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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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

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

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House of Lords

Tuesday 23 January 2024

2.30 pm

Prayers—read by the Lord Bishop of Gloucester.

Introduction: The Lord Bishop of Hereford

2.36 pm

Richard Charles, Lord Bishop of Hereford, was introduced and took the oath, supported by the Bishop of Gloucester and the Bishop of Southwell and Nottingham, and signed an undertaking to abide by the Code of Conduct.

Freedom of Information
Question

2.40 pm

Asked by ***Baroness Deech***

To ask His Majesty's Government what assessment they have made of the speed and scope of the operation of the Freedom of Information scheme.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, the Government have no current plans to alter the law on freedom of information.

Baroness Deech (CB): My Lords, there are so many problems with the system that I am now asking the Minister to commence a complete overhaul. My experience with the Department for Levelling Up is that it is not a department that levels with you. I have spent 11 months chasing a small request about the Holocaust memorial and have been met with nothing but delay and evasion. The £600 limit has stayed unchanged for years, limiting hours. There is the need for a reference by an MP. Time limits are not enforced. If you complain about delay, the department is given another 40 days to reply. There is no time limit on the allocation of investigations by the ICO; hence there is limitless hold-up in being able to refer to the tribunal. Does the Minister agree that the system is not fit for purpose and needs review?

Baroness Neville-Rolfe (Con): My Lords, while I am very sympathetic to the noble Baroness's dilemma in this issue, we have to draw a balance between the rights of individuals, the burden imposed on our public authorities and the Civil Service and, of course, the objective of improving and increasing transparency and accountability. She has had a difficult experience, first, with a complaint that turned out to be too broad and was therefore disallowed under Section 12—and the Information Commissioner upheld that—and I understand that she has now complained again and that the ICO has started its inquiry into that complaint. These are difficult issues. I would say that the number of requests received for information under freedom of information has been going up. In Q3 of 2023, there were 18,555—that is the highest ever—in spite of the progress we have made with making more information available every quarter as part of our transparency returns.

Baroness Whitaker (Lab): My Lords, I am not sure that I heard in the Minister's response to the noble Baroness, Lady Deech, an answer to her Question. Have His Majesty's Government made no assessment of the impact, the scope and the speed of this legislation?

Baroness Neville-Rolfe (Con): Of course not—I am sorry if I misled the noble Baroness—as we do keep these things under review. The latest review was in 2016, when the Information Commission on Freedom of Information looked at whether we should change the rule, which noble Lords may be aware of, that freedom of information requests can be turned down if they equate to more than 24 hours' work. However, civil servants are advised to narrow down requests so that they do not fall foul of that rule, and I know that they do that in the Cabinet Office. That rule was looked at by the independent commission in 2016; there were some advantages to changing it upwards and some to changing it downwards, and the decision was taken not to make a change. However, as I was trying to explain, we take freedom of information very seriously and the number of requests that we are dealing with across the machine has increased. Obviously, individual cases can be a problem.

Lord Wallace of Saltaire (LD): My Lords, I know that freedom of information is an embarrassment to government and that, when Governments get their feet well under the table, they regret it. I have just been back to the White Paper which introduced the Freedom of Information Act. It says:

> "Openness is fundamental to the political health of a modern state … Unnecessary secrecy in government leads to arrogance … and defective decision-making".

Would the Minister care to say that she strongly agrees with those principles?

Baroness Neville-Rolfe (Con): I certainly agree with openness wherever we can make things open. Of course, that White Paper goes back to the Labour Government of the early 2000s, and I remember a certain Prime Minister commenting on freedom of information and the problems it had created. Of course, we need open information, but it has to be a combination of using the Act and also bringing in other measures—I mentioned the quarterly transparency returns, and there is the contracts finder and the changes we are making in the Procurement Act—and generally having an attitude of trying to be helpful and open, and not use these things as an excuse.

Lord Forsyth of Drumlean (Con): My Lords, in order for freedom of information to work, it is necessary for Ministers and government to keep proper minutes of meetings. We still have a United Kingdom Civil Service in this country; why are the Government not taking action when Scottish Government officials' bedtime ritual is apparently not to have a cup of coffee

[Lord Forsyth of Drumlean]
or cocoa but to delete all their WhatsApp messages? Increasingly, the Scottish Government have meetings without proper minutes being kept. What has happened to the fundamental principles of the Civil Service that there should be proper records kept so that freedom of information requests can be dealt with, or if there are inquiries, the information is available to them?

Baroness Neville-Rolfe (Con): I agree with my noble friend; records are important, both for the record and for the next steps agreed at meetings, which one wants to make sure are carried forward in the interests of efficiency. Obviously, the Scottish Government are a separate Government with their own rules. The *Cabinet Manual*, as we have discussed before in this House, is in the process of being revised, but that applies to the Civil Service across the piece. We have also introduced new guidance; it is called—a rather difficult mouthful—*Using Non-corporate Communication Channels (e.g. WhatsApp, Private Email, SMS) for Government Business*, for UK Government, Civil Service and Ministers. That is on GOV.UK and is absolutely designed to make sure that WhatsApps of substance in policymaking or government business are recorded for posterity.

Baroness Chapman of Darlington (Lab): My Lords, the Information Commissioner has found that some government departments have a consistently poor level of performance for FoI request handling. Departments find ways to avoid responding—for example by denying that information is held—and seem to have worked out that there is no meaningful penalty imposed as a consequence. Given that these departments repeatedly fail to comply with the law, do the Government intend to review the sanctions imposed for this failure?

Baroness Neville-Rolfe (Con): At the moment, as I was saying, we do not have plans to change the Freedom of Information Act. However, we have worked hard to clear the backlog that was created on freedom of information as a result of the pandemic. Some departments have done better than others. We have worked very closely with the Information Commissioner on just that. As I have explained, the casework continues over time. The Cabinet Office gives advice centrally; we try to delegate these things to the appropriate responsible department, but we do encourage good practice and compliance with the complexities of the Freedom of Information Act and its different sections.

Lord McLoughlin (Con): My Lords, has there been any estimate as to how much money the Freedom of Information Act costs the Government, at a time when there are scarce resources to spend on services on the front line? Is there a figure for what the total cost to government of this particular piece of legislation is?

Baroness Neville-Rolfe (Con): It is a good question. I do not have a figure; I have explained that freedom of information is a duty across nearly 100,000 public authorities, because we are not only talking about central government today but schools, the NHS, local authorities and even some publicly owned organisations, so individual costs will be borne by individual departments. In the Cabinet Office, there is also a dedicated unit, because we are responsible overall for the Act, which is why I am answering Questions. But a lot of freedom of information requests are actually dealt with by civil servants as part of their day-to-day job, because they have to comment on where there are policy issues or advice to Ministers that it would be difficult to make available. Obviously, as the Minister, I try to encourage them to make things available wherever possible under the Act.

Lord Clark of Windermere (Lab): My Lords, I was pleased to hear the Minister say that she supported freedom of information. Will she continue to shout that loud and clear? I was the author of the original White Paper, and we made the point that unless our constituents and electors have knowledge, there cannot be democracy. I hope she will make that point loud and clear.

Baroness Neville-Rolfe (Con): I support the noble Lord. I think this was probably his approach when he conceived the legislation, which is not entirely easy because of the burdens. You have to have a balance between letting sunlight in wherever we can by making things available—not using them as an excuse for cover-ups; we have perhaps had too many of those historically—and keeping secret private advice to Ministers so that they can take decisions in an objective fashion, consider options that are not always welcome and come to the right conclusions. I think that is very important, and I speak as someone who, strangely, has been both a civil servant and a Minister.

NHS: Hospital Waiting Times
Question

2.50 pm

*Asked by **Lord Sikka***

To ask His Majesty's Government what assessment they have made of the number of people who have died while waiting for NHS hospital appointments in England in the past five years.

