quite outstanding speeches, and I am fairly anxious about putting my toe in the water. Some years ago, I had the privilege to chair a national charity called Hft, founded in 1962 by a group of families with a vision for creating a better life for their relatives who had learning disabilities. They pioneered the idea that everyone could have choices about how they live. They

called it Home Farm Trust, and it became known as Hft. This role changed my perspective and understanding of learning disability.

At present, there are around 2,000 learning-disabled adults being held in mental health in-patient units. These individuals are detained under the Mental Health Act, even though they do not have a mental health condition, in a secure hospital setting, often far from their community, and they can be subject to restraint and overmedication. Today, Hft supports more than 2,000 people across England and Wales, from those living independently in their own homes to day-care opportunities from a few hours a week right up to 24 hours a day. For every person it supports, it is committed to working with them to realise their best life possible.

Despite repeated commitments from the Government to transform care and end this practice, they have repeatedly missed their targets over the past 12 years. The latest commitment set out in the NHS long-term plan—to reduce the number of people with learning disabilities and autism in in-patient mental health care by 50% by March 2024—is likely to be missed again. The Government must bring forward a mental health Bill which prevents the inappropriate detention of learning-disabled adults under the Mental Health Act. It was highly distressing that this was not included in the King's Speech and is not on the Government's legislative agenda, despite a 2019 manifesto commitment to

"make it easier for people with learning disabilities and autism to be discharged from hospital and improve how they are treated in law".

Ensuring social care is funded properly, so that everyone can receive the right care, is also critical. This will ensure that everyone who needs social care can receive the right support at the right time, and should prevent admissions to in-patient units.

Social care faces financial challenges, from poor quality and unmet need to low pay and high turnover. Central government grants to local authorities fell by 37% in real terms between 2009-10 and 2019-20, from £41 billion to £26 billion in 2019-20 prices. This results in local authorities with less to spend on adult social care despite demand, and therefore costs remain high. In 2019-20, local authorities had to meet a funding gap of £6.1 billion to meet the cost of care, resulting in £4.1 billion of cuts to adult social care at local authority level.

Ultimately, the impact of financial pressure is felt by those who draw upon and work in the sector. The consequences of this are numerous. It causes unmet need: with funding squeezed, social care is more often being commissioned only for those with the highest needs, leaving those with lower needs without essential support. The number of adults waiting for social care is still incredibly high, estimated at 400,000 people.

There is an impact on the NHS: a lack of suitable social care can affect health services, for example, by delaying discharging people from hospital or not having suitable or any care in the first place leading to admission. According to the Care and Support Alliance, one in seven people have needed hospital treatment due to a lack of care.

The financial pressure also contributes to workforce pressures: 81% of providers reported that local authority fee increases did not cover the rising cost of the national living wage, let alone a higher, more competitive wage. Pay of social care providers is uncompetitive. This is largely due to the fact that, in general, the amount local authorities pay providers to deliver care does not allow for substantial pay increases.

The knock-on impact of this is high vacancy rates, due to the necessary use of expensive agency staff and turning away of admissions due to insufficient staffing. We are aware that the twin impact of funding cuts and the pandemic has had an impact on commissioning trends. We have seen instances where commissioners are using the closure or reduction of day services as a reason not to recommission, consequently saving money.

The importance of the social care workforce cannot be underestimated. For many of the 1.5 million people in the UK with a learning disability, it provides support to ensure they remain healthy, can remain in employment and be an active member of their community. Tackling longstanding recruitment and retention issues within the social care workforce is one of the most fundamental challenges for the sector. It impinges on both the viability of services from a health and safety perspective and can have a huge impact upon the care received by people with a learning disability.

During 2022, the adult social care sector saw an average vacancy rate of 21%. Some 42% of providers saw a decline in the number of applications for care staff in 2022, which saw an average turnover rate for the sector of 25%. The Government have taken several steps to address this, including pledging £500 million to support and develop the social care workforce. While this will fund positive initiatives such as a new knowledge and skills framework and a portable health certificate, it will not address the most pervasive cause of high turnover and vacancy rates, which is uncompetitive pay. When surveyed, providers told us increases in pay would make the biggest difference to workforce challenges. Invaluable social care staff should be paid a wage which remunerates them for their skill and recognises inflationary costs. The increase in the national living wage is therefore a welcome step.

Yet, too often, this is not sufficiently reflected in local authority funding, with 80% of learning disability care providers stating that the fees they receive to deliver care do not cover the increased cost of wages. This requires providers to make up the shortfall, adding to existing financial pressures—such as energy and agency costs—and precluding any ability to pay a higher wage to alleviate the recruitment and retention crisis.

What changes are needed? First, we need a reform package for the social care system to deliver high-quality, person-centred care but which also supports and appropriately remunerates those who work within it. It must provide long-term and sustainable funding for social care. This must factor in a fully funded minimum pay rate for social care to reflect the complex and demanding role the workforce plays, as well as the increased cost of living. The Government must publish a comprehensive social care workforce strategy akin to the NHS workforce plan, co-produced with people who use the service and those who work in social care. The Chancellor is aware of the chronic underinvestment in the social care sector and the required national action to prevent further pressures on the NHS. To support the sector, we should see the introduction of a

[Baroness Jolly]
fully funded minimum pay rate for social care, as recommended by the Migration Advisory Committee and which is already in place in Scotland and Wales. Can the Minister confirm that this is on his wish list too?

6.32 pm

Baroness Merron (Lab): My Lords, I congratulate the noble Baroness, Lady Hollins, on securing this important debate today, particularly as it comes so soon after the publication of her report, *My Heart Breaks*, which focuses on the fact that solitary confinement in hospital has no therapeutic benefit for people with a learning disability or for autistic people. However, I also want to congratulate her, as the noble Baroness, Lady Bull, did, on her tenacity in ensuring that this House and the Minister cannot overlook what is in fact a disgrace to our society. That disgrace is the damage caused to those with learning disabilities and/or autism, with often misunderstood and challenging behaviour, whose needs tragically continue to be unmet. The noble Baroness herself, along with many of us in this House, has made many times over the strongest of cases for reform of the Mental Health Act, which will be crucial to attending to this.

In her introduction, the noble Baroness, Lady Hollins, set out a number of disturbing statistics, which were amplified by the noble Baronesses, Lady Bull and Lady Jolly. If I had to pick out just one of those tragic statistics, it would be this: at the end of October this year, over 2,000 people with a learning disability and/or autism were in mental health hospitals, of which 210 were children. Even more shockingly, within that number, some 670—that is nearly one in three—had been in in-patient units for over five years, and the average length of stay for those in this group is 5.2 years.

The noble Baroness, Lady Bull, repeated a call I have heard a number of times before, and I would rather not keep hearing it, because, as she reminded the Minister, while this is a shocking number, it is not so large that it cannot be dealt with by a focus on it. She called, as has been called for many times in this House, for individualised plans. Can the Minister inform your Lordships' House what progress has been made in this regard? I emphasise the point that the noble Baroness made that these are not just statistics. Every one of the people we are talking about is a real person who is part of a household, a family, a community and an organisation, and they too are very much affected.

Perhaps the key point in the debate today is, as the report of the noble Baroness, Lady Hollins, pointed out, that long-term segregation lacks any therapeutic or rehabilitative benefit for the most vulnerable in our society. I was particularly struck that the report described long-term segregation as just one part of a four-stage failure. The four failures include a lack of community-based support. We have heard a lot today, and I endorse the comments, of major failings in adult social care and the need to provide for a properly trained and rewarded social care workforce that is planned in the same way as we have in the NHS workforce plan. The second failing is where there is a failure in the hospital to provide the support needed by the individual, because without providing that there is more trauma, disorientation and restrictions for the patient. The third failure is in the use of restrictive practices, including solitary confinement. The fourth failure is a lack of clarity about responsibility for commissioning and funding the skilled support in case management that is needed, which goes back to the accountability called for in the report. I emphasise those four points to the Minister in order to ask whether this four-pronged approach will be taken in addressing the situation before us, to reduce the number of people with learning disabilities and autism in inappropriate settings.

As has been said not just today but on a number of occasions, the Government had promised to tackle this shocking ongoing scandal through the reform of the outdated and discriminatory Mental Health Act 1983, yet that was nowhere to be seen in the King's Speech, which was the last opportunity for this Government to bring this much-needed reform forward in this Parliament. That opportunity was missed. Once again from this Dispatch Box I say that, should Labour be in government after the next election, we will bring it forward in our first King's Speech. I hope that commitment will provide some small comfort when looking forward, because it has been devastating to all those who were so involved in developing the discussions on improving mental health care, including all the charities, the other organisations, the Joint Committee on the Draft Mental Health Bill and many others who contributed so much to the draft Bill.

It is highly unlikely that the Government will meet their target of halving the total number of people with a learning disability and/or autism in mental health hospitals by March 2024 from the 2015 levels, and analysis by Mencap, as the noble Baroness, Lady Bull, said, suggests that the target will not be met before 2029. There is no plan at all for this after next March, so I find it hard to see what change will be made.

If the Government are still committed to a reduction in the total number of people with learning disabilities and/or autism in mental health hospitals, what is the future beyond March 2024 of the Building the Right Support action plan, which previously set out these targets? The noble Lord the Minister and Minister Caulfield held a welcome meeting with noble Lords yesterday and referred to changes that might be made in the absence of government legislation. I put it to the Minister that the culture and practice reflected in a Mental Health Act that is some 40 years old are so far from what we now need that any changes must have at their heart ensuring a change of culture, as well as practice, to make any difference. It would be helpful if the Minister could give that reassurance, not just about the focus on change of culture and practice but about how this will be reported to this House, so that noble Lords can be updated and continue to take a very focused and important interest in this.

I will conclude my comments by picking up some points in a recent letter from the Minister, dated 8 December. Can he provide further detail on the pilot models of culturally appropriate advocacy that this letter said would provide tailored support to people from ethnic-minority communities being treated under the Mental Health Act? The Minister's letter also highlighted the patient and carer race equality framework launched by NHS England. How will the Government

evaluate its impact, not only on the wider scale but on how it is implemented across different mental health trusts? This is, as we always say, an important matter to debate; it is today and has been on previous occasions. I hope that the Minister will once again hear the wisdom that has been put forward and that we will have a response, in the absence of the legislation we have been promised.

6.42 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): I too add my thanks to the noble Baroness, Lady Hollins, for her terrier-like qualities—I hope that is seen as a compliment—in getting and maintaining our attention. I feel that this has been an excellent series of debates that have complemented each other and added to that basis of knowledge. I had useful feedback from the round table yesterday, and I hope the feeling from it is that this is a not a one-shot deal: it is an ongoing conversation with ongoing engagement.

One of the things that probably struck me the most—the noble Baroness, Lady Merron, mentioned it as well—was the change in the culture. When we think of where we were in the 1980s, and of all the things that we know need updating from the Mental Health Act 1983, we need to make sure we are reflecting that change of culture in all this. I will not pretend that we have an answer to that, but I think we are all committed. We need an Act; I understand everyone's disappointment in that. We know we need to correct this at the earliest opportunity, but the round table was a good way of starting to talk about the things that we could do. We saw some very promising examples, particularly the Somerset model, which I am looking forward to hearing more about.

The point we need to reflect and come back better on is how we are changing those cultural attitudes as well. The example of Ash, given by the noble Baroness, Lady Hollins, sets out very clearly that these are real people, as the noble Baroness, Lady Merron, said. Thankfully, in some ways, they are not a large number of people, but this brings home what needs to be done. The figure of 5.2 years as the length of stay really struck us all.

It is a good question and challenge: are we setting the right target with 50%? It is a round number, and I am not saying that in any way to try to move away from it, but is it the right target? As we have said, we all care about whether we are building the right support going forward. To answer the question raised, I can confirm that there is commitment to this beyond March 2024. In some ways, the figure of 50% by March 2024 has almost created a false sense of "That is a deadline, and what happens beyond it?" Candidly, we all know that this is an ongoing problem, which will work only if we have the supply.

It is well recognised that adult social care is a crucial component to the supply of places, as mentioned at Questions yesterday. Post pandemic, we had first to put in place action to stabilise adult social care. That is what the investment has been about, so that we are finally at a place where we have managed to increase the supply of places and increase the staffing there. It is only when you are on that stable footing that you can then look to the reform action that needs to come in, of which the care excellence certificate is very important. I will freely admit that we are at the start of that journey to completion.