Lord Evans of Rainow (Con): My Lords, cutting waiting lists is one of the Prime Minister's top priorities. We are committed to ensuring that patients get the care they need when they need it. The department cannot provide an estimate of deaths on the waiting list as the data required is not held centrally. However, the ONS estimates that overall excess deaths in 2023 were 5% higher than expected. We plan to transform elective care and tackle waiting lists through initiatives focused on increasing activity, managing demand and increasing productivity.

Lord Sikka (Lab): My Lords, I thank the Minister for that reply. Under this Government, the number of unfulfilled NHS hospital appointments in England has increased from 2.5 million in 2010 to 7.76 million. Everyone knows that the denial of timely healthcare

leads to suffering and premature death. A study in the *Times*, to which I have referred the Minister, reported that around 300,000 people a year in England were dying while waiting for NHS hospital appointments. That is utterly unacceptable. Can the Minister explain why the Government have caused so many premature deaths?

Lord Evans of Rainow (Con): I pay tribute to the noble Lord and the forensic accountancy skills that he brings to this place. He certainly brings excellence to debates in your Lordships' House. The data on the number of people who have died while on waiting lists is not held centrally. The Office for Natural Statistics reports annually on avoidable mortality using OECD/Eurostat definitions. Our excess mortality model does not enable us to estimate how many excess deaths could be considered avoidable based on that definition. To prevent avoidable deaths and maximise outcomes, the NHS triages patients waiting for elective care by reflecting clinical judgment on need, targeting those waiting the longest, and by increasing the number of cancer referrals.

Baroness Manzoor (Con): My Lords, I am surprised and rather shocked that the department does not hold such important data centrally. Accessibility to good data should be at the heart of evidence-based decision-making, particularly in the NHS, where we know that, for instance, mortality, morbidity and health outcomes are poorer, particularly for black and ethnic minority communities and vulnerable patients. What will my noble friend the Minister do to ensure that that is corrected? As we heard in the previous Question, good governance is based on transparency, accountability, delivery and honesty. If we do not have the data, how is service provision going to be made and improved compared with today?

Lord Evans of Rainow (Con): My Lords, my noble friend makes a good point. Waiting list management and data collection are held locally by individual trusts and integrated care boards. As such, the department does not centrally collect or hold data on deaths or causes of death on the waiting list. Instead, the Department of Health and Social Care and NHS England measure elective performance using a number of existing robust data collections. The DHSC and NHS England both have statutory duties to promote an effective and comprehensive health service. Within that, NHS England is responsible for holding NHS providers and ICBs to account for their performance. However, my noble friend makes a good point and I will take it back to the department and the Secretary of State.

Lord Allan of Hallam (LD): My Lords, long wait times for cancer diagnosis and treatment can be a matter of life and death for some people. However, we are still some way off meeting the Government's faster diagnosis standard of 75% of people receiving a definitive yes or no to whether they have cancer within 28 days of an urgent referral. How confident is the Minister that the Government will meet this target by March 2024, as they promised they would?

Lord Evans of Rainow (Con): Our ambition for cancer diagnosis is that by March 2024 75% of patients urgently referred by their GP for suspected cancer will receive a cancer diagnosis or have cancer ruled out within 28 days. In November 2023, 71.9% of patients received a diagnosis or all-clear within 28 days. We are confident that we will meet our March 2024 ambition.

Lord Stirrup (CB): My Lords, the Minister will be aware that doctors who do not go on strike work frantically to cover for those who do. When the strike is over, they have to work frantically to try to eat into the backlogs, which have only grown during the strike. What action is being taken—apart from just wishing the strikes would go away—to manage clinical workloads in order to avoid plunging morale, burnout, premature retirements and all the compound consequences for waiting lists that flow from these?

Lord Evans of Rainow (Con): The noble and gallant Lord makes a very good point. We are treating more patients than ever before due to the highest investment in the NHS, with community diagnostic centres, surgical hubs, more doctors and more nurses. Apart from the junior doctors, all parts of the NHS workforce—nurses, midwives, paramedics, consultant doctors and speciality doctors—have accepted the Government's pay offers.

We urge the junior doctors to stop going on strike for their unreasonable pay demand. As the noble and gallant Lord rightly pointed out, it puts pressure on the whole workforce. The other parts of the workforce have accepted the pay offer. It is about everybody coming together, particularly junior doctors, at this difficult time. We are treating more people. The waiting lists came down in 2023. But, for as long as they go on unprecedented strikes, we will struggle to get to those targets.

Lord Woodley (Lab): My Lords, a recent study from the Institute of Health Equity at University College London, led by Sir Michael Marmot, reported that between 2011 and 2019—before the pandemic—over 1 million people died earlier than they would have done if they had lived in areas where the richest 10% of the population lived. How is it that the institute can do a study, but the Minister does not know how many people have passed away, unfortunately, under these circumstances? When will the Government realise that their policies are killing the poorest people? When will they start transferring wealth from the richest to the poorest?

Lord Evans of Rainow (Con): It is NHS England's responsibility to record those figures. The noble Lord is right to highlight that health disparities happen and affect the most deprived sections of our communities in our country. The Government do all they can to make sure that NHS facilities are accessible to the poorest in our community.

Baroness McIntosh of Pickering (Con): My Lords, is my noble friend aware that there is a tendency for hospitals to delay admissions and referrals for spurious reasons, such as an additional blood test—which is

[Baroness McIntosh of Pickering]
much quicker to effect in a hospital? Will my noble friend investigate this? I refer to my entry in the register working with the Dispensing Doctors' Association.

Lord Evans of Rainow (Con): My noble friend raises a specific issue I am not aware of. If she wants to write to me with the details, we will look into that. As I said in a previous answer, the Government have introduced a significant number of community diagnostic centres, where such blood analysis can be done. The whole point of the centres is that tests can be done very quickly to ascertain whether any further surgery is required. If my noble friend writes to me, I will respond to her directly.

Lord Hunt of Kings Heath (Lab): My Lords, can we get back to the Question? The Minister said that the information asked for is not kept centrally. Will he accept that the latest figures show an average of 750 people each week die prematurely from cardiovascular conditions, including heart attacks, coronary heart disease and stroke? That is 39,000 people per year. Many of those are waiting too long on a hospital waiting list. When can we expect the major conditions strategy to be published and will it deal with this really pressing problem?

Lord Evans of Rainow (Con): The noble Lord makes an important point. Excess deaths from all causes involving cardiovascular disease have reduced year on year since 2020 to December 2023. Relative excess deaths involving cardiovascular diseases were higher in the years prior to that—2021 and 2022. Clearly, we still have a lot more to do on that front.

Lord Kakkar (CB): My Lords, I draw the House's attention to my registered interest. Is the Minister able to confirm whether there is a systematic approach to assessment of risk for poor clinical outcome for those patients on the waiting list? This would help in the earlier identification of those where the poorest outcome might be predicted and therefore drive intervention earlier in those cases.

Lord Evans of Rainow (Con): The noble Lord raises a good point, as always. It is not always the number of people on waiting list, it is the amount of time they spend on it. As I said in a previous answer, the NHS now triages at an earlier stage to try to identify exactly those patients who need earlier intervention.

Lord Watts (Lab): My Lords, is the Minister aware that you can jump the list if you pay to see a consultant first. Is that not breaking the NHS rule to treat people on the basis of need?

Lord Evans of Rainow (Con): The noble Lord raises the point about consultant doctors. They work within the NHS but they also have private practices. That has happened for many years since the NHS was originally formed. He raises a good point but there is nothing new about that.