The second part of that is the individualised mental health supply. That is what the £2 billion investment is all about, with the 2 million extra places that we need to provide in the community for people, including 300,000 young people. In that, we all have experience that a stitch in time really does save nine. If we can get there early, then that really helps and supports people.

As other noble Lords have pointed out, while progress is being made on the number of people who have a learning disability without the autism diagnosis, the real challenge is the autism diagnosis in-patient numbers. That is the one where we need to really understand what action is needed. That is why, as I say, the Building the Right Support delivery board is an ongoing thing, not something that stops in March.

On that supply, that is what the £121 million investment in community support people is about, and making sure that every integrated care board has to have an executive lead on learning disabilities and autism. Those are the people we are really holding to account in all of this, to make sure that support is there at a local level.

On the point made by the noble Baroness, Lady Merron, the dynamic support registers are all centred on the individualised plans that need to be given to these people, so we can make sure that dynamic support is there for them all. A national development team for inclusion has been commissioned to work in 20 areas to give the bespoke support that is needed.

I reassure the House that we will continue to take forward non-legislative commitments to improve the care and treatment of people detained under the Act, as the noble Baroness mentioned, and in particular to pilot models of culturally appropriate advocacy, which will provide tailored support to hundreds of people from ethnic minorities to better understand their rights when they are detained under the Mental Health Act.

The importance of the right workforce has rightly been raised, to make sure that people with a learning disability and autism get the right support at the right time. That is what the strategy to put people at the heart of care is all about. Comments have been made about whether we have got that strategy right and whether it is covered in the long-term work force plan. It is harder in this area, as we know; as I mentioned yesterday, there are 17,000 independent providers in the adult social care setting and so co-ordinating across it is harder. But again, that is what the reforms and the care certificate are all about, and the digital platform that has been put in place to provide the qualifications and the payment mechanism is key to all of that.

I hope from these comments we are showing that we are alive and responding to the ongoing conversation and dialogue that the noble Baroness, Lady Hollins, has set in place and which will continue. I will not pretend for one moment that we have got all the parts in place. That is why it needs to be a continuing dialogue, to which I am committed. As noble Lords saw yesterday, Minister Caulfield is definitely committed to this as well. We look forward to further round

[LORD MARKHAM]
tables in the new year and increasing our knowledge from them. Noble Lords can rest assured that the Building the Right Support action plan is an ongoing live document that does not stop at March. It is key to everything going forward.

At this point, I thank all noble Lords, and especially the noble Baroness, Lady Hollins, for her continued dedication to this.

House adjourned at 6.53 pm.

Grand Committee

Wednesday 13 December 2023

Arrangement of Business
Announcement

4.15 pm

The Deputy Chairman of Committees (Viscount Stansgate) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, the Grand Committee will adjourn as soon as the Division Bell rings and resume after 10 minutes. I do not think that we are expecting any Divisions.

Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
Considered in Grand Committee

4.15 pm

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

That the Grand Committee do consider the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023.

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

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): My Lords, on 12 May 2023, the Government launched a consultation on three areas that could benefit from reform and where we could remove unnecessary bureaucracy: record-keeping requirements under the Working Time Regulations; simplifying annual leave and holiday pay calculations in the Working Time Regulations; and consultation requirements under the Transfer of Undertakings (Protection of Employment) Regulations—the TUPE regulations. The consultation sought views on proposals for these areas of retained EU employment law to ensure that they are tailored to the needs of the UK economy.

I turn first to the record-keeping requirements. The Working Time Regulations are derived from the EU working time directive and create various entitlements for workers, including minimum rest breaks and maximum working hours, as well as an entitlement to paid annual leave. While the regulations provide important protections to workers, they can also place disproportionate burdens on business in relation to recording working hours and other administrative requirements. That is why we consulted on removing the effects of a 2019 judgment of the Court of Justice of the European Union, which held that employers must have an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. Our proposed regulations make it clear that employers will not be required to keep burdensome and disproportionate records of daily working hours of each worker. Instead, employers will need to keep adequate records to demonstrate compliance with their working time obligations—I stress that point. This clarification could help to save businesses around £1 billion a year, without changing workers' rights.

I assure noble Lords that people will continue to be able to enforce their rights under these regulations. Workers can take a case to an employment tribunal where they feel they have not been permitted to exercise their rights under the Working Time Regulations, including the rights to annual leave and to daily and weekly rest. The Health and Safety Executive, other state enforcement bodies and local authorities can also directly enforce maximum working hours and record-keeping requirements. It is important that employers comply with the Working Time Regulations and that they are held to account if they do not.

I turn to the Transfer of Undertakings (Protection of Employment) Regulations 2006. Before a TUPE transfer, the current employer and the new employer need to consult the affected workforce's existing representatives or arrange elections for employees to elect a new representative if they are not already in place before the transfer. We want to simplify the process for businesses where worker representatives are not already in place. Currently, micro-businesses have the flexibility to consult directly with workers rather than hold elections. The SI would extend that flexibility to small businesses, with fewer than 50 employees, undertaking a transfer of any size and to businesses of all sizes involved in transfers of fewer than 10 employees if there are no existing employee representatives in place. That means that they will not be required to undertake the time-consuming process of arranging elections for new employee representatives.

This reform will simplify the TUPE process, while ensuring that workers' rights continue to be protected. It does not erode the role of trade unions in the workplace. We are only proposing changing the consultation process in instances where businesses do not have employee representatives to consult. Where employee representatives, including trade unions, are in place, employers will still be required to consult them. I make it clear that the reforms will not change the requirement for businesses to consult employees on transfers; they will only change the requirement to elect employee representatives if they are not in place. Clear guidelines remain in place for employers regarding what they must consult employees on. Employers who fail to properly consult their employees about TUPE transfers could be taken to an employment tribunal.

The regulations also introduce reforms to holiday entitlement and pay. We have defined irregular-hours and part-year workers in these regulations to ensure that they are clear to employers and workers to whom some of the reforms apply. How a worker is classified will depend on the precise nature of their contractual working arrangements. We encourage employers to ensure that working patterns are clear in their workers' contracts. We recognise that there are a vast number of different working patterns. The definitions seek to take all of these into account, so that the regulations are relevant for modern working practices. We will keep them under review.

I turn now to the holiday accrual method for irregular-hours and part-year workers. The regulations respond to the 2022 Harpur Trust v Brazel Supreme Court

[LORD JOHNSON OF LAINSTON]

judgment. This resulted in part-year workers being entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year. To address this disparity, the regulations introduce a simplified method to calculate holiday entitlement for irregular-hours and part-year workers. This will be calculated as 12.07% of hours worked in a pay period, in the first year of employment and beyond. This accrual method was widely used before the Harpur Trust judgment and better reflects what workers actually work in a leave year. The introduction of this accrual method could save businesses up to £150 million over the long term.

The regulations also introduce a method to work out how much leave an irregular-hours or part-year worker has accrued when they take maternity leave, family-related leave or sick leave. Introducing a 52-week reference period will allow employers to look back and work out an average of hours worked across that period. Employers will need to include weeks not worked and not on maternity leave, family-related leave or sick leave so that leave is proportionate to the time actually worked. This will ensure that workers are not unfairly disadvantaged when on maternity leave, family-related leave or sick leave. For example, if an irregular-hours worker goes on maternity leave, her holiday entitlement is reflective of how much she worked in the 52 weeks prior to going on maternity leave.

We are also legislating to allow the introduction of rolled-up holiday pay for irregular-hours and part-year workers. Rolled-up holiday pay is where an employer includes an additional amount with every payslip to cover a worker's holiday pay, as opposed to paying holiday pay when a worker takes annual leave. We consulted on introducing rolled-up holiday pay for all workers. However, taking into account stakeholder feedback, rolled-up holiday pay will be introduced as an additional method of calculating holiday pay for irregular-hours and part-year workers only. Employers do not have to use rolled-up holiday pay for these workers if it does not suit their business; they can continue to use the 52-week reference period to calculate holiday pay.

Employers that use rolled-up holiday pay will calculate it based on a worker's total earnings in a pay period. This will avoid the complexity of applying the rolled-up holiday calculation to different rates of holiday pay. Despite the fact that it has been unlawful since the 2006 European Court of Justice case of Robinson-Steele v RD Retail Services, rolled-up holiday pay is already used in a lot of sectors due to the simplicity that it offers to calculate holiday pay for irregular-hours workers. Allowing holiday pay to be paid as an enhancement to a worker's pay at the time that the worker performed work instead of when they are on holiday will ensure that the worker's holiday pay is as closely aligned as possible to the pay that they would have received. Rolled-up holiday pay also ensures that a worker receives the holiday pay that they are due even if they work for that business for only a short period of time. For example, an irregular-hours worker who works for a company over a period of three months will receive holiday pay as part of each payslip.

We note the concerns that allowing rolled-up holiday pay may disincentivise workers from taking leave. Compared with full-time workers, people who work irregular hours and part-year contracts are already likely to have periods when they are not working and, as a result, these concerns are less applicable. We also consider that existing safeguards are proportionate in addressing these concerns. For example, employers are already required to provide an opportunity for workers to take leave and we have heard through our stakeholder engagement that this is taking place. We also have safeguards in relation to the 48-hour working week, where a worker cannot work more than 48 hours a week on average, unless they choose to opt out.

I turn now to the issue of retaining two rates of holiday pay and distinct pots of leave. We consulted on a further reform: the introduction of a single annual leave entitlement with a single rate of pay. We will not introduce this as part of the package. These regulations maintain the two distinct pots of annual leave and the two existing rates of holiday pay, so that workers will continue to receive four weeks at the normal rate of pay and 1.6 weeks at the basic rate of pay, totalling 5.6 weeks. Following a review of case law in this area and engagement with stakeholders, we are legislating to restate the case law in respect of the four weeks of leave. This is to ensure that workers continue to receive pay for those weeks at their normal pay rate, rather than having the whole pot paid at the basic rate, which for some workers can be a reduced amount. The intention is for workers to continue to enjoy the same rates of holiday pay from 1 January as they do now. We would like to assess the take-up of rolled up holiday pay and then consider more fundamental reforms to the rate of holiday pay. This will allow employers to continue with their current payroll systems, while providing clarity on what elements form part of normal remuneration.

I turn to restatements and revocations. In addition to these reforms, the statutory instrument revokes the European Cooperative Society (Involvement of Employees) Regulations 2006 and the Working Time (Coronavirus) (Amendment) Regulations 2020. The main European co-operative society regulations were repealed in 2021 and the regulations on involvement of employees therefore no longer have any effect in practice. The Covid regulations referred to in the statutory instrument were introduced as temporary legislation intended to prevent workers from losing annual holiday entitlement if they were unable to take it due to the effects of Covid. Therefore, these regulations are clearly no longer needed.

The scope of the statutory instrument is limited to Great Britain, other than the revocation of the European Cooperative Society (Involvement of Employees) Regulations 2006, which extends to Northern Ireland. Employment law in Northern Ireland is a transferred matter.

In addition, the statutory instrument mitigates the risk that the removal of interpretive effects on employment law could lead to a reduction in workers' rights by restating the following three principles: the right to carry over annual leave where an employee has been unable to take it due to being on maternity or other family-related leave or sick leave; the right to carry over annual leave where the employer has failed to inform the worker of their right to paid annual leave or enable them to take it; and the rate of pay for annual leave accrued under regulation 13 of the working time regulations.

Northern Ireland has its own employment legislation. Accordingly, any secondary legislation on this would be for the Northern Ireland Executive, or the Northern Ireland Civil Service in their absence, to decide, with support from the UK Government to legislate if needed.

Although interpretive effects will cease from the end of 2023, the Government's position is that the UK will remain in compliance with our international obligations under Article 2 of the Windsor Framework. The REUL Act's restatement powers are available until June 2026. Therefore, the UK Government and the Northern Ireland Civil Service will keep all decisions on restatements under continuous review in both Northern Ireland and Great Britain.

As mentioned, the Government's approach to restatements seeks to mitigate the risk that the removal of interpretive effects on employment law could lead to a reduction in workers' rights. We undertook an analysis of the employment law, including domestic and EU legislation and case law, to assess the full extent of the risk that certain principles would be lost. Our assessment concluded that the three principles we are restating carried a high level of risk of being lost because they are largely or wholly dependent on the special features of EU law that are removed by the 2023 Act with effect from 1 January 2024. Therefore, the instrument will restate the three principles before the end of 2023 to ensure these employment rights continue, notwithstanding the removal of the special features of EU law by the 2023 Act. We are confident that these changes comply with our international legal obligations, including those in the EU-UK Trade and Cooperation Agreement.