Pension Investments

Question

3.01 pm

Asked by ***Baroness Altmann***

To ask His Majesty's Government whether they plan to encourage UK pension investors to increase support for (1) long-term UK growth, and (2) UK financial markets.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, the Government are delivering a series of measures to reform pension fund investment, strengthen the UK's competitive position as a leading financial centre and support long-term UK growth, building on the Chancellor's Mansion House package of reforms. These measures include an industry-led compact whereby 11 of our largest defined contribution schemes have committed to the objective of allocating at least 5% of their default funds to unlisted equities by 2030.

Baroness Altmann (Con): I thank my noble friend for her Answer. However, the Mansion House reforms focus only on unlisted companies and do not require the investing of a penny in the UK itself. Will my noble friend agree to meet with me and like-minded peers, who are concerned that there are ready-made portfolios in UK-listed investment companies, trusts and REITs that are already investing in wind farms, solar farms, sustainable energy projects and other infrastructure that could be used for pension investments to support UK growth and revive confidence in UK markets? Does she agree that the current problems with charges disclosure have driven pension funds to invest in overseas infrastructure rather than our own and we urgently need to address that, either through a statutory instrument or my Private Member's Bill?

Baroness Vere of Norbiton (Con): I should be delighted to meet with my noble friend to discuss these matters further. The UK has a world-leading investment trust sector representing over £250 billion of assets and is highly aligned with the Government's priority to promote long-term productive investment. She will know that at the Autumn Statement, the Government published draft legislation to replace the packaged retail and insurance-based investment products, or PRIIPs, regulations. We also announced that we will bring forward the repeal of the relevant provisions of the Markets in Financial Instruments Directive. This will enable the FCA to put in place more proportionate cost disclosures.

Baroness Kramer (LD): My Lords, I am keen to see increased domestic investment in the UK economy, but is it appropriate to put pension money from small pots—people who cannot afford to lose part of that pot —into liquid, high-risk start-up investments, as the Mansion House compact seems to contemplate?

Baroness Vere of Norbiton (Con): There are two things about that question. First, having a very large number of pension pots under £1,000—I believe that there are now 4 million—is not a good way to manage pensions. We need to make sure that we can consolidate those into much larger schemes that can diversify their investments much better. However, the UK has a very poor record on pensions investing in unlisted securities, running at about 0.5% of pension pots. In Australia, the figure is 4.9% and in Canada, although it is not directly comparable, it is over 15%. Just because something is unlisted and illiquid does not mean that it cannot offer good returns over the long term.

Lord Drayson (Lab): My Lords, I direct the House to my entry in the register of interests. Investment funds have flowed out of listed UK equities for the past 30 consecutive months. When is this going to stop?

Baroness Vere of Norbiton (Con): The Chancellor and indeed the Government have put forward a number of reforms to ensure that we make the UK the best place not only to raise capital but to invest pensions in future. As I am sure the noble Lord has seen, we have been delivering on the recommendations of the noble Lord, Lord Hill, for overhauling the UK's prospectus regime, we have been looking at the recommendations of Rachel Kent's investment research review and we have been developing a new type of trading venue that will act as a bridge between private and public markets. We can be innovative, but this is a process of evolution not revolution.

Baroness Hayman (CB): My Lords, I declare my interests as in the register. In their green financial strategy, the Government recognised that clarifying the fiduciary duties of pensions investors, which could help to increase support for long-term and sustainable investment in the UK, was needed. When will the Financial Markets Law Committee, which is reviewing the clarity of the law relating to fiduciary duty, be publishing its report?

Baroness Vere of Norbiton (Con): I am grateful to the noble Baroness for raising this issue, about which I had a meeting last week with a number of fund managers. Some felt that the fiduciary duty needs to be changed, while others were content with it. The Government remain committed to considering how the fiduciary duty can be clarified. The financial markets group that she referenced is independent of government and includes various law firms and pension schemes. We look forward to the publication of its final report, but, as I say, it is independent of government and it will publish its report when it is ready.

Lord Leigh of Hurley (Con): Does my noble friend not agree that this issue needs not just a meeting with the noble Baroness, Lady Altmann, but wider discussion in this House? It is incredibly important to facilitate investment in UK plc. The issue is not unlisted investment; it is investing in the UK market, and it is not just about defined contributions. What progress has been made in respect of direct benefit in encouraging local government pension schemes to invest in UK plc?

Baroness Vere of Norbiton (Con): I would be more than happy to take lots of debates on this issue because it is incredibly important, and the Government are making great strides in this area. For example, on local government pension schemes, hundreds of billions of pounds has been invested for employees' longer-term pensions. They are invested in pots that are too small; they need to be bigger, so we have set a deadline of March 2025, when we want to see local government pension schemes consolidate into fewer asset pools of greater than £50 billion. We expect that, by 2040, those pension schemes will be invested in pools of around £200 billion. With that sort of money, it is really easy to diversify.

Lord Livermore (Lab): My Lords, when the Labour Party sought to amend the Financial Services and Markets Bill to encourage pension funds to invest in high-growth businesses, the Government opposed our amendment, so the Chancellor's recent announcement that he is now following our lead was most welcome. However, the Mansion House compact does not, as many noble Lords have said, ensure that the unlocked capital is invested in UK equities, rather than finding its way overseas. What steps will the Government take to incentivise pension funds to put their wealth into the British economy by backing UK assets?

Baroness Vere of Norbiton (Con): I am not aware of the detail of the amendment to that Bill tabled by the Labour Party, but we are taking a very measured approach to market intervention. It is clear to me that we need to do this and, as I said previously, it is evolution not revolution. However, there are many ways in which the Government are focusing on UK high-growth companies in particular. I point the noble Lord to LIFTS, or long-term investment for technology and science—investment vehicles tailored to direct contribution schemes. The Government will coinvest in or support those schemes up to £250 million. The bids have already been submitted, and we expect those funds to be operational and investing in UK growth companies by mid-2024.

Lord Howell of Guildford (Con): Does my noble friend agree that, whatever the pension funds invest in—and we certainly need them to get back to the 40% they once put into Britain, rather than today's 4%—and wherever they put their money, they are not going to be attracted by very long-term, politically high-risk projects which turn out not to be an investment at all? Is that not a reason why we should encourage giving priority, in our nuclear recovery, to smaller, quick-build machines, rather than sinking all our money into very long-term large structures which may not work even when they are built?

Baroness Vere of Norbiton (Con): My noble friend makes the very important point that investment is always about diversification. We need a wide range of projects and vehicles to encourage the UK economy, and some of those may indeed be of the sort he refers to.

Lord Watson of Wyre Forest (Lab): My Lords, does the Minister believe that consolidating pension funds will lead to an increase or a reduction in the fees paid by pension savers?

Baroness Vere of Norbiton (Con): I would expect the cost to be lower because, on the value for money framework, for example, which the FCA will consult on shortly, we are proposing direct contribution schemes. If they are not making the sort of overall returns that savers could reasonably expect, they will be encouraged to wind down or consolidate. Of course, in those overall returns, one always does put cost. It is true that the cost for each saver is lower for larger schemes.

Office for Environmental Protection

Question

3.11 pm

Asked by ***Lord Krebs***

To ask His Majesty's Government what assessment they have made of the second annual progress report of the Office for Environmental Protection, published on 18 January.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, I refer to my interests as set out in the register. This Government are committed to leaving the environment in a better state than we found it. The Office for Environmental Protection's report covers the period from 1 April 2022 to 31 March 2023. This includes the first two months of the 2023 environmental improvement plan and our new long-term environmental targets. The OEP's 200-page report recognises the scale of ambition in the EIP 2023, including our challenging interim targets. We will study it carefully and respond in due course.