In conclusion, under this Government we have seen employment reach near record highs. The number of payroll employees for September 2023 was 30.2 million, 370,000 higher than this time last year and 1.2 million higher than before the pandemic. Through Brexit we regained the ability to regulate autonomously, and we are using these new freedoms to ensure that our regulations are tailored to the needs of the United Kingdom economy. In addition to providing cost and administrative savings for businesses, these reforms aim to provide clarity on complex holiday pay legislation so that it is simpler for employers to follow and comply. Approximately 5.1 million workers will be affected by the holiday pay reforms. By simplifying the legislation, workers will receive the holiday entitlement and holiday pay that they are entitled to, and the restatements of the three principles mentioned above will retain existing rights. I beg to move.

Lord Hendy (Lab): My Lords, this draft statutory instrument is the tip of the iceberg which noble Lords on this side of the House warned would appear over the horizon during the debates on the Retained EU Law (Revocation and Reform) Act 2023. Workers' rights are on a collision course with it. We said that the Act would be used to remove workers' rights. We moved amendments to try to protect those rights, but they were all rejected by the Government. For example, the then Minister, the noble Baroness, Lady Neville-Rolfe, said:

> "I should say straightaway, as my noble friend Lord Callanan already has, that this Government have no intention of abandoning our strong record on workers' rights, and nor are the delegated powers intended to undermine the UK's high standards on workers' rights. Our high standards were never dependent on our membership of the EU. Indeed, the UK provides for stronger protections for workers".

She then gave some examples.

4.30 pm

The noble Baroness continued:

> "These proposals do not remove rights or change entitlements but instead remove unnecessary bureaucracy in the way that these rights or entitlements operate, allowing business to benefit from the additional freedoms that we have through Brexit. The proposed conditions on workers' rights in the"—

particular amendment under discussion—

> "are unnecessary".—[*Official Report*, 15/5/23; cols. 116-7.]

The noble Lord, Lord Callanan, had said much the same thing in debates on 6 and 23 February.

Of the four things that this statutory instrument proposes, I will deal with the first, which proposes to remove the protection against rolled-up holiday pay. The purpose of the elimination of rolled-up holiday pay was to remove a disincentive on workers to taking their holidays with pay, as required under EU law, in particular for the protection of health and safety at work—see the case already cited, Robinson-Steele v RD Retail Services.

Secondly, the proposed statutory instrument will also reverse the judgment of our own Supreme Court in Harpur Trust v Brazel that annual leave entitlement is to be calculated by accrual on the basis of 12.07% of annual hours worked, instead of a standard 5.6 weeks to be taken when the worker reasonably requests it. The effect of the statutory instrument in that regard will be to cut holiday pay entitlement for many workers.

The impact assessment calculates this loss at no less than £248 million per annum. It describes that as a "transfer to employers", and so it is. In the middle of a cost of living crisis, this Government are putting their hands into the pockets of workers to extract, each year, £248 million and transfer that sum to employers—presumably to celebrate Brexit. It is as if the Government were urging workers to strike for higher pay.

Thirdly, the statutory instrument, in effect, removes the requirement on employers to keep adequate records to show that working time does not exceed 48 hours per week. For the purpose of guaranteeing health and safety, such a record system must currently measure the duration of hours worked by each worker and, as the noble Lord mentioned, must be objective, reliable and accessible—see Federación de Servicios de Comisiones Obreras v Deutsche Bank. One would have thought that it was essential, not just for health and safety but also for the calculation of pay, for employers to keep objective, reliable and accessible records of hours worked. However, under the proposed statutory instrument, the requirement is merely to have records that

> "are adequate to show whether the employer has complied".

Clearly, the quality of record keeping is going to fall and more workers are going both to unlawfully exceed the maximum working time and to find that they are not paid for all the hours that they actually work.

The fourth aspect of the statutory instrument is the amendment to the TUPE regulations, the effect of which would be to exempt consultation with worker representatives, prior to transfer, for certain classes of

[LORD HENDY]
workers. Existing law already exempts small employers with fewer than 10 workers; the statutory instrument will exempt employers with up to 50 workers.

I looked earlier this afternoon at the government statistics for October 2023, which show that there are 1,448,000 employers in this country, of whom only 43,615 employ more than 50 workers. In other words, this statutory instrument will exempt 97% of all employers from the consultation requirement in that regard. That means that, for them, prior consultation on TUPE transfers is effectively a dead letter. I hope the Government will make it clear to the constituencies in the red wall that that is what they voted for when they voted to "get Brexit done".

Many other points were eloquently made in the other place by the shadow Minister, Justin Madders—no doubt my noble friend will make more in a moment—but I will not develop them here. However, I end with a question to the Minister: how can these reductions in worker protection, particularly in the field of health and safety at work, be squared with the United Kingdom's obligations under the trade and co-operation agreement?

At the risk of going on longer than I should, I remind noble Lords that Article 386.1 of the trade and co-operation agreement defines labour and social levels of protection as

"the levels of protection provided overall in a Party's law and standards, in each of the following areas",

which include

"occupational health and safety standards".

Article 387.2 states:

"A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards".

Clearly, transferring costs from employees to employers does affect trade or investment, but there is more to it than that, because Article 399.5 says:

"Each Party commits to implementing all the ILO Conventions that the United Kingdom and the Member States have respectively ratified and the different provisions of the European Social Charter that, as members of the Council of Europe, the Member States and the United Kingdom have respectively accepted".

I will not go through all the ILO conventions, but I will mention ILO convention 187—the Promotional Framework for Occupational Safety and Health Convention—which the UK ratified. However, the European Social Charter of the Council of Europe provides, at Article 3:

"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake … to issue safety and health regulations … to provide for the enforcement of such regulations by measures of supervision … to consult, as appropriate, employers' and workers' organisations on measures"—

blah, blah, blah. Clearly, reductions in working time health and safety protection will breach ILO and European Social Charter standards and, hence, the trade and co-operation agreement. Would the Minister be good enough to explain how that circle is to be squared by these regulations?

Lord Davies of Brixton (Lab): My Lords, it is a pleasure to take part in this debate. It is a particular pleasure to be under the chairmanship of my noble friend Lord Stansgate. We are long-term colleagues; we worked together many years ago. As I said, it is a pleasure to see him in the chair.

My noble friend Lord Hendy has really said it all. I have very little to add, but I will say something specifically about the TUPE regulations to make it clear to the Minister and the Government in general that people do care, that these provisions are important and valid, and that they deliver real benefits to workers.

No doubt the Minister will tell us in his reply that the changes proposed are very limited, which raises the question of why the Government are bothering to make these changes. There is no evidence presented to us that in any way suggests that there was an upswell of demand to get rid of these provisions. It is as if the civil servants—the officials—were told, "We've got to show that we're doing something with these new powers". On this provision, the TUPE part—I make no comment on the other parts of the regulations—it is as if they were told, "Let's work out what's the smallest change we can possibly make to claim that Brexit is having some advantage". What is that big advantage? Some people are not necessarily going to be consulted if they had been consulted previously.

The results of the consultation as presented to us were very much as one would expect. When asked, "Would you like to get rid of this requirement?", some people said "Yes, we would". Equally, there were a lot more people who said, "No, we still need these protections". In truth, the consultation told us nothing that we did not already know.

I emphasise that the changes are limited, but I am still against them on the grounds of death by a thousand cuts. If you come back and chip away at workers' rights time after time, sooner or later you find that there are serious depredations in the protection that we rightly provide for working people. Will the Minister repeat, for the purposes of this Committee, the reassuring remarks that were made in the Government's response to the consultation? In particular, they said:

"The government agrees that the TUPE regulations provide important protections for employees, and they provide a strong legal framework for staff transfers"

and went on to say that

"workers' rights will continue to be protected".

Earlier in that response, talking specifically about the concerns many trade unions had expressed that this was an incremental move against their rights, the Government stated:

"In response to concerns about the TULRCA, the government would like to reassure respondents that the reforms we are proposing will not affect how"

the Act

"works. Employers will still be prohibited from undermining collective bargaining in breach of Section 145B"

of that Act. Will the Minister simply reassure this Committee that the Government stick by those commitments?

Baroness Brinton (LD): My Lords, I will make two very brief interventions on this. There is not much left to say, following the noble Lords, Lord Hendy and Lord Davies of Brixton, but it is important just to note a couple of things.

First, from these Benches, we contest the assumption of the Government that implementing the 2019 judgment to the CJEU, known as the CCOO case, would be

"disproportionate, particularly while the economy is recovering from the impact of the Covid-19 pandemic and the impacts of war in Ukraine".

I can completely understand the concern about the effect of the pandemic. Having been health spokesperson during the first three years of it, I really understand why that is the case. But I struggle to understand exactly what the effect of the war in Ukraine is on record keeping by employers. I would be grateful if the Minister could give me some guidance on that, because I do not see a logic.

Secondly, the Government keep talking about using artificial intelligence to reduce bureaucracy. Many companies already use such systems. The hand-written timekeeping systems that I used in my youth are long gone. Even the spreadsheets of a decade ago are gone. One now fills in something that feeds straight back into a database that runs the organisation. It takes far more information than just the 15 minutes of work, or whatever it is, on a particular project, and it is then used to assess the progress of the company and the progress of individuals—whether some of that is right or not is another matter, but it is there. It seems to me that a Government who are arguing that we should be focusing on using AI are—by saying, "Actually, we're assuming there is a massive burden"—not keeping up with what is happening in the workplace at the moment. So can the Minister explain this massive burden, in the light of the way that records are currently kept by most organisations?

4.45 pm

Finally on this particular point, I say thank you very much for the three impact assessments; far too many SIs do not have them, and at least we do have the impact assessment here. It sets out:

"Option 0: Do Nothing, i.e. allow continued legal uncertainty about record keeping obligations".

The answer is, "Well, we don't want the uncertainty so we're just going to legislate to remove it". That seems a rather large jump, so can the Minister can explain exactly why that is justified, particularly in light of the comments I have just made about reducing bureaucracy?

I have an even briefer comment on the TUPE regulations. It was a pleasure to follow the noble Lords, Lord Hendy and Lord Davies. I am not surprised that the trade unions are concerned that this will undermine the role of unions in the workplace. From these Benches, we say that, at times of TUPE, whether there is a small or a large number of people in a firm, that is the exact point at which they need support and advice from people who are not their employer but who understand the roles that are being considered to be TUPE-ed. I wonder whether the Minister might comment on that.

The impact assessment and the Explanatory Memorandum go into some detail in explaining why they will now add large firms proposing to TUPE fewer than 10 employees. Is there any assessment of whether firms might game the system by doing TUPEs in small numbers to be able to avoid having to use this system?

Other than that, I echo the points made by both the noble Lords, Lord Hendy and Lord Davies, on concerns about the reduction of workers' rights more generally, which I believe we need to be concerned about.

Lord Leong (Lab): My Lords, I thank the Minister for introducing the regulations, and all noble Lords who contributed to this debate. It is a pleasure to see my noble friend Lord Stansgate and welcome him to the chair.

As we have heard, this instrument does three main things. It reduces requirements under the working time directive, simplifies annual leave and holiday pay calculation and streamlines the regulations that apply when a business transfers to a new owner. This results from the retained EU law Act removing the interpretive effects of EU law on the UK statute book.

As my noble friend Lord Hendy mentioned, during its passage through the House, many of us on these Benches made it absolutely clear that the Act should never be a vehicle for the removal of important existing rights of British citizens. The Government seek to assure us that these changes do not amount to that, and that they simply remove extra bureaucracy. However, in my relatively short time in this place, I have learned to be wary of such assurances. It is said that the devil definitely lies in the detail. However, accurate records leading to accountability surely should not be seen as an evil in itself.

First, I turn to the change to the working time regulations. This represents the greatest risk to workers' protection. It means that businesses will not have to keep records of their workers' daily working hours if they can demonstrate compliance without doing so. Will the Minister accept that removing the requirement for accurate record-keeping, tilting the balance of power away from workers to the employer, in fact removes workers' rights, not unnecessary bureaucracy?

The Explanatory Memorandum says that the instrument will "remove the uncertainty", without quite explaining what this actually means. The Government argue that the obligations were disproportionate and could damage relationships between employers and workers. Can the Minister expand on how removing clarity could damage this relationship and do anything but actually increase uncertainty? Can he also explain how businesses will demonstrate compliance without records and how a lack of compliance could be evidenced or enforced? Can he expand on the implied relationship between recording working hours and reducing economic activity, or is he prepared to accept that such a correlation does not in fact exist?