Lord Krebs (CB): I thank the Minister for his response. When Dame Glenys Stacey, the chair of the OEP, launched her report last week, she said that the OEP's job was to hold up a mirror to the Government for them to assess their progress. I am afraid to say that the view in the mirror was not a pretty sight. As was mentioned in yesterday's Oral Question, the OEP concludes that the Government are largely failing to meet the statutory and other targets they have set for environmental improvement. The Government's response seems to be either to reject or to reinterpret what the OEP said. Would it not be better to acknowledge what the OEP has said, recognise that things are not necessarily going as well as they should, learn lessons and try to adopt a different tack?

Lord Benyon (Con): I absolutely concur with the noble Lord in that we treat anything that comes from the OEP very seriously. I seek to reassure noble Lords that it is not our position to dismiss it in any way. As I said in my original Answer, the report refers to just two months of the environmental improvement plan, which sets out some very demanding targets and holds the Government to account for them. The noble Lord and I are meeting next week, when I will set out some of the things we are doing as a result of the EIP and other measures. I think he will be reassured that the report that looks at a full year of the EIP's implementation will show the Government's ambition and how we are responding to reasoned criticism and being held to account by a very well-led organisation.

The Duke of Wellington (CB): My Lords, I commend the report from the Office for Environmental Protection. I quote from it:

> "The current state of the water environment is not satisfactory … the pace of change has now stalled".

Will the Minister and his ministerial colleagues consider setting up a review of the way the water companies are regulated? Regulation is currently divided between Ofwat, as the financial regulator, and the Environment Agency, as the environmental regulator. Would it not be better to have a single regulator?

Lord Benyon (Con): I thank the noble Duke for his question. The report the OEP produced was for the year up to the end of March last year. In April we published our plan for water, which addresses many of the points the OEP raised. Of course, since then we have had the announcement of the large investment in water quality that we are requiring water companies to make. His point is interesting, and I have considered over many years whether we could have a better landscape of regulation of our water industry. What I want to urge is that there is an urgency about trying to tackle the problems. We have set ourselves very important targets, and if government were to indulge in navel-gazing over many months in trying to create a new body, we would miss our really important 2030 target, which Ministers are concentrating on.

Baroness Jones of Moulsecoomb (GP): My Lords, we all have huge respect for the Minister—even I do—but he keeps repeating the same thing from the Government. Clearly, the report is not happy. It says that this is deeply concerning, adverse environmental trends continue and:

> "Government must speed up … its efforts".

Are the Government going to speed up their efforts?

Lord Benyon (Con): We have a real sense of urgency in the department; it does not just stop at Ministers but goes right down through the agencies that are the delivery bodies for this. We could double the size of Natural England and the Environment Agency and we still would not hit the targets if we were not weaponising the most important people in terms of improving the environment: the people who control and manage the land. Completely changing how we support farming, from an area-based system to one that is improving nature and incentivising and rewarding farmers, is just one part of what we are doing. I have great respect for the noble Baroness as well, so I say to her: come in to Defra and sit down. I will take her through the most ambitious plan for our environment that this country has ever seen.

Lord Cromwell (CB): In answering a recent question in this House, the Minister introduced us to a very interesting category of person, and he has just done it again: the weaponised land manager. Looking at my register of interests, I think I might be one, and therefore I will put a question to him. I spent last month bouncing back and forth between officials who deal with Countryside Stewardship and the sustainable farming initiative, both worthy causes. There is a great deal of

passing back and forth, confusion and lack of unity. When will we get a unified scheme so that environmental warriors such as me can actually deliver?

Lord Benyon (Con): The noble Lord is a weapons-grade guardian of the countryside, and I want to make sure that people like him find it really simple and straightforward to apply for the sustainable farming incentive. It is probably the best 20 to 40 minutes of a farmer's year, and it compares and contrasts so well with the complications of systems in the past. It is fairer: more than 50% of area payments went to the biggest 10% of farmers; these are systems that improve smaller farmers as well. We are also unifying, to use his word, the system that allows people to apply for Countryside Stewardship and sustainable farming incentives, and the RPA is doing that today.

Baroness Hayman of Ullock (Lab): My Lords, like the noble Baroness, Lady Jones, I recognise the Minister's personal commitment to protecting the natural environment, but yesterday he rightly observed that you cannot meet 2030 targets if you start acting only in 2029. He has talked about important schemes that have already got off the ground, but yesterday the noble Baroness, Lady Boycott, provided a lengthy list of examples of where there has been little or no visible progress. Can the Minister provide a timetable for the announcements of regulations that are going to be brought forward during the remainder of this Session, so that both this House and the OEP can see where and when this progress is going to be made?

Lord Benyon (Con): The noble Baroness, Lady Boycott, raised the issue of peat. The *England Peat Action Plan* committed us to restoring 35,000 hectares of peat-land by 2025—which is fairly soon—through the nature for climate fund. Through the net-zero strategy we are also committed to restoring 280,000 hectares of peat by 2050. We will bring forward legislation this year to ban the use of peat in horticulture. That is just one area that the noble Baroness, Lady Boycott, raised. I also draw her attention to our 34 new landscape recovery projects, which show that we are on track to have 70% of land in environmental land management schemes by 2028. This is progress and has real benefits to our environment on the ground.

Earl Russell (LD): My Lords, launching the annual assessment, the chair of the OEP said that

"government's plans must stack up. Government must be clear itself and set out transparently how it will change the nation's trajectory to the extent now needed, in good time".

We do not yet have that clarity or transparency. What action will now be taken to meet the key delivery plans, the interim targets, and to implement an effective monitoring and evaluation learning framework?

Lord Benyon (Con): The noble Earl probably missed what I said earlier about the fact that this report covers just two months since the announcement last January—a year ago—of the environmental improvement plan. In a year's time, he will be able to see how we are doing against that through the next report, in the summer. Through the Environment Act, noble Lords on all sides were rightly keen to ensure that there is an accurate monitoring and reporting system. These are not state secrets; this is 800 pages of data that we can share that underpin the targets that we produce in that plan. We are committed, through parliamentary processes and through the OEP, to report on those monitoring methods. We will continue to do so in an open and transparent way.

Arrangement of Business

Announcement

3.22 pm

Baroness Williams of Trafford (Con): My Lords, I thought it would be useful if I updated the House on the business arrangements for tomorrow. Noble Lords may have seen that a new version of *Forthcoming Business* was issued this afternoon, announcing the intention to take all stages of the new Northern Ireland (Executive Formation) Bill tomorrow afternoon. This Bill will be introduced tomorrow. It is a one-clause, focused Bill to extend the period for Executive formation in Northern Ireland. The Leader of the House of Commons announced this afternoon that the Bill will also go through all its stages in the other place tomorrow. We therefore expect to receive the Bill tomorrow afternoon and we will proceed to Second Reading as soon as possible.

Noble Lords can now sign up to speak at Second Reading in the usual way. The speakers' list will be open until 11 am tomorrow to enable the longest possible window to sign up. The Public Bill Office will accept amendments from after First Reading in the Commons, and we will signal that on the annunciators. Noble Lords will have 30 minutes after the conclusion of Second Reading tomorrow to table amendments for Committee stage. We will make further announcements about the arrangements for the remaining stages through the usual routes, including providing details of subsequent stages through *Today's List*, the usual channels, and on the annunciator.

As already announced, it remains our intention to proceed with the first day of Committee of the Victims and Prisoners Bill tomorrow. How much progress we make on that Bill and whether we start Committee stage before we commence proceedings on the Northern Ireland Bill will depend on when we receive the Bill from the House of Commons. I will of course update the House tomorrow when timings are clearer.

Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill [HL]

Third Reading

Scottish, Welsh and Northern Ireland Legislative Consent sought

3.24 pm

Motion

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

That the Bill do now pass.

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): My Lords, I beg to move that the Bill do now pass. If I may, I will say a few notes of thanks to the participants and highlight a few core points. Other speakers may wish to do the same, but I gather that I should go first in the order of debate.

The Bill is a narrow one, focused on technical barriers to trade, intellectual property and government procurement, but it will help ensure that we meet our international obligations when we accede to the CPTPP. We will be the first new member to accede to the agreement. We have also, through our accession to this wonderful institution, in effect established a brand-new set of free trade agreements with Malaysia and Brunei.

This is also therefore a highly significant step, and taking this Bill through your Lordships' House has been a pleasure and a privilege. I am delighted that the ambassadors and representatives from all 11 CPTPP member states—Canada, Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam—are here today to witness this historic moment. "Ocean's Eleven" will become "Ocean's Twelve".

Noble Lords: Oh!

Lord Johnson of Lainston (Con): I spent a long time working on that joke—it did not work the first time, but I thought I would try it at this final point.

This Chamber has seen productive debate, including following the Bill's Second Reading, which was opened with profound style by the then new Foreign Secretary, my noble friend Lord Cameron of Chipping Norton.

I turn first to the Opposition spokespeople, the noble Lords, Lord McNicol of West Kilbride and Lord Purvis of Tweed. The scrutiny that they have undertaken has been thoughtful and thorough, and they have my sincere thanks for this.

I am indebted once again to my noble friend Lord Lansley and his ability to purposely probe legislation, this time in relation to geographical indications and government procurement. I also extend my gratitude to all members of the International Agreements Committee, led by the noble and learned Lord, Lord Goldsmith, for their continued engagement, particularly the noble Baroness, Lady Hayter, and the noble Lord, Lord Kerr.

It would also be right for me to express thanks to the noble Lords, Lord Alton of Liverpool and Lord Leong, who I hope are reassured by the robustness of our democratic processes around our treaty obligations and my undertakings to ensure that all future countries who wish to join the CPTPP, once we are a full member, will receive full and proper scrutiny.

I am also grateful to the noble Lord, Lord Foster of Bath, for his extraordinary knowledge of intellectual property law and his comments around artists' rights. I look forward to seeing the findings of the consultation when it reports over the coming months. I also make a commitment to continue to work with all CPTPP countries to further the principle of artists' resale rights, as recently discussed with the noble Earl, Lord Clancarty.

I thank my noble friend Lord Goldsmith of Richmond Park for his helpful input around the risks to the environment and continue to reassure noble Lords that we remain fully committed in this area when negotiating free trade deals. There is no derogation of our standards with our joining CPTPP. In fact, this forum allows us to drive change and further align our partner countries with our environmental values and ambitions.

Other important areas discussed during the Bill's passage include food standards, the UK's financial sector and parts of the Bill's application in Northern Ireland. These issues were raised frequently and emphatically by my noble friends Lady McIntosh, Lord Holmes and Lady Lawlor, and the noble Baroness, Lady Willis. I pay tribute to each of them for this and the engagement that they afforded me.

Finally, it would be remiss of me not to thank my Secretary of State, Kemi Badenoch, for her skills in bringing this process to a conclusion. She led a first-class team who delivered a truly wonderful gift to this nation.

Behind the scenes, the extraordinary Bill team also put in an unbelievable amount of effort. All Peers in this House who have engaged in this or, indeed, any legislative process will be aware of the extraordinary effort by our officials to ensure sensible dialogue and great outcomes. My thanks go to James Copeland, Alistair Ford, Jack Collins and Jack Masterman, as well as Hope Hadfield, Neelam Mandair and Bayse Genc from the CPTPP team. I also thank my private secretary, Lisa Banks, and other officials who make up my private office, so ably led by Anthony Donaldson.

Finally, I thank the parliamentary staff, including the doorkeepers and the clerks, for their professionalism and continued support to your Lordships' House.

British businesses and consumers alike are set to benefit significantly from our acceding to this trade group. It builds on the free trade agreements that entered into force between the UK and Australia and New Zealand in May last year, which I had the honour of taking through Parliament. It will result in new market access for our world-leading goods and services. We are removing tariffs, which will help our farmers, service providers and businesses export across the world to new, fast-growing economies and populations hungry for our produce. As Lord Haldane so wisely said, tariffs are not the answer; the only way to remain ahead of our rivals is to continue to be ahead of them in the quality of what we make. No tariff can keep out that quality which is the key to quantity.

The CPTPP is a gateway to greater growth and economic prosperity for all parts of the UK. I repeat the wonderful quotation from William H Seward:

> "the Pacific Ocean, its shores, its islands, and the vast regions beyond, will become the chief theatre of events in the World's great Hereafter".

As the Bill travels to the other place and develops, it is important that we continue to work with the devolved nations to ensure that we have their appropriate co-operation and collaboration. With that, I thank all noble Lords in this House.

The Earl of Clancarty (CB): My Lords, briefly, I thank the Minister for his active engagement on the artist's resale right; I am encouraged by the direction of travel. In particular, I thank him for yesterday's meeting on ARR, which he efficiently managed to schedule for before today's Third Reading. I thank

Reema Selhi of DACS, Oliver Evans of the Maureen Paley gallery, and my noble friend Lord Freyberg, who is in his place, for their valuable contributions to this discussion, particularly on how the international element can be better understood. I am grateful to the Minister for listening and for his active involvement in this area. Following ratification in July, I look forward to seeing how membership will help further these aims, in relation to both the countries concerned and other agreements.

Baroness Hoey (Non-Afl): My Lords, this is a very important Bill and I have supported it strongly. But before we finally complete Third Reading, I point out again to this House, as I did in Committee, that two clauses do not apply to part of the United Kingdom: Northern Ireland. We have been left under the European Union rules and will not be able to take advantage of these provisions.

Some new terminology was brought in, but although the provisions covered Northern Ireland, they would not apply to Northern Ireland. In terms of equal citizenship —because of what we did in leaving the European Union while leaving Northern Ireland out of that— Northern Ireland has once again been left out. That is a very sad reflection of the Conservative Government's aim and promise that they believed in a United Kingdom and in the union.

Lord Howell of Guildford (Con): My Lords, I congratulate my noble friend the Minister on the enthusiastic verve with which he has handled the whole of this legislation. We in the International Agreements Committee have been examining the detail of membership at considerable length for some time. Long before that, and long before Brexit many years ago, we were working to see our greater involvement in this pivot to south-east Asia and Latin America.

As the Minister said, this is a historic moment: we are entering now, with new opportunities, the fastest-growing markets of the next 30 years. Beyond that lie even bigger investment opportunities and markets which will ensure that we can maintain our own living standards in this country. This is a great move in the right direction, which will, if we work at it, bring enormous benefits.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend the Minister on securing the safe passage of the Bill. He is aware of the concern of farmers across North Yorkshire and the rest of the country about the Bill's impact. I look forward to the increasing consumption of cheese, chocolate and whisky produced in all four parts of this country in all the countries that are party to the CPTPP—the whole thing; tout.

Can I raise two issues with my noble friend? Will he work very closely with Defra on the labelling of provisions when we eventually import products that may not meet the same standards of animal welfare and environmental protection that our farmers have to meet? Can I press him on his last comment on seeking the legislative consent of the Scottish, Welsh and Northern Irish? It is complex. Does he have a date—now that the Bill will pass to the other place—when that legislative consent will be granted?

The Earl of Sandwich (CB): My Lords, may I ask the Minister a very brief question? I was on the committee at about the time he joined so he may not remember this, but as a committee we were very strongly in favour of the department bringing out a trade policy paper which would highlight all the good things about Britain, if you like. It would tell us more what the department was thinking while we were going through line by line. Can he resurrect that project? Will he give us an answer?