Secondly, the instrument provides a simplification of annual leave and holiday pay calculations. In all my years of owning and managing businesses and employing thousands of employees, I have never seen such a complicated system—so much for reducing unnecessary bureaucracy. Can the Minister guarantee that, as a result of this regulation, no workers will lose out on the annual leave and holiday pay to which they are currently entitled?

Finally, I turn to rights under the Transfer of Undertakings (Protection of Employment) Regulations —TUPE. My noble friend Lord Davies of Brixton

[Lord Leong]
eloquently set out why this change is totally unnecessary. As TUPE transfers currently stand, employers must inform and consult with representatives from a trade union or, if there is none, other employee representatives. Employers can inform and consult directly with employees only if there are fewer than 10 employees in the organisation. This instrument will amend TUPE consultations so that they can take place directly with employees in the absence of existing representation, if either the company has fewer than 50 people or the transfer involves fewer than 10 employees. This clearly represents a reduction in the existing rights of workers in such organisations. Can the Minister confirm whether ACAS has been consulted on these changes? I look forward to his response.

Lord Johnson of Lainston (Con): As always, I thank noble Lords for their valuable input in this crucial statutory instrument debate. I also join in the thanks to the noble Viscount, Lord Stansgate, and welcome him to his position.

I will try to go through the various points raised, beginning with those of the noble Lord, Lord Hendy; by answering some of his questions, I will have a chance to answer others as well. The point about rolled-up holiday pay is important because, if you are an irregular-hours contractor and you work for an employer for a very short period of time, for example, it would be impractical for you to take a fraction of a day's holiday paid in that way. It is much more reasonable, useful and suitable for the employee to have their holiday pay rolled up into the work they are doing.

This is important, and we consulted on whether we should bring it in for all employees in the UK. We decided that that was very much not the right thing to do, precisely for the reasons raised by the noble Lord: it is essential, in many respects—in order to have a good and functioning workforce—that holiday is taken at the right time and that people have the right level of rest, let alone in relation to the implications for health and safety. As a result, this only applies to part-year and irregular-hours workers. Whether the employees wish to receive their pay in that way is at the discretion of the employer, in consultation with them. From my point of view—I have been an employer—this strikes me as eminently reasonable. It does not necessarily change anything significant; it just clarifies the important point about how that can be rolled up. We also brought in important clarifications between part-year workers' holiday entitlements and irregular hours workers' holiday entitlements, which now bring them into line. Again, this is about fairness, which I know that the noble Lord is keen on.

On record-keeping, it is relevant to mention the court case that has been referred to: CCOO v Deutsche Bank—I will use the acronym "CCOO", rather than try to pronounce the full name. It is important to note that we are not changing anything at all. I am not sure whether noble Lords realise that this was never implemented in the UK, so the point is that we will not implement it in the UK and it is currently not implemented. Tomorrow morning, or whenever the statutory instrument comes into effect, there will be no change in employment systems for any company—no one would see any difference—because we are not implementing this necessity to track every minute of every worker's day. Instead, employers will have the rights that they have today, so if we are comfortable—which we are—with the obligations that employers have to confirm under the working time directive, we should be very comfortable with where we are.

We believe very firmly that bringing in this necessity would in many instances be unnecessary. This does not relate to making sure that irregular-hour workers, workers in part-time roles or those who work complex shifts, and so on, have worked the right amount of time. In most instances, this is for regular office-hours workers who work roughly nine to five; to have them clocking in and out, and having complex systems monitoring them, is entirely unnecessary. We do not do it now and do not see why we should do it. We think that the cost to industry in this country could be much as £1 billion in terms of new systems and familiarisation.

The noble Baroness, Lady Brinton, mentioned Ukraine. The consultation referred to the fact that in a cost of living crisis, and with other global headwinds and challenges, it would seem unnecessary and wrong to impose burdens on businesses that we are not already imposing on them. There is nothing to lose. It is important to be reassured that employers' obligations have not been changed. There are no changes as a result of this instrument. It simply ensures that we do not have to conform to unnecessary and restrictive paperwork-oriented activities.

The noble Baroness, Lady Brinton, also raised an important point about the use of AI and technology. I completely agree with her raising those points. I do not think it is in doubt that employers will want to use AI to ensure that they are conforming to their obligations and that their workforces are properly managed, but we should not forget that it is important that we respect small businesses in this country, which may not have the time or capital to invest in such systems. In most of these instances, we think it is unnecessary. I believe that, collectively, we are doing a sensible act in not implementing this judgment, by keeping things as they are and ensuring that workers are protected. Employers have obligations and we are allowing the system to function appropriately.

The third point covered by noble Lords was on TUPE. I know that the noble Lord, Lord Hendy, has been described as the barrister champion of the trade union movement, and it is a title of which he should be proud, but this relates to organisations with fewer than 50 employees—currently, it relates to organisations with fewer than 10 employees—who do not have a representative force in place. While he is indeed the barrister champion of the trade union movement, it may surprise him to know that some companies do not have trade union movements or representative organisations in them. We find ourselves in a bizarre situation where small companies with few employees are obliged to have elections for representative organisations that do not exist. Even in the world of the noble Lord, that would seem bizarre, unnecessary and indeed unkind to small businesses. It does not at any point derogate the rights of employers when it comes to TUPE transfers where there are representative organisations.

The noble Lord, Lord Leong—perhaps it was the noble Baroness, Lady Brinton, or the noble Lord, Lord Davies—rightly raised whether this can be used as a way round, so that large companies transferring small units to other companies could do it piecemeal, say 10 employees at a time. I do not believe that that would be the case. The obligations of an employer under TUPE regulations—the liabilities accruing to them—have not changed in any material way whatever. Tribunals where they could be found at fault would clearly see through such a plan. I am sure noble Lords know that when you buy businesses that are relevant in terms of team transfers to other companies, it simply does not work in that way, so I do not believe there can be an abrogation of rights.

Let me give an example, which I am sure noble Lords will agree is common sense: if you are transferring a small unit of two people, I understand that you are currently obliged to have an election and a representative for two people who are not members of a union and do not have a representative organisation. That does not mean they cannot receive external advice; of course, we would always advise people to receive the advice they need. In this instance, we are clarifying the situation, simplifying it and making it completely reasonable. At no point are we rolling back on any of the workers' rights that we hold so strongly in this country and which we are committed to, either through trade agreements with Europe or any agreements that we have undertaken.

Genuinely, I have looked very carefully at each aspect of this statutory instrument and think it is a welcome tidying-up of paperwork and bureaucracy, alleviating burdens on businesses while at the same time simplifying the rights of workers and ensuring that the economy can function effectively. I commend this instrument to the Committee.

Lord Hendy (Lab): I wonder whether the Minister would care to say something about the trade and co-operation agreement. If he does not want to, that is for him.

Lord Johnson of Lainston (Con): I am always delighted to talk about the trade and co-operation agreement, as it is one of my favoured specialist areas, but I am not sure what the noble Lord wants me to refer to. If he is relating this back to the relationship with the CCOO v Deutsche Bank SAE case, the important point is that we have not brought this into effect as it stands, in any event, so I am not sure what the relevance there is. I cannot really see how his comments on the need to protect workers' rights in terms of derogation of input production capabilities in relation to our European colleagues are relevant here. These are paperwork changes; they do not negatively change the rights of any workers in the UK.

5 pm

On the TUPE process, I cannot see why any noble Lord in this Committee would disagree with what is a perfectly rational change in the paperwork processes. As for the other sections that I went through, it is absolutely right that we should clarify how holiday pay and entitlement are calculated for part-year and irregular-hours workers. I would be delighted to have further discussions with the noble Lord to ensure that we have not missed anything, but I am very comfortable, as are the Government, that these are eminently sensible, detail-orientated alterations to processes, which will allow businesses to function better and workers to be protected more clearly. That is the core concept of many of these moves—that workers understand clearly and easily what they are entitled to, rather than necessarily having to refer to complicated legal texts or even the text of *Hansard*.

Motion agreed.

Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023

Considered in Grand Committee

5.01 pm

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

That the Grand Committee do consider the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023.

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): My Lords, these regulations were laid before the House on 16 October 2023 under the Retained EU Law (Revocation and Reform) Act 2023. The retained EU law Act brought about significant changes to the domestic body of law named retained EU law. First, it provided that EU interpretive effects would cease to apply to UK legislation at the end of 2023. Secondly, it provided the Government with powers to revoke, reform and amend retained EU law more easily. Finally, to reflect the loss of interpretive effects, it provided that "retained EU law" would be renamed "assimilated law" at the end of 2023. Therefore, the Government are bringing forward this instrument to ensure that references to "retained EU Law" in primary legislation are changed to "assimilated law", and to make related consequential changes.

The SI will enact consequential amendments to 107 pieces of primary legislation in order to implement the renaming of retained EU law as assimilated law and to make related textual changes. These changes reflect what has already been agreed to by Parliament as part of the passage of the REUL Act. This SI simply implements consequential changes that both Houses have already agreed. For example, the SI states that, in Section 4B(3A) of the International Organisations Act 1968, "retained EU" should be substituted by "assimilated". The changes are necessary to ensure that the statute book reflects the REUL Act and to provide legal clarity and accessibility to users of legislation.

The SI will make technical amendments to Acts of Parliament containing areas of devolved competence, including making changes to Northern Ireland primary legislation. I am pleased to confirm that the Welsh and Scottish Governments have provided consent, as has the Northern Ireland Civil Service in the absence of an Executive and Assembly. I thank officials for their close working and collaboration on this matter.

[LORD JOHNSON OF LAINSTON]

It is worth noting that this SI is a standard example of using a consequential power. These powers are common in many Acts. They simply allow the Government to make consequential amendments to legislation that both Houses of Parliament have already passed. The fact that we are debating such technical changes as this demonstrates the Government's commitment to ensuring proper scrutiny for all statutory instruments laid under the REUL Act.

Finally, although this SI does not enact reform or make any policy changes, the Government's commitment to reform remains unchanged. Our priority is to bring forward reforms that will unlock innovation, reduce burdens for business and ensure that our regulations are the best fit for the UK. I am the Government's lead on smarter regulation, so reforming our regulations is a personal priority for me. I look forward to sharing additional reform SIs with the House in coming months.

With all that in mind, the principles behind the changes we are proposing today have already been agreed by both Houses as part of the passage of the retained EU law Act. These changes are necessary to ensure that the statute book reflects the provisions enacted by that Act and to ensure that the terminology is consistent throughout primary legislation on our statute book. Nothing that this SI does will enact policy changes. I beg to move.

Lord Leong (Lab): My Lords, I confess I struggled to find the controversy in this statutory instrument. All it actually does is bring into effect the use of the phrase "assimilated law" instead of "retained EU law". Paragraph 7.1 of the Explanatory Memorandum states:

"This instrument does not result in any change in policy effect, but rather provides clarity to users of legislation that the specific changes made by the REUL Act have taken effect—thereby helping to further modernise our statute book and improve its clarity and accessibility for businesses and consumers alike".

It is basically a linguistic update. We on this side of the Committee very much welcome any bit of clarity and assistance that can be offered to business. From what we can see, it certainly is not a controversial statutory instrument. On that basis, we will support it.

Lord Johnson of Lainston (Con): I thank the noble Lord, Lord Leong, as I always do, for his wise words. I will say no more than that.

Motion agreed.

Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023

Considered in Grand Committee

5.07 pm

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

That the Grand Committee do consider the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023.

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

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, these regulations amend the exemptions from the financial promotion regime for high net worth individuals and self-certified sophisticated investors. I note that this statutory instrument was raised as an instrument of interest by the Secondary Legislation Scrutiny Committee. I will address the SLSC's comments in the course of my remarks.

The exemptions that the Grand Committee is considering are designed to help small and medium-sized businesses raise finance from high net worth individuals and sophisticated private investors, or "business angels", without the cost of having to comply with the financial promotion regime. These exemptions allow businesses to make financial promotions related to unlisted companies without being authorised by the FCA or having to follow FCA rules on financial promotions.

The existence of these exemptions reflects the important role that private individuals play in enabling SMEs to raise finance. However, as financial promotions made under the exemptions are not subject to the stringent safeguards of the financial promotion regime, the scope of the exemptions must be designed carefully to reduce the risk of consumer detriment.

These exemptions were last substantively updated in 2005. Since then, there have been significant economic, social and technological changes to the context in which they operate. For example, we have seen the development of an online retail investment market, which has made it easier for individuals to invest in unlisted companies. There has also been significant price inflation over the past two decades. Together, this means that many more consumers will fall within the eligibility criteria to use the exemptions than in the past.

In addition, there are concerns about misuse of the exemptions. They includes the risk of businesses seeking to use the exemptions to market investments inappropriately to less sophisticated ordinary retail investors. This risk was recognised in a report by the Treasury Committee in the other place, and it led to a recommendation for the Government to re-evaluate the exemptions to

"determine their appropriateness and consider what changes need to be made to protect consumers".

In light of this changing context and that committee's recommendation, the Government reviewed the exemptions and consulted on a set of reforms. Having considered the feedback to the consultation, the Government are bringing forward a set of amendments to the exemptions to address the risks that have been identified.

I now turn briefly to the substance of the statutory instrument. These regulations raise the financial thresholds to be eligible for the high net worth individual exemption to require an income of at least £170,000 in the last financial year or net assets of at least £430,000 throughout the last financial year. For the purposes of this exemption, net assets do not include an individual's primary residence or their pension.

The regulations also amend the criteria to be eligible for the self-certified sophisticated investor exemption. They do this in two ways. First, they remove the criterion of having made more than one investment in an unlisted company in the previous two years. Following the rise of online investing, it is much easier for individuals to invest in unlisted companies than it was

in 2005 when this exemption was introduced. The Government are of the view that this criterion is no longer an indicator of investor sophistication and that it should be removed. Secondly, the regulations increase the company turnover required to satisfy the criterion related to being a company director from £1 million to £1.6 million. This will mean that directors of companies with at least £1.6 million of turnover will remain eligible for the self-certified sophisticated investor exemption.

These regulations also improve the statements that investors are required to sign when using the exemptions. This should ensure that investors have a better understanding of the protections they lose when receiving financial promotions under these exemptions. The regulations will make minor and consequential changes, including applying these changes to promotions of collective investment schemes that invest in unlisted companies.

Further, the instrument amends the separate exemptions to the regulatory gateway for financial promotions, ensuring that those exemptions apply as intended. This is a rather technical area of policy, and I hope noble Lords will forgive me for taking a moment to explain the effects of these changes. First, the instrument amends the exemption that applies to authorised persons approving financial promotions of unauthorised entities that are part of the same group. Secondly, it amends the exemption that applies to authorised persons approving financial promotions of their appointed representatives in relation to regulated activities for which the authorised person, as principal, has accepted responsibility. The effect of these changes is to allow onward communication of the promotion by any unauthorised person. This brings the scope of those exemptions into line with the approach for the exemption that applies to authorised persons approving financial promotions that they have prepared themselves. This correction intends to ensure that any unauthorised person will be able to communicate a financial promotion where that financial promotion has been approved by an authorised person within the scope of any of the exemptions to the gateway.

I turn to the comments made by the SLSC. In its third report of this Session, the committee highlighted this statutory instrument as an instrument of interest. It encouraged the Treasury to reassess the financial thresholds more regularly in future, and the committee is right to note that these thresholds have not been updated in quite some time. The Government will keep the financial thresholds under review to ensure that they remain fit for purpose into the future.

The changes being introduced through these regulations take account of inflation over the past two decades and amend other eligibility criteria to reduce the risk of capturing ordinary consumers. Overall, these regulations are designed to reduce the risk of consumer detriment while ensuring that SMEs can continue to raise capital as a result of financial promotions made under these exemptions. I beg to move.

5.15 pm

Lord Sharkey (LD): My Lords, let me say at the outset that we support this statutory instrument and the two that are to follow—but we do have some questions and comments. I note that, last week, the Commons debated all three instruments together, as one group. Why have the Government chosen to take a different approach in this House by splitting the debate into two sections? What does this signify, if anything?

Dealing with the instrument before us, we believe that it contains relatively uncontroversial and appropriate updates to existing legislation, following on from the TSC's recommendations as made in its report on the collapse of London Capital & Finance in June 2021, as the Minister noted. The committee said that the FPO

"would benefit from reform due to the increasing risks associated with the exemptions that allow customers to self-certify as high net worth or sophisticated".

It continued:

"The Treasury should—as a matter of priority—re-evaluate the Financial Promotion Order exemptions to determine their appropriateness and consider what changes need to be made to protect consumers".

That was two and a half years ago. Perhaps the Minister could explain why it has taken so long to address the TSC's recommendation. It is obvious that the risks addressed by the TSC continue to increase, as even a cursory glance at the inviting investment ads on any Tube train will show.

Some questions arise directly out of the consultation carried out by the Treasury in preparation for the SI. Angel investors had some doubts about raising the high net worth thresholds. They noted that raising the thresholds

"could reduce the potential for broadening angel network participation, including among less represented groups such as women and ethnic minorities. They also raised concerns that lower angel investor participation in the future could reduce SME investment, particularly for younger start-ups".

I would be grateful if the Minister could tell us why these worries were discounted, particularly for the SMEs.

The consultation report also noted that

"many responses provided suggestions for improvements to the investor statements to ensure greater investor engagement. These included adding additional risk warnings and positive frictions, to encourage investors to engage meaningfully".

These suggestions appear not to have been taken up by HMT. Can the Minister tell us why that is?

We also note that, in its third report, the SLSC encourages HMT to reassess the thresholds contained in this instrument on a more timely basis, as the Minister has mentioned. It is 18 years since the thresholds were last updated. Why cannot the Government agree to a regular—say, quinquennial—change to smooth out the boundary changes? In closing, I confirm again our support for the clearly necessary updates proposed by this SI.

Lord Livermore (Lab): My Lords, we agree with these regulations, but I will ask the Minister just one question, which follows on from the final question of the noble Lord, Lord Sharkey. As the Minister said in her opening remarks, the exemptions to the financial promotions regime were last substantively updated in 2005, nearly 20 years ago. Given current high inflation rates, and the fact that prices have already risen nearly 5% since the January 2023 data used to reset the thresholds in this instrument, these new figures could arguably be said to be already out of date. I note what the Minister said in her opening remarks, but can I push her to provide at least an approximate timeframe for when the thresholds are likely to be reviewed again?

Baroness Vere of Norbiton (Con): I am grateful to both noble Lords for their contributions to this short debate. The noble Lord, Lord Sharkey, asked why we are doing this in two debates rather than one. I do not know, but I think it was probably decided by the business managers—whoever they may be. If one looks at the two SIs, they are substantially different and deal with different parts of the financial services market, so potentially that is why. Anyway, I for one am delighted to have the opportunity to get up twice and introduce two SIs, because I will be able to focus very much on the questions the noble Lord raised, and indeed the follow-up question from the noble Lord, Lord Livermore.

I only partially agree with the charge made by the noble Lord, Lord Sharkey, that the Government were too slow in addressing the TSC recommendation. The Government did take action: we launched a consultation in December 2021 and then took the time to consider the feedback we received. It is fair to say that we received a range of feedback, so we needed to think about the proposals and how we would take them forward. We reflected very carefully on that feedback. There was a balance to strike between better protection for consumers and being able to get much-needed capital into the SME sector. The noble Lord will know there is then that period during which nothing appears to be happening, but lots of lawyers are working very hard and drafting and preparing all the relevant legal and associated documents. So we are in a good place now and I am relatively content with the speed of progress.

The noble Lord asked whether the Government feel that there would be a reduction in investment in angel networks and SMEs. Again, we considered very carefully the various views shared by respondents on the financial thresholds to qualify for the high net worth individual exemption, because we recognise the importance of the angel investment community. We considered the responses and decided to increase the thresholds only in line with inflation, rather than bring forward a more substantial rise—which was advocated by some; obviously, others would not have wanted such a significant rise.

The exemptions will continue to facilitate angel investment in early-stage businesses and enable a broadening of angel network participation. This is the important point: where a person has been a member of a network of business angels for more than six months, they will still qualify for the self-certified sophisticated investor exemption. So there is a route through, provided that an investor joins the angel network, attends it and ensures that they fully understand what they are doing with their hard-earned cash.

The noble Lord, Lord Sharkey, then talked about investor statements; he felt that we had not gone far enough. However, the regulations make significant changes to the investor statements. First, the format of the investor statement is being updated, including making changes to the conditions to be considered a high net worth or self-certified sophisticated investor more prominent, and making it clearer to investors that promotions made under these exemptions may not be accompanied by any protections. So there will be change in what the statements look like.

Secondly, the language in the statements is being simplified: we are removing references to other pieces of financial services legislation, as that is unhelpful. We need to make it more consumer-friendly, such that all the information is in one place in plain English. Lastly, the statements will require greater investor engagement. The updated statements will require a prospective investor to select which criterion they meet. So they cannot just sign it; they will have to say that they meet a certain, specific criterion to be either a high net worth or sophisticated investor.

There has been much discussion about the updating of the thresholds, and I accept that 18 years is probably too long. However, I will not commit the Treasury to a particular date in the future for when the thresholds should be looked at again, because that will depend on what happens to inflation. There will be periods of very low inflation, when one would not want to update the thresholds, because, on the flip side, there would be an awful lot of familiarisation from investors and investee companies to ensure that they are keeping track with the exemptions. There is a balance, but I accept that we should—and we will—keep these financial thresholds under review, such that there is not a significant disconnect in future.

The noble Lord, Lord Livermore, asked why we used January 2023 inflation data. This is not rocket science. When we did the consultation, there were people who wanted the thresholds to be higher and those who wanted them to be lower. To a certain extent, that is why we came up with an approximation of the past 18 years' inflation. Whether we chose January or a slightly later date for inflation probably would not have made a significant difference. It was necessary to choose a moment in time to make the revised calculation and we chose January to provide that certainty. We will watch inflation and review the limits and thresholds again in due course.

Motion agreed.

Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023

Considered in Grand Committee

5.25 pm

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

That the Grand Committee do consider the Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, these two instruments make updates to financial services regulation to ensure that it remains effective following the passage of the Financial Services and Markets Act 2023, which I will refer to as FSMA 2023.

The Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 make two targeted changes to financial services retained EU law or REUL. FSMA 2023 repeals REUL in financial services, allowing the Government to deliver a smarter regulatory framework for the UK with regulation designed specifically for UK markets and consumers.

The repeal of each individual piece of REUL will be commenced once the Government and the regulators have made appropriate arrangements to replace it with UK rules or determined that no replacement is needed. Until financial services REUL has been fully replaced, FSMA 2023 ensures that it can be kept up to date through a power to modify REUL before its repeal takes effect.

The first change made by the instrument reintroduces a discount factor into the UK Capital Requirements Regulations. The discount factor reduces the amount of capital that small and medium-sized financial services firms are required to hold for certain derivatives activity.

The Secondary Legislation Scrutiny Committee raised this SI as an instrument of interest, noting the timeline of the original removal of the discount factor from UK legislation and the Government's policy on mirroring changes in EU law. The Government removed the discount factor in April 2021 through the Financial Services Act 2021. The EU also removed the discount factor from its version of the Capital Requirements Regulations at that stage before reintroducing it later that year. The Government do not have a policy of mirroring EU law and, through the smarter regulatory framework, will tailor regulation to the UK. After industry raised concerns with the Government about the removal of the discount factor, we acted swiftly to reinstate it through this instrument. This will provide certainty to firms and align regulation to best practice globally.

The instrument also amends Article 51(5) of the benchmarks regulation to extend the transitional period for the third-country benchmarks regime to the end of 2030. Thanks to the transitional period currently in effect, UK users of benchmarks have access to non-UK benchmarks. The third-country regime, once it takes effect, would require administrators of those benchmarks to pass through one of the three access routes—equivalence, recognition or endorsement—for UK users to rely on them. There is a variety of issues with the third-country regime as originally drafted in the EU. For example, some third-country benchmarks are provided on a non-commercial basis, and administrators may therefore lack the economic incentives to come through these access routes. If the transitional period were to end with the third-country regime in its current form, many administrators may be unable or unwilling to use this regime for continued UK market access. Losing access to these third-country benchmarks could undermine the UK's position as the centre for global foreign exchange and derivatives markets and have further repercussions given the widespread use of third-country benchmarks by UK firms.

This instrument therefore extends the transitional period from the end of 2025 to the end of 2030. This extension will provide time to review the UK's third-country benchmarks regime and implement any changes in time for industry to take the necessary steps to comply with the regime before it comes into force.