Lord Purvis of Tweed (LD): My Lords, the *Companion* is quite clear that we do not reopen at Third Reading elements of the debate that we had at earlier Bill stages, so this is an opportunity for me to thank the Minister for his openness. He has been assiduous in replying to questions, as I am sure he will be for those asked of him today. It perhaps illustrates that while we are passing this Bill which facilitates the UK ratification of the accession, the other member states will also have to ratify and go through their own constitutional processes to do so. Many of the issues raised during the passage of the Bill will continue to be relevant, such as the impact on developing countries and the standard issues on impacts that my noble friends raised. We will continue to engage with the Minister with regard to all those.

I also welcome the diplomatic community who have been gathered by the Minister to bear witness to this. They are excellent representatives of their countries. Notwithstanding that, according to "Rotten Tomatoes", "Ocean's Twelve" is the weakest of the film series, as my noble friend Lord Fox pointed out, we always consider the Minister as the George Clooney of the Government in this House. For myself, I think Brad Pitt probably had the better role.

However, if the whole country is to benefit from the largesse of the 0.08% growth over 15 years, it will be as a result of the Minister's enthusiasm. If we could market and export ministerial enthusiasm, we would be on to a winner with that he presents. All six of his predecessors whom I have shadowed in this House had equal levels of enthusiasm for growing British trade. We will see the operationalisational elements of this agreement by the fact of British exporters needing support to access the markets, for there to be an industrial strategy from the Government and for the export strategy to be grown. We want success for our exporters, trading with our friends, using this agreement and I am sure this will not be the last time we will debate our trade with these nations.

In the meantime, I congratulate the Minister and thank him for what he has done during the proceedings of the Bill.

Lord Kerr of Kinlochard (CB): I too congratulate the Minister and thank him for the way he has handled relations, not just with the House but with its International Agreements Committee. He has been open, transparent and forthcoming with documents.

[Lord Kerr of Kinlochard]

I also make a public service announcement. In the next couple of weeks, the International Agreements Committee will be publishing a full report on our accession. Let me reassure the House, as we pass this Bill, that the International Agreements Committee will not say anything which would imply that we should not pass it. We too very much welcome this accession.

Lord Johnson of Lainston (Con): I appreciate all the comments made. I will revert back on the principles around legislative consent, but I can assure your Lordships that we are having very constructive conversations with all the devolved nations. I beg to move.

Bill passed and sent to the Commons.

Investigatory Powers (Amendment) Bill [HL]

Report

Scottish Legislative Consent sought.

3.39 pm

Clause 2: Low or no reasonable expectation of privacy

Amendment 1

Moved by ***Lord Fox***

1: Clause 2, page 6, line 7, after "must" insert ", as soon as possible and in any event within 24 hours,"

Member's explanatory statement

This amendment requires a person granting an authorisation in urgent cases to notify a Judicial Commissioner within, at most, 24 hours that they have done so.

Lord Fox (LD): My Lords, I will speak also to Amendment 7, which is in my name. These amendments require a person granting an authorisation in urgent cases to notify a judicial commissioner within, at most, 24 hours. This amendment would make it mandatory that, when the intelligence services use type 7A and 7B data for urgent operational purposes, they must report this to a judicial commissioner within 24 hours.

As your Lordships know, the current proposal in the Bill is three days. As it stands, the intelligence services can use those three days to interrogate a dataset that is ultimately ruled offside by the judicial council—three days to deploy AI models that work very quickly, in moments. The Minister responded, highlighting extra cost as a possible reason not to pursue this. Plainly, with all due respect, that is not true, because the data has to be reported anyway, and bringing it forward by a couple of days is not a relevant concern.

The spectre of weekends has also been raised. I assume that, given that this process is to facilitate urgent investigations, the intelligence services themselves will be working on Saturday and Sunday, and it is up to them to report their activity. Amendments 1 and 7 do not change the time duty for the judiciary to respond, so this would not affect the operation of the urgent inquiry. Should they not respond until Monday or otherwise, it is not the concern of the services. Clearly, it puts pressure on the judicial commission to some extent, but the intelligence services will have met their side of the obligation and can carry on with their important and urgent work until such time as the judicial commissioner makes a ruling. In any case, I am sure that there will be duty rosters and such things going on for this, so, again, I am not sure that the weekend is a concern.

Another argument that has been advanced and may yet return is that other legislation uses three days, so this should, too. The whole point of the Bill is to take advantage of new and innovative technology. It seeks to recognise the differences and change regulations accordingly. If the technology changes, as it does as a result of the Bill, so should reporting criteria. If there are other times that are different, perhaps we should be looking at those rather than at this amendment. In this case we are dealing with new technology, where artificial intelligence, once trained, can be deployed on data—which may or may not be allowed until such time as the judicial commissioner has ruled—and AI can produce its answers in minutes, perhaps hours.

In Committee I proposed that the use of this data for urgent operations should be reported immediately. I recognise that that was a very unreasonable suggestion, which is why these amendments specify within 24 hours, which is a fairer proposal.

In Committee, the Minister's words on what happens to information retrospectively ruled unusable were helpful:

"The relevant information must be removed from the low/no dataset and either deleted or a Part 7 warrant sought".—[*Official Report*, 11/12/23; col. 1743.]

However, additionally in Committee, various ex-services Peers confirmed what I knew, which is that once a fact is known by service personnel, it is not forgotten—it cannot be unknown. The noble Baroness, Lady Manningham-Buller, and other noble Lords were very clear on that.

This amendment is designed to limit the amount of unforgettable information that can be derived from inappropriate datasets. I will listen hard to the Minister's words, but, unless he has found a different and more compelling argument than those already deployed, I will press Amendment 1.

I am pleased that the Government have agreed that, in the event of Amendment 1 being agreed, Amendment 7 will be treated as consequential. I beg to move.

3.45 pm

Lord West of Spithead (Lab): My Lords, I rise to speak to Amendments 2, 3 and 6. As I made clear in Committee, the Intelligence and Security Committee broadly welcomes the introduction of this legislation as a means of addressing significant changes to the threat and technological landscapes that have the potential to undermine the ability of our intelligence agencies to detect threats and protect our country. There are, however, several areas in which the Bill must be improved and, in particular, safeguards strengthened.

The draft codes of practice published by the Government contain indicative safeguards. This is not a substitute, however, for putting such provisions on the face of the Bill, which is essential if we are to ensure that those safeguards cannot be changed or diluted by subsequent Administrations. This is particularly

important when we are discussing necessary scrutiny and oversight. The ISC is still, therefore, seeking amendments to several sections of the Bill.

It is important to remember that the Bill seeks an expansion of the investigatory powers available to the intelligence services. We consider that this expansion is warranted. Any increase in those powers, however, must be accompanied by a proportional increase in oversight. Sadly, the Government have previously been reluctant to ensure that democratic oversight keeps track of intelligence powers—particularly where it is related to the remit and resources of the ISC. This House has made its views on this long-standing failure known during debates on several recent Bills, and yet again in Committee on this Bill. The Government have so far refused to update the remit of the ISC or provide the necessary resources for its effective functioning, such that it has

"oversight of substantively all of central Government's intelligence and security activities to be realised now and in the future"—

as was the commitment given by the then Security Minister during the passage of what became the Justice and Security Act.

The House of Lords made its views on this long-standing failure known in debates over several recent national security Bills, including what became the National Security and Investment Act, the Telecommunications (Security) Act and the National Security Act. Despite these repeated attempts by this House to ensure effective oversight, this has been ignored by the Government. The Government cannot continually expand and reinforce the powers and responsibilities of national security teams across departments, and not expand and reinforce parliamentary oversight of those teams as well. The committee expects the Government to take this opportunity to bolster the effective oversight it purports to value. It is therefore imperative that Parliament ensures that, in relation to this Bill, the role of the ISC and other external oversight bodies, such as IPCO, is well defined and immovable from the outset. Fine words in a code of practice are, I am afraid, hardly worth the paper they are written on. They must be written into statute.