The Secondary Legislation Scrutiny Committee asked about any risks posed by this extension. Although extending the transitional period entails some risk by allowing the continued use of lower-quality third-country benchmarks in the UK, those risks are outweighed by the risks that would arise from allowing the transitional period to end with the third-country regime in its current form. Risks arising from the use of third-country benchmarks during the transitional period can be mitigated through regulation in the home jurisdiction of those benchmarks and through international co-operation for jurisdictions where specific benchmarks regimes are not in place.

5.30 pm

The second SI—the Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023—makes a number of consequential amendments arising from FSMA 2023. First, it makes consequential changes that are needed as a result of the repeal of a number of pieces of retained EU law. The repeals in question will take effect at the end of the year. Secondly, it updates a cross-reference in FSMA 2023 to align the Bank of England's reporting requirements with its remit and responsibilities. Thirdly, it amends the Payment Card Interchange Fee Regulations 2015 to ensure that the Payment Systems Regulator effectively co-operates with other regulators under a new direction power provided by FSMA 2023. These are consequential changes that ensure the continuing functioning of the statute book following the passage of FSMA 2023.

Together, these SIs deliver important changes to ensure that the financial services regulatory framework continues to function effectively for consumers and businesses alike. I beg to move.

Lord Sharkey (LD): My Lords, we have no comment to make on the second statutory instrument in this group, except to say that we agree with what the Minister said during the debate in the Commons that for the entirely consequential changes brought about by this instrument "consequential" means "necessarily following on from" not "of consequence".

We support this instrument, but we have a little more to say about the first. As a mathematician by education, I should start by saying how pleased I was to see e—Euler's number, the base of natural logarithms—make an important appearance on page 2 of the instrument, albeit without any explanation at all for the reader of what it might mean. I think that may be rather odd.

The EM explains that the discount factor—a means of reducing the amount of capital that small and medium-sized firms hold for their trading and derivative activities—was removed in error from the capital requirements regulation, both here and in the EU. Reinstating it via this SI will help ensure that the UK remains competitive with other jurisdictions. We entirely support this remedial measure but note the SLSC's comments about the matter. The Minister has already mentioned some of them.

The question really is: how is it that the mistake, and it was a mistake, was introduced into the UK after it had already been corrected in the EU? Does this not suggest incompetence or, at the very least, insufficient awareness of relevant activity in key trading partners? What steps has the Treasury taken to eliminate this kind of error?

We also support the extension of the transitional period for third-country benchmark regimes for five years to 31 December 2030. As the Minister said, if we

[LORD SHARKEY]
were to lose access to these third-country benchmarks, it could weaken our position as a centre for global FE and derivatives. This SI gives us six years to sort out a new regime, as I believe the EU is also contemplating.

How, when and with what do we intend to replace these transitional arrangements? What steps are currently being taken to make sure that we do indeed replace them, or are we content to extend this supposedly transitional arrangement indefinitely? Are we engaged in discussion with our EU counterparts over the matter? The Treasury told the SLSC that the risks arising from the extension of the transition period were "small, manageable and temporary". The Minister mentioned and addressed that issue, but I would be grateful if she could expand on exactly what the risks are, how they are manageable and why they are temporary. Having said all that, I close by saying that we support this SI.

Lord Livermore (Lab): My Lords, overall, we agree with these regulations. When the first of these two grouped SIs was debated in the House of Commons, my honourable friend Tulip Siddiq, the shadow Economic Secretary, posed two questions to the Minister. Unfortunately, he did not address either of them in his response, so I will ask them again today. Of course, the noble Baroness is welcome to write with an answer, if that is preferable.

The two questions are on changes to capital requirements. First, given that the Prudential Regulation Authority is proposing to remove the SME supporting factor when it confirms its final rule, are the Government not reintroducing a measure that the PRA plans subsequently to abolish? Secondly, if the PRA goes ahead with its plan, what reassurance can the Government provide that the UK's SME lending market will not be left at a significant competitive disadvantage against its European counterparts due to the increased cost of capital?

The noble Lord, Lord Sharkey, asked about the reintroduction of a discount factor, which was mentioned by the Minister in her opening remarks. I note that the discount factor was previously "unintentionally" removed from the relevant regulation in both the UK and the EU. I also note that the discount factor was removed from UK law in January 2022, and that this was identified as an issue only 18 months later, in July 2023. However, apparently, the factor was reinstated by the EU into its own laws four months prior to it being unintentionally removed from UK law back in September 2021. As the noble Lord, Lord Sharkey, observed, it is odd that a mistake was introduced in the UK after it had already been corrected in the EU. The Minister is clearly correct to note that the UK does not mirror changes to EU law post Brexit, but does she think that keeping up to date with developments in the EU, where parallel measures remain part of UK legislation, could help to ensure that avoidable errors such as this do not occur?

Baroness Vere of Norbiton (Con): Once again, I am grateful to both noble Lords for their contributions to this short debate. I will write further on what the noble Lord, Lord Sharkey, said about the formula—it is not that complicated; I am an engineer by training, and it is not beyond the wit of man to understand this. But we might provide a little more explanation in due course.

I am not sure I can say much more about the timing of the removal and reintroduction of the discount factor. It is not a particularly widely used element within the system, and therefore the industry took a while to notice that the change had happened. Obviously, there are lessons to be learned in these circumstances, and we moved to reintroduce it as quickly as we could. Of course, the regulators are well aware of what happened. I am grateful to noble Lords that we are able to get it back on to the statute book today.

That brings me on to the various discussions we have with the EU, as close trading partners. The noble Lord, Lord Sharkey, asked what changes will be next. There will be potential changes to the third-country benchmarks regime, but that is in the context of much wider changes within the smarter regulatory framework, so the repeal of each piece of retained EU law will be commenced once appropriate arrangements are in place with the UK rules—or, as I said in my opening remarks, when the Treasury has determined that no replacement is needed. Alongside that, we are delivering our smarter regulatory framework in order to replace retained EU law as necessary.

It will be a carefully planned and phased approach. We believe that we have given ourselves sufficient breathing room by making the transitional period last until 2030. It may be that we need all that time, or it may not, but we want to make sure that it fits into the wider reform of the programme to ensure that we prioritise those things that we feel are needed first in order to benefit our very successful financial services sector. Of course, we continue to have enduring and sensible dialogue and co-operation with other jurisdictions, including the EU. For example, on 19 October, the Treasury hosted the first joint EU-UK financial regulatory forum, which welcomed participants from not only the European Commission but UK and EU regulators to discuss common issues. It is clear that the UK and the EU regulatory frameworks will change over time and ultimately remain the autonomous concern of the respective parties, but it is also important that we discuss changes for the benefit of sharing our understanding.

The noble Lord, Lord Sharkey, asked about the risks from the benchmark extensions. It should be noted that systemically used benchmarks pose the greatest risk. These benchmarks are subject to UK benchmark regulation because they are administered in the UK. They might be subject to another jurisdiction's benchmark regime or be created by a third country's central bank. That also means that there are some benchmarks that do not fall into those categories—these are possibly the lesser-used ones. But it is the case that UK benchmark regulation places additional requirements on the users of benchmarks that continue to apply where they use third-country and domestic benchmarks. These requirements include, for example, robust fallback provisions in the contract should the benchmark become unavailable for whatever reason, or fail—so there are protections there. As I noted in my opening remarks, we recognise the risks and also the benefits that those benchmarks have in underpinning a very significant part of our financial services sector.

The noble Lord, Lord Livermore, asked about the questions raised by his colleague in the other place. I will write with more information. I have lines here on the Prudential Regulatory Authority, Basel III et cetera, but his question deserves a fuller answer about how we see this transitioning into that regime.

Motion agreed.

Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023

Considered in Grand Committee

5.43 pm

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

That the Grand Committee do consider the Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023.

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

Motion agreed.

Equality Act 2010 (Amendment) Regulations 2023

Considered in Grand Committee

5.44 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Equality Act 2010 (Amendment) Regulations 2023.

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

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, this instrument was laid on 7 November 2023 and debated last Wednesday in the other place. Its purpose is to reproduce select interpretive effects of retained EU law in order to maintain equalities protections against discrimination. These protections are reproduced by making amendments to the Equality Act 2010. I thank the Joint Committee on Statutory Instruments for its consideration of and comments on the regulations.

It is important to make clear from the outset that the overwhelming majority of our equality law is contained in domestic legislation—the Equality Act 2010, approved and voted on by our own Parliament. The interpretive effects of retained EU law have a bearing on our equality framework in only a limited number of areas.

This instrument uses the powers of the Retained EU Law (Revocation and Reform) Act 2023 to ensure that necessary protections are put into our statutes. This will end the inherent uncertainty of relying on judicial interpretations of EU law and instead ensure that strong and clear equality law protections are set out in our domestic legislation. It applies across Great Britain.

The instrument safeguards and enshrines key rights and principles across a range of areas. First, it protects women's rights: maintaining equal pay protections where employees' terms and attributable to a single source, but not the same employer; protecting women from less favourable treatment at work because they are breastfeeding; protecting women from unfavourable treatment after they return from maternity leave, where that treatment is in connection with a pregnancy or a pregnancy-related illness occurring before their return; ensuring that women are protected against pregnancy and maternity discrimination, where they do not have a statutory right to maternity leave but have similar rights under alternative occupational schemes; and ensuring that women can continue to receive special treatment from their employer in relation to maternity—for example, ensuring that companies continue to offer enhanced maternity schemes.

I am sure that all of us in this place agree that women should not face discrimination for being pregnant or taking maternity leave. They should continue to receive equal pay for work of equal value and they should not receive less favourable treatment in the workplace because they are breastfeeding.

This instrument reproduces these principles in domestic law to ensure that women can continue to rely on these protections. It also maintains protections for disabled people in the workplace, so that they can participate in working life on an equal basis with other workers. It is of course important that disabled people have the same opportunities as everyone else to start, stay and succeed in work. This amendment will mean that disability protections continue to apply where someone's impairment hinders their full and effective participation in working life on an equal basis with other workers.

Finally, the instrument maintains two protections that apply more broadly. The first maintains the status quo, whereby employers and their equivalent for other occupations may be acting unlawfully if they make a discriminatory public statement relating to their recruitment practices, including when there is not an active recruitment process under way. This ensures that groups that share certain protected characteristics are not unfairly deterred from applying for opportunities in an organisation.

The second maintains protections against indirect discrimination for those who may be caught up and disadvantaged by indirect discrimination against others, so that they are also protected where they suffer substantively the same disadvantage.

We intend that there will be no time gap and no break in protections between this law coming into effect and the removal of the special status and EU-derived features of retained EU law at the end of the year. By maintaining these important protections, we will ensure that our domestic equality framework has continuity. Importantly, these amendments do not add any regulatory burdens on business, as the legislation reproduces the status quo, meaning that the regulatory environment will not change.

I hope your Lordships will join me in supporting the draft regulations. I beg to move.

Baroness Thornton (Lab): My Lords, those of us who participated in the REUL Bill debates were aware that the Government would need to safeguard important

[Baroness Thornton]
protections derived from EU case law and ensure they were retained—and do so by the end of this month. Indeed, I spoke during the passage of that legislation about my concerns for women and equalities legislation.

We do not regard the SI as controversial. Rather, the protections being restated today underline why this process is so important. People cannot lose rights that are being reasserted in these regulations. As the Minister said, they are massively important to women, protecting them through and after pregnancy, against pay inequality and from discrimination, and are crucial in providing people who have disabilities with protection against discrimination. Of course these vital protections need to be retained, and I agree with the Minister that it is also important that we give people certainty in law by restating these principles.

However, my questions are about the fact that we are getting round to restating these protections only a matter of weeks before they could have disappeared. That is a little concerning. So I ask the Minister about the Government's wider approach to identifying which bits of important case law they wish to retain and then pass, through regulations, on to our statute book. It worries me that we are doing this a week or so before this law would fall. I just hope that nothing else will be lost in this process. Can the Minister tell us what measures the Government are taking to ensure that important decisions are taken about the interpretive effects of retained EU law? Do the Government have an equivalent to the dashboard—everybody will remember the dashboard that was mentioned during the passage of the REUL legislation—which was introduced to identify statutory instruments for European Union judgments that have an impact on domestic law? "How's that going?" is, I suppose, what I want to say.

I am not going to go into detail about the regulations, because they are very straightforward and do exactly what we hoped they would do. It is therefore important to note that putting them on to the statute book and ensuring stability about this does not mean that the battle for equality is over. For example, the earnings gap between disabled and non-disabled people has increased. It is over half a century since the Equal Pay Act was passed in 1970, so I am sure the Minister will join me in agreeing that we still both have work to do in this area. This is providing us with the legislative infrastructure to do it, but we still have work to do.