On the detail of Amendment 2, as I have noted in my previous speeches, Section 226DA of the current Bill requires that each intelligence service provide an annual report to the Secretary of State detailing the individual bulk personal datasets it retained and examined under either a category authorisation or an individual authorisation during the period in question. My amendment would ensure that there was independent oversight of this information, rather than just political oversight, as at present. It would achieve this by providing that the annual report be sent also to the Intelligence and Security Committee of Parliament and the Investigatory Powers Commissioner.

IPCO does have a degree of oversight included in the Bill already, alongside its existing powers of inspection, but it is not full oversight. Further, there is currently no parliamentary oversight of category authorisations at all. This is not appropriate. My amendment will, therefore, enshrine within legislation that IPCO and the ISC will have oversight of the overall operation of this regime.

At this point, I acknowledge the amendment tabled by the Government. I thank the Minister for his engagement with the ISC; we have had some useful dialogue and I thank him very much for that. It is reassuring that there may finally be some recognition of the strength of feeling in this House that was apparent through noble Lords' interventions at Second Reading and in Committee that the ISC must have a role in scrutinising this new regime.

However, what is not clear is why the Government chose to table their own amendment rather than accept the ISC's amendment. Both amendments would seemingly provide the ISC with information on category authorisations that are granted or renewed in the given period. Without wishing to sound suspicious, I think the House requires an explanation as to what the Government see as the difference.

The first difference appears to be that the government amendment is less specific on the information to be provided and does not include individual authorisations within its scope. It therefore does not give the same level of assurance to Parliament and the public that the ISC is fully sighted on the operation of the regime.

The second difference is that the government amendment would seem to create more work for the intelligence community, as rather than simply sending the existing annual report to the ISC, a separate report would have to be produced instead. The Minister has been very keen to emphasise the need to minimise the burden on the agencies—we agree entirely with him; they are very busy—when it comes to other elements of the Bill, so it is most peculiar that the Government are deliberately choosing to increase the burden.

The third point I would note is that if the intention of this proposal is to carefully curate the information provided to the ISC regarding the Part 7A regime, it is rather undermined by the fact that the committee would still be able and willing to request a full report be provided to the Secretary of State, under the existing powers in the Justice and Security Act.

My fourth and final point is that the government amendment excludes the Investigatory Powers Commissioner. It is not clear why. IPCO and the ISC are both essential to oversight.

I trust noble Lords can recognise that, despite what I am sure are the Government's best intentions, the ISC amendment provides the most robust assurance to Parliament and the public regarding oversight of the new regime, and the most streamlined mechanism for delivering this. I therefore urge the Minister and noble Lords to support this amendment to ensure that the robust safeguards and oversight mechanisms so carefully considered by Parliament in respect of the original legislation are not watered down by changes under this Bill. If investigatory powers are to be enhanced, so must oversight. This is what the ISC seeks to achieve by this amendment and those others that I have tabled.

I will touch very briefly on my noble friend Lord Coaker's Amendment 5. I support it fully and I have raised those issues to do with the ISC.

On Amendment 6, this Intelligence and Security Committee amendment is required in order to close a 12-month gap in oversight. This relates to the new

[LORD WEST OF SPITHEAD]
Part 7A, to be introduced by this Bill, which provides for a lighter-touch regulatory regime for the retention and examination of bulk personal datasets by the intelligence services where the subject of the data is deemed to have low or no reasonable expectation of privacy. Approval to use such a dataset may be sought either under a category authorisation, which encompasses a number of individual datasets that may be used for similar purpose, or by an individual authorisation, where the authorisation covers a single dataset that does not fall neatly within a category authorisation or is subject to other complicating factors.

In the case of the category authorisation, a judicial commissioner will approve the overall description of any category authorisation before it can be used. A judicial commissioner will also approve any renewal of category authorisation after 12 months, and the relevant Secretary of State will receive a retrospective annual report on the use of all category and individual authorisations.

However, as I highlighted in Committee, this oversight is all retrospective. What is currently missing from the regime is any form of real-time oversight. Under the current regime, once a category authorisation has been approved, the intelligence services then have the ability to add any individual datasets to that authorisation through internal processes alone, without any political or judicial oversight. They will be able to use those datasets for potentially up to a year without anyone being the wiser. This would mean relying on the good intentions of a particular intelligence service to spot and rectify any mission creep up until the 12-month marker for renewal. Although we have every faith in the good intentions of the intelligence services, no legislation should be dependent on the good will of its subjects to prevent misuse of the powers granted therein, particularly where those powers concern national security.

It is important that we fill that 12-month gap in oversight, and my amendment does so very simply by providing a new Section 226DAA in Clause 2, which would ensure that IPCO is notified whenever a new, individual bulk personal dataset is added by the agencies to an existing category authorisation. The Government's primary argument against this proposal appears to be that it would be too onerous for the intelligence community and would impair its operational agility. I do not believe this is the case.

Notification would entail the agency sending a one-line email to the Investigatory Powers Commissioner containing the name and description of the specific bulk personal dataset as soon as reasonably practicable after the dataset was approved internally for retention and examination by that intelligence service. The amendment would not require that the use of the dataset be approved by the Investigatory Powers Commissioner, merely that the commissioner be notified that it had been included under the authorisation. It does not, therefore, create extra bureaucracy or process—certainly not in comparison with an entire new annual report, as the Government were proposing in relation to my previous amendment.

Crucially, this will provide for IPCO to have real-time information to enable it to identify any concerning activity or trends in advance of the 12-month renewal point. Any such activity could then be investigated by the commissioners as part of their usual inspections. Aside from the supposedly onerous burdens that these one-line emails will place on the agencies, the Government are also seeking to argue that the safeguards of the Bill are currently calibrated to the lowest level of intrusion associated with low or no expectation of privacy datasets and that it would therefore be inconsistent for the agencies to provide notification regarding category authorisations, given that they do not provide notification for datasets under the current Part 7 class warrant regime.

This argument is similarly unpersuasive. In the first instance, the light-touch nature of our amendment, requiring simple notification rather than approval, is already calibrated to the lower level of intrusion. However, the key point is that the agencies do not have the same powers under Part 7 and Part 7A. This new regime gives the agencies greater powers specifically to internally add individual datasets to those categories without external approval. This is not a power given under the current Part 7 regime. The ISC agrees that the agencies should have this power in relation to low or no reasonable expectation of privacy datasets. However, to rehearse this argument yet again, we should not be creating greater intrusive powers without data oversight. This is a new power that should not be available without some form of real-time external oversight, which is what my amendment provides.

This combination of real-time oversight through the notification stipulated in this amendment and retrospective oversight through the involvement of judicial and political oversight bodies, as set out in my previous amendment, is necessary to provide Parliament and the public the reassurance that data is being stored and examined in an appropriate manner by the intelligence services. The ISC believes that this amendment strikes the right balance between protecting the operational agility of the intelligence services, which remains very important to us, and safeguarding personal data. I therefore urge noble Lords to support my amendment.

Baroness Manningham-Buller (CB): My Lords, first, I apologise. Like the noble Lord, Lord West, who during Committee had a bionic knee, I may not last, because I had a new one installed a couple of weeks ago. My eyes turned to the noble Lord, Lord Fox, as he possibly expected, but I am out of reach today and I cannot hit him with my crutch.

It might help the House if I described the circumstances in which an emergency warrant is sought. There is a very long-standing system for this. In the days before we had judicial commissioners, it was if a Minister was unavailable, and now it is if the Minister and, of course, the judicial overseers decide that a warrant sought is wrong or inappropriate, all the material is destroyed.