Baroness Jenkin of Kennington (Con): My Lords, is it possible to ask a point of clarification of the Minister? I came in a bit late, so if it is not, I quite understand.

Lord Gascoigne (Con): I apologise to my noble friend; she was late. Forgive me. Perhaps she could do it after the meeting, if possible.

Baroness Jenkin of Kennington (Con): I will, thank you.

Baroness Barran (Con): My Lords—or my Ladies—I am grateful to the noble Baroness for speaking in this debate. I would like to recognise her work on women and equalities over many years. Britain has a proud history of justice and fairness, with some of the world's strongest and most comprehensive equalities legislation thanks to the Equality Act 2010. By setting out these EU-derived protections in domestic law, we will ensure that our equality framework provides clarity and continues to protect the fundamental rights and freedoms of people in this country.

I understand very well the spirit of the noble Baroness's questioning. She asked about the principles that underpin our approach in this area. I seek to reassure her, and the Committee, that the Government remain absolutely committed to upholding the highest standards in equalities and ensuring that the necessary protections are preserved after the end of this year. We are using the powers in the retained EU law Act to ensure that necessary protections are put in statute.

The Equality Hub has considered over a hundred judgments and undertaken legal analysis to ensure that Great Britain maintains that history of equality, and that the necessary protections are clearly set out in our domestic legislation. As the noble Baroness knows, the REUL Act's restatement powers are available until June 2026; that will allow the Government to keep the position under review within this timeframe. We will publish a REUL progress report in January, in line with our statutory six-month reporting requirements. The REUL dashboard—I think the noble Baroness described it as the beloved dashboard—still exists and is available on GOV.UK. It most recently had a minor update in November, but there will be the regular update in January.

I am also happy to agree with the noble Baroness that the battle for equality is far from over. With that, I commend the regulations to the Committee.

Motion agreed.

York and North Yorkshire Combined Authority Order 2023

Considered in Grand Committee

5.56 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the York and North Yorkshire Combined Authority Order 2023.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Penn) (Con): My Lords, the purpose of this order is to implement the devolution deal agreed between the Government and the councils of York and North Yorkshire on 1 August 2022. Since then we have been working closely with those councils on implementation, and on 3 November 2023 they consented to the making of this order.

This order, if approved, will establish the new York and North Yorkshire combined authority and the office of mayor for the area, with the first election to take place on 2 May 2024. The elected mayor will then take up office on 7 May, with a four-year term ending after the next mayoral election in May 2028. Thereafter, there will be elections every fourth year, to be held on the ordinary election day for that year—that is, on the first Thursday in May. Following the enactment of the Elections Act 2022, these mayoral elections will be on a first past the post basis.

The mayor will be chair of the York and North Yorkshire combined authority, which comprises as constituent councils the city of York and North Yorkshire. The combined authority will be established on the day after the order is made, subject to parliamentary approval, which is likely to be before the end of the year. Until the elected mayor takes office there will be an interim chair of the combined authority. The combined authority will appoint one of its members as the interim chair.

The order also transfers police, fire and crime commissioner functions for North Yorkshire to the combined authority, to be exercised by the mayor. Additionally, the mayor and the combined authority will be conferred a range of other significant powers agreed in the devolution deal. These include a concurrent power with Homes England, powers on regeneration and transport, and powers for establishing mayoral development corporations. Education and skills functions, along with the devolution of the adult education budget, will be conferred on the combined authority at a later date, as agreed with the area. This is with a view to the area being responsible for skills and adult education from the academic year 2025-26. This is subject to the area meeting the readiness conditions and parliamentary approval of the secondary legislation conferring these functions.

The order also contains detail on the governance arrangements of the new combined authority, to reflect these powers and the role of the mayor. Each constituent council will have two members on the combined authority, one of these members being appointed by the mayor as deputy mayor. The mayor will also appoint a deputy mayor for policing and crime, who may be any person the mayor considers appropriate.

These governance arrangements include that the PFCC functions and certain other functions—including, for example, the power to designate a mayoral development area or to draw up local transport plans and strategies—are to be exercised by the mayor personally. The mayor may also delegate the exercise of these functions to another member or officer of the authority, with particular specified arrangements for the PFCC functions.

6 pm

This order gives effect to the provisions of the devolution deal. I will briefly summarise these now. To improve the supply and quality of housing and facilitate the regeneration of York and North Yorkshire, the combined authority will be conferred powers for housing and regeneration, land acquisition and disposal. These powers will be exercised concurrently with Homes England, enabling the combined authority, working closely with Homes England, to promote housing and regeneration. The compulsory purchase of land will be a mayoral function and any decision will require consent from the York and North Yorkshire combined authority lead member whose local government area contains any part of the proposed land.

The order gives the mayor the power to designate mayoral development areas within the combined authority's area to support the regeneration of strategic sites in the area of York and North Yorkshire. This designation is the first step in establishing a mayoral development corporation and a further order would be necessary to create such a body. The relevant powers concerning MDCs are conferred to the York and North Yorkshire combined authority, to be exercised by the mayor. These decisions will also require the consent of the respective York and North Yorkshire combined authority lead member whose council area contains any part of the designated area, and the North York Moors or Yorkshire Dales national park authorities if any part of the designated area sits within the national park.

The mayor will have control over a consolidated and devolved transport budget, with the power to pay grants to the constituent councils in relation to the exercise of their highways functions to improve and maintain roads. The mayor may pay grants to bus service operators for eligible bus services operating within the York and North Yorkshire area. Grants must be calculated in accordance with any regulations or methods made by the Secretary of State.

Police, fire and crime commissioner functions will be transferred to the York and North Yorkshire combined authority for exercise by the mayor. The order is clear that decisions around police and fire property, rights and liabilities are the mayor's responsibility, and there remains a distinct police precept. All money relating to policing must be paid into and out of the police fund, and this money can be spent only on policing and matters that are related to the mayor's PCC functions.

A new police and crime panel is also to be created, which will exercise broadly the same functions as a police and crime panel under the PCC model. The financial year of the PFCC is to be extended from 31 March until 6 May 2024 to rationalise accounting processes and avoid preparing additional accounts for the one-month interim period.

The order also includes constitutional provisions reflecting the powers conferred and the role of the mayor. There is provision regarding voting arrangements so that certain decisions exercising the functions conferred on the combined authority must include the mayor among the majority of members in favour of that decision. The order also provides for the establishment of an independent remuneration panel to recommend the allowances of the mayor and deputy mayor.

If the order is made, York and North Yorkshire will benefit from significant funding that was agreed for the area as part of the deal. The largest element of this is the £18 million of annual investment funding for York and North Yorkshire for the next 30 years. In total, this will provide £540 million to be invested in the area to drive growth and take forward local priorities. It also includes an additional £1 million to support the development of local transport plans, over £13 million for the building of new homes on brownfield land across 2023-24 and 2024-25, and £7 million to drive green economic growth, along with investment of up to £2.65 million on projects that support the area's priority to deliver affordable, low-carbon homes.

As other combined authorities have shown, there is good evidence that devolution to geographies that reflect a functional economic area enhances economic performance, fiscal efficiency and policy delivery at both national and local levels. It can make government action more coherent locally and enhance local government's contribution to solving problems in areas

[BARONESS PENN]
falling between individual policy fields. By conferring the powers on the new York and North Yorkshire combined authority, the provision of local services can be better aligned with locally determined priorities. This will all help the mayor and local leaders to drive economic growth and development for rural, coastal and urban communities across York and North Yorkshire.

I am keen to thank and recognise local leaders and their councils for all that they have done, and are continuing to do, to address local priorities and to support business, industry and communities across York and North Yorkshire, and for coming together to agree to this devolution deal.

Turning to the order-making process, this order will be made, if Parliament approves, under the Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016. As required by the 2016 Act, along with this order, we have laid a Section 105B report, which provides details about the public authority functions we are devolving to the combined authority, some of which are to be exercisable by the mayor. The statutory origin of this order is in a governance review and scheme adopted by the constituent councils in accordance with the requirements of the 2009 Act. The scheme proposed functions to be conferred on the combined authority, as envisaged in the devolution deal, and specified those which would be exercised by the mayor. The scheme also set out the governance proposals for the combined authority.

The councils of York and North Yorkshire consulted on the proposals in their scheme. The promotion of the consultation included a dedicated website, face-to-face engagement events across the region and widespread advertising. Responses could be made online or directly by email or paper. The consultation ran from October to December 2022, and a total of 2,500 people responded. The councils provided the Secretary of State with a summary of responses in March this year.

Responding to questions as part of an online survey, a majority—54%—supported or strongly supported the proposals for the governance arrangements for the new combined authority, including the election of a mayor for York and North Yorkshire. Specific questions on the powers to be conferred under transport, skills and employment, and housing and regeneration also received similar levels of support, as did the proposal for the transfer of police, fire and crime commissioner functions to a York and North Yorkshire mayor. On the question of finance functions, 49% of responses supported the proposals set out in the scheme.

In laying this draft order before Parliament, the Secretary of State is satisfied that the statutory tests in the 2009 Act are met—namely, that no further consultation is necessary; that conferring the proposed powers would be likely to improve the exercise of statutory functions in the combined authority area and would be appropriate, having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government; and, where the functions are local authority functions, that they can be appropriately exercised by the combined authority. Furthermore, as required by statute, the constituent councils have consented to the making of this order.

In conclusion, this order, which is supported locally, is a significant step forward for York and North Yorkshire and its businesses and communities. It is key to the future economic development and regeneration of the area and will enable local leaders to invest effectively in, and address, local priorities. I beg to move.

Baroness Pinnock (LD): My Lords, I remind the Committee of my interests as a councillor in the adjacent West Yorkshire area and a vice-president of the Local Government Association.

Devolving powers on local decisions to locally elected representatives has been an aim of the Liberal Democrats for a very long time. It is very important that there is strategic thinking and decision-making across regions and subregions. Perhaps the Minister will therefore expect wholehearted support from the Liberal Democrats for the proposals before us, but she will be only partially right. I will detail the reasons for that.

First, mayoral combined authorities have delegated powers rather than devolved functions. Functions such as transport, housing, regeneration and planning are currently exercised centrally and delegated to the mayoral authority with, as we heard, skills following later. This particular mayoral authority will be granted, from Westminster, the grand sum of £18 million a year, which is specifically referenced within the order, as is the offer from the Government, as part of this deal, of £540 million over the next 30 years, plus additional sums which the Minister referenced. There is no mention of whether these are fixed cash sums, as they appear, or whether they will be index linked. Over 30 years, that potential £540 million will buy a lot less than it will now and be a lot less attractive than it appears within the order. Maybe the Minister can comment on that and say whether it will be index linked.

I acknowledge that this order enables a greater degree of local input in, for example, determining major highways schemes. However, the act of creating a mayoral authority is not a game-changer for more locally determined decision-making, as would occur in comparable local areas across western Europe.

My second point is the loss of democracy. The proposal before us is for the election of a single person to represent the whole of the City of York Council and North Yorkshire Council. The elected mayor will chair the combined authority of the two councils. The Schedule to this SI confirms that two representatives from each of the constituent authorities are required, with a third person acting as a substitute member. No other existing mayoral combined authority that I can think of has so few constituent member councils. It will be interesting to see how effectively this arrangement works in practice. There will be five people making decisions for the combined authority, on these very important functions that have been referred to.

This is a bit of a leap in the dark because of the small number of councils and, therefore, the small number of members on them. My second question is will there be a review of these constitutional arrangements, say within three years, to evaluate its success or otherwise? I think that is important.

The extension of the mayoral model to very rural areas, when the model does not recognise the very significant differences with urban areas, makes this a

bit of a leap in the dark. I do not know whether the Minister has been to North Yorkshire. I live next door to it, so I know North Yorkshire and it is a very rural area. It has a population of 615,000, in—importantly—an area of 3,340 square miles, of which 40% is designated as the national parks North York Moors and the Dales. It is huge. With the City of York Council, which deals with a population of 142,000, the mayoral authority will be responsible for just about three quarters of a million people in a vast rural area, from the coast of Whitby to the border with Lancashire, and from the border with Northumberland to the border with Leeds. It is huge. There will be a single person directly elected to take responsibility not just for the mayoral functions but, in this instance, for both the role of police and crime commissioner and fire and rescue, for this vast county and historic city.

Of course, this is too large a range of responsibilities for one person. The arrangements in this order therefore allow for the appointment of a deputy mayor, who will presumably be responsible for police and fire. The upshot of that arrangement is that there is no longer a directly elected commissioner for policing or an elected councillor taking responsibility for the fire and rescue service across this vast county and the city of York. The conclusion I reach is that the Conservative experiment of police and crime commissioners has failed; otherwise, there would still be a directly elected police and crime commissioner for North Yorkshire and the city of York. At the minute, they are going to be appointed. Can the Minister explain whether there is now a policy of gradually removing elected PCCs?

The order states the expected allowances for the mayor, which will be determined by an independent panel. The scale of remuneration packages for combined authority mayors is instructive. In West Yorkshire, the mayor receives £105,000 per year while the appointed—I emphasise that word—deputy mayor receives £72,000 for taking responsibility in West Yorkshire for policing, but with no direct accountability to the people whom they are there to serve. Do not say "scrutiny" to me because it is ineffective.

The order also allows for the employment of a political adviser. I would like some explanation of that. From what I know, those do not exist in other mayoral combined authorities within the orders, so that is an interesting addition here.

In conclusion, a strategic political and democratically elected role is important. However, we Liberal Democrats cannot condone this cynical approach to removing elected police and crime commissioners—they are elected with responsibility for the fire and rescue service—and replacing them with appointed political people where there is no direct accountability through the ballot box, which is the least that taxpayers can expect in a democracy.

Given all that, I look forward to the Minister's response.

Baroness Taylor of Stevenage (Lab): My Lords, I remind the Committee of my interests as a serving councillor at both county and district level. I am also a vice-president of the Local Government Association.

As a councillor for almost 27 years, a former leader of my council for 16 years, one of the instigators of the Hertfordshire Growth Board and a local enterprise board member since its inception, I am a great believer both in the transformational powers of local government and in far deeper and broader devolution. I see this, as does my party, as the quickest and most effective way of creating economic growth tailored to local circumstances, as well as of providing the levers of economic, social and environmental well-being where they can best be deployed flexibly, speedily and to the greatest benefit of the area concerned.

So, as a passionate advocate of devolution, it would be churlish of me not to welcome an agreement between York, North Yorkshire and the Government where all believe that it is in their interests. If I needed further convincing, it was pleasing to see that one of my local government colleagues—Councillor Mark Crane, the leader of Selby, who had always been deeply sceptical of such a deal for North Yorkshire—now welcomes the proposals; I am pleased to see that. I thank all the leaders and officials from that area who have done so much work to get this deal over the line. My comments concern the principles, with some specific questions about this deal, and are not intended to intervene in this two-year-long process between the councils in York and North Yorkshire, the people whom they represent and the Government.

We have seen highly effective outcomes from devolution in Greater Manchester—with which I worked extensively as part of the Co-operative Councils' Innovation Network—and in West and South Yorkshire, but no one could argue that the progress of devolution has not been slower than a snail's pace. It remains fragmented, patchy and piecemeal, with large areas of the country not subject to deals at all, even where they have worked carefully to draw together political, business and social partnerships, because they have clearly not passed the mysterious and indeterminate tests set by the Government. I cite Hertfordshire as an example here. I was very pleased to hear the Minister in the other place reiterate yesterday that a mayor is not the right solution for everybody, but it seems that, if your proposal does not include one, you are far less likely to shimmy under that government bar.

We would like to see a presumption in favour of handing back powers to our towns, cities and communities, with everywhere having the powers and flexibility to turbocharge the growth that works for their area and to attract investment, with the ability to negotiate longer-term finance settlements from government. That would give every area the ability to be ambitious for their residents and businesses and to deliver the real changes on the ground to deliver that ambition.

Too many areas are held back by our antiquated, struggling and definitely not fit for purpose local government funding system. It has been further weakened by years of cuts, use of outdated data that is out of touch with changes in local areas and, more recently, the further blow to finances caused by runaway inflation following the mini-Budget just over a year ago. To authorities in such straitened financial times, a devolution deal can bring some much-needed financial relief, so it is perhaps not surprising that local leaders are tempted.

[BARONESS TAYLOR OF STEVENAGE]
However, we need to see this in context. The York and North Yorkshire deal, for example, apparently equates to £20 per resident of the region per year over the term of the 30-year deal—incidentally, that is more than West Yorkshire but less than Liverpool, the Tees Valley and South Yorkshire, so I hope that local government colleagues working on deals are tough negotiators.

However, IPPR North tells us that the north of England has seen a £413 reduction per person in average annual council spending in each year between 2009-10 and 2019-20, so the deal does not come close to the losses that communities in the north have experienced due to austerity. Does the Minister see this as such a marvellous deal in that context? Is it envisaged that further money might be on the table as plans for the area develop? That was a bit ambiguous in the SI, so I am interested to know whether it is the case.

On the consultation process, I can see from the papers that extensive efforts were undertaken—which the noble Baroness, Lady Penn, went through—to elicit responses from the public on these areas, but does the Minister consider that just over 2,000 responses from a population of almost 1 million people represents a clear mandate? What work have the Government done with the Local Government Association on how we might improve these consultation processes in future? I appreciate that the structure of local government can be confusing, particularly in areas with two or three tiers of local government, but introducing changes of such magnitude on the basis of a mandate of just over 50% of such a tiny percentage of the local population surely suggests that we need more innovation in the consultation processes.

On general questions of governance, the Minister will be aware that we tried very hard to ensure that every place in the area would be represented on the combined authority during the levelling-up Bill, but that was not the outcome. Like the noble Baroness, Lady Pinnock, I remain concerned about so many powers being vested in one person. It has been the practice in mayoral authorities for mayors to appoint deputy mayors and for them not to be elected. This also applies to police commissioners. These are very important roles, so does appointment rather than election impact on accountability? This is especially the case if the mayor cannot fulfil their role, as it is then delegated to an unelected deputy mayor. Why do the Government consider appointment the best model here and, to go back to my earlier point, why do appointed deputy mayors enjoy a role on combined authorities which is denied to locally elected council leaders?

Have the Government given any thought, for example, to local public accounts committees to mirror their function in the other place? This would widen the scope of the police and crime commissioners, which, I agree with the noble Baroness, Lady Pinnock, have not proved terribly effective, and would provide joined-up accountability for the mayor.

We note that for this deal the adult education budget transfer is to come later than the introduction of the combined authority in May 2024. I appreciate that this has been agreed with the partners in this devolution deal, but with skills and training so essential to economic growth, why are they not an early priority for all devolution deals?

I have carefully read Part 5 of the order, which means the authority may introduce bus franchising if it chooses to do so. How would the Government, including the Department for Transport, support the combined authority if it chooses to exercise this power? Do the Government envisage any issues arising from the different transport roles of the mayor, the York and North Yorkshire Combined Authority and the constituent authorities in relation to local transport plans, bus partnerships and highways and traffic authority functions?

In July, the BBC reported that £1 million would be given to support the set up of the new combined authority in addition to £582,000 already spent. Can the Minister update the Committee on funding the direct cost of the combined authority after the inaugural mayoral election? That is not the money allocated for spend for the authority, but its direct set up cost.

In conclusion, we strongly support the principle of devolution to local areas and congratulate all local areas that have navigated the current complex system to get their deals over the line. We will certainly not be opposing a deal negotiated at local level, however we urge that the Government consider how they will accelerate the devolution process and how some of the questions that have come up under this deal and others are to be answered in future.

Baroness Penn (Con): My Lords, I thank both noble Baronesses for their contributions. I will seek to address as many of their points as possible. First, it is worth recognising the in principle support for this deal and the process overall.

Like the noble Baroness, Lady Taylor, we recognise the work that has gone on among local councils, representatives and others in making this happen. To pick up the point about consultation, it is important to place that consultation in the context of the involvement of a great many people within the York and North Yorkshire area who are representatives of their communities and constituents. Given the diversity of the areas covered, the broad support for it among councils, MPs and others involved means the reach for how we have gone about agreeing the devolution deal process is not represented just by the consultation. However, I think we should always look at how we can better engage local areas and people as we go through this process of devolution, so we would always open-minded about how we can improve on that process.

I will address the other, broader point around the process of devolution about how far this deal goes in terms of delegation versus devolution and how much of the country benefits from either and should in future. We are absolutely committed to having every area that wants it benefitting from more devolved government. Since we set out our ambitions for this in the levelling up White Paper, we have moved at a faster pace than we would expect. I think that more than half of England's population will be covered by a devolution deal.

We are also keen to reflect that devolution deals can work for rural areas as well as urban areas. The noble Baroness, Lady Pinnock, is right that this deal is in

some ways a trailblazer for that. However, I do not think that that is a reason not to go ahead. If we want devolution to be available to every area of the country, we need to find the geographies and structures that work that mean that it can be extended.

The Government are going further: we have the two trailblazer areas of Greater Manchester and the West Midlands Combined Authority as regards moving towards that next stage, where you will get closer to a single settlement for the combined authority with much greater flexibility. Those are intended to be trailblazers for other areas that wish to go further in this process—so I think we agree on the direction of travel as regards those aspects of it as well.

6.30 pm

To address a few of the other specific questions, the noble Baroness, Lady Pinnock, asked about the £18 million per annum. That is a cash sum and is not index linked; I hope that provides some clarity on that point. On the question about the provision for the appointment of political advisers, I am told that that is not novel and that it exists in previous combined authority and devolution deals, so it is not unique to this deal.

The noble Baroness also asked about a review of this deal or its outcomes. There will be an evaluation as part of the devolution agreement, as agreed with the Treasury. That is set out in the Explanatory Memorandum. This could cover the constitutional arrangements if needed or if the area wishes, as well as the financial and economic elements of the devolution deal that go alongside it. We would expect that to take place roughly every five years, so not within three years but around that timeframe.

The noble Baroness also asked about the function of the directly elected police, crime and fire commissioner and whether this is part of a process of replacing or removing them. The mayor is the directly elected police, crime and fire commissioner in this example. That model has been successful in London; it is also in place in Greater Manchester and other areas. The mayor is the directly accountable person for those functions but they also have had the ability to appoint deputies to help them carry out those functions. We have seen that model work well; it is not replacing or indicating a failure of the PCC model but integrating it into the wider devolution picture for someone directly elected and directly accountable for those functions. That makes great sense, as they have a greater ability to join up delivery on tackling crime and securing public safety. As I said, those functions were transferred to the mayor in Greater Manchester in 2017 for the PCC functions, and in 2017 the combined authority became the fire and rescue authority, with those functions to be exercised by the mayor. In West Yorkshire, the PCC functions were transferred to the mayor in 2021, so we see a similar process here.

The noble Baroness, Lady Taylor, referred to funding, addressing the point about cash and the broader context of local government funding. In recent years, local councils have received above-inflation increases to their core spending power, even taking into account higher inflation than anticipated. We recognise the greater pressure that local councils are under and remain in close dialogue with them on that.

Baroness Pinnock (LD): I am sorry to interrupt, but government Ministers continually say that above-inflation grants have been provided to local authorities in the last year or so. However, for those local authorities that have social care responsibilities, the social care precept is an additional burden on council tax payers. It is not exactly the case that more money has been provided; it has, but the Minister should give the addendum that part of it is provided by an additional burden on council tax payers. In my local authority, it costs council tax payers £200 extra a year to provide for the social care precept.

Baroness Penn (Con): I absolutely acknowledge the point made by the noble Baroness. I think I referred to an increase in core spending power, and my understanding of that metric is that it reflects the government grant, the council tax and the additional social care precept. I did not refer only to the government grant. I am sure she will be well aware that additional grant funding has also gone into social care over the last two years to reflect additional pressures in that sector.

I was simply making the point that, since 2019, I believe, above-inflation increases to the core spending power of councils have been made available. The terms of the devolution deal and the money attached to it are as set out. The noble Baroness, Lady Taylor, asked about further funding. I will not speculate on that, but I point out to all noble Lords that the Government have made significant amounts of funding available for levelling up through the levelling up fund, the towns fund and the future high streets fund. We are working to simplify that funding landscape, but there is an ongoing commitment from this Government to make funding available for local economic development and regeneration. We have seen that in the significant amounts made available in recent years and the ongoing commitment from the Government in that area.

I am conscious that I have not addressed a couple of the questions, in particular on transport, which the noble Baroness, Lady Taylor, asked. If both noble Baronesses will forgive me, I will write to them with further details.

Motion agreed.

Committee adjourned at 6.37 pm.