At the earlier stage, I said that you cannot legislate to forget, but the noble Lord, Lord Fox, has slightly twisted what I was trying to say then. Of course, if the

material is destroyed because the warrant was not approved, some people will remember what they read, but it cannot be used in any way.

These occasions occur nearly always at times when people are unavailable—in the middle of the night or at weekends—when there is a brief window of opportunity where it is a matter of life and death. I can see that, on the surface, it is appealing to bring the notification time down to 24 hours, but this is not rational or consistent with the rest of the legislation that we have. For far more intrusive techniques such as planting a microphone or intercepting a communication, it is three days. That said, I know that my former colleagues will endeavour to do it as soon as possible, but over the weekend the Investigatory Powers Commissioner's Office is not open. People are not available. They will try to do it as soon as possible, but it does not make sense to reduce the time needed in these cases of low intrusion, with datasets of no or low expectation of privacy, to require a stricter regime than for very much more intrusive techniques such as the planting of a microphone in your house.

4 pm

Lord Murphy of Torfaen (Lab): My Lords, I rise very briefly to support my noble friend Lord West in his excellent speech regarding the Intelligence and Security Committee, which I had the honour of chairing for two years some years ago. I hope that the Government take great heed of my noble friend's words. The ISC is probably the most important oversight committee in the world, and it is certainly held in great respect by countries throughout the western world. I have never known the committee to be in any way partisan, and it consists of Members of both Houses of Parliament of great distinction. Therefore, I support what my noble friend said.

However, I also support the amendment tabled by my noble friend Lord Coaker regarding the Prime Minister. Something has gone wrong in the last few years in relations between the Government and the Intelligence and Security Committee. It would seem that the Prime Minister, whoever it might be, has not met with the ISC—as he should do—for years. Perhaps the Minister will tell us when the ISC last had a formal meeting in the Cabinet Room of No. 10 Downing Street with an incumbent Prime Minister. It is hugely important because, inevitably, the work of the ISC is secret but may need to be discussed with the Prime Minister of the day. My noble friend's amendment puts that obligation for the Prime Minister to meet with the committee in statute. I have no doubt that the Minister will dismiss this as impractical. However, it shows the strength of feeling of Members of this House and, I am sure, of the other place, regarding the importance of the ISC, the importance of the agencies reporting to it—especially since, as a result of this Bill, the agencies will have more power—and for there being a direct link between the Prime Minister and the committee on a regular basis.

Lord Coaker (Lab): My Lords, I thank the Minister for his continued engagement with us on all aspects of this important Bill. I would be grateful if he could pass that on to his officials as well. I wish the noble Baroness, Lady Manningham-Buller, well with her knee, and I hope she will soon be able to make do without the crutch.

I very much support what my noble friends Lord West and Lord Murphy said about the amendments moved by my noble friend Lord West regarding the ISC. I look forward to the Minister's response. I will come to my amendments in a moment, but it goes to the heart of what many of us have been saying—that the Intelligence and Security Committee is extremely important. Part of the problem is that, when the Minister responds to us on these points, he often says, "Don't worry: there's ministerial oversight". However, what my noble friends have talked about is that this is not the same as parliamentary oversight. There is an important distinction to be made. I hope that the Minister can respond to that.

I turn to the noble Lord, Lord Fox, and his amendments. Again, we thank the Government for the communication we have had regarding Amendments 1 and 7. As I have intimated before, we support the noble Lord, Lord Fox, on his Amendments 1 and 7. With the addition of the low/no datasets authorisation and third-party data warrants to the bulk personal datasets warrants regime, and the extension of powers that this represents, it seems appropriate that additional safeguards are put in place to ensure the judicial commissioner is informed as quickly as possible of the use of these urgent warrants. Importantly, that does not change how long the judicial commissioner has to consider the warrant, and to revoke access if necessary; it is just on the importance of notification as quickly as possible. If urgent powers, as the noble Baroness, Lady Manningham-Buller, has pointed to, need to be used, nobody is suggesting that they are not used; the suggestion is that the notification to the judicial commissioner should be made as soon as possible and, with respect to the amendment of the noble Lord, Lord Fox, within 24 hours.

I turn to my Amendment 47. This amendment aims to try to get the Minister to put some of this on the record, rather than to seek to divide the House on it. Amendment 47 seeks to ensure that the Government report on the potential impact of the Bill on the requirement to maintain data adequacy decisions from the EU. The adequacy agreement is dependent on the overall landscape of UK data protections. Although the UK protections are currently considered adequate, deviations from this under this legislation could put our current status at risk. Losing this designation would have serious consequences for digitally intensive sectors, such as telecommunications and financial services as well as tech services. In his response, could the Minister provide some reassurances on this particular aspect of the legislation and say whether any specific analysis has been done on the impacts of the Bill on the data adequacy agreement?

I turn to my Amendment 5, which, just for clarity, is a probing amendment but is extremely important. The Minister will know that I have raised this point again and again on various pieces of legislation over the last year or two. To be fair, the Minister has said that he will raise it with the appropriate people, and I am sure that he has done that—I am not questioning that at

[LORD COAKER]
all. As the noble Lord, Lord Murphy, said, and the Intelligence and Security Committee said in its report of 5 December 2023—hence my Amendment 5 to probe this—no meeting between the Prime Minister of our country and the Intelligence and Security Committee has taken place since December 2014. I am pleased that we have the noble Lord, Lord Cameron, here—not present in the Chamber now, but here within your Lordships' House—because he was the last Prime Minister that met with the committee. I find it absolutely astonishing that that is the case.

We are informed by the committee that many invitations have been made to various Prime Ministers to attend the Intelligence and Security Committee. I do not want to go on about this—well, I will to an extent—but it is incredibly important. I cannot believe—people say that it cannot be right, and I show them the report—that it has been 10 years since a Prime Minister has gone to the body, which has been set up by Parliament to ensure there is liaison between Parliament and the intelligence and security services. Obviously, matters can be discussed in that committee. Some of those cannot be discussed in the open, but that is one way in which it is held to account.

Can the Minister explain what on earth is going on? Why is it so difficult for the Prime Minister to meet the committee? I am not intending to push this amendment to a vote, as I say, and I am sure the Minister will try to explain again, but it is simply unacceptable that the Prime Minister of this country has not met the ISC for 10 years. For the first 20 years of its existence, and my noble friend Lord West will correct me if I am wrong, I think it was an annual occurrence that the Prime Minister met the ISC—my noble friend Lord Murphy is nodding—yet that has not happened since 2014. That is unacceptable, and my Amendment 5 seeks to ask the Minister what on earth we are going to do to try to get the Prime Minister to attend. I would not have thought that was too much to ask.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I have listened with interest to the points made in this debate. As noble Lords will be aware, we have considered carefully the amendments that have been debated. I place on record my thanks to the noble Lords, Lord West, Lord Coaker and Lord Fox, for their constructive engagement in the run-up to today's debate on these issues and various others that will be debated later today.

I turn first to the topic of oversight of the new Part 7A regime containing bulk personal datasets, BPDs, where there is low or no expectation of privacy. Alongside the proportionate set of safeguards set out in Part 7A, the Bill currently provides for executive political oversight and accountability by requiring the heads of the intelligence services to provide an annual report to the Secretary of State about Part 7A datasets. The intention of the report is to ensure that there is a statutory mechanism for political oversight, given that the Secretary of State will not have a role in Part 7A authorisations. That is set out in new Section 226DA in Clause 2 of the Bill.

The Investigatory Powers Commissioner will continue to provide full, independent and robust oversight of the investigatory powers regime, including this new part. Nevertheless, the Government have listened to the points made by noble Lords and colleagues in the other place, and we understand their concerns about increasing parliamentary oversight. Government Amendment 4 therefore recognises the important role of the ISC in providing parliamentary oversight of the intelligence services. It places a statutory obligation on the Secretary of State to provide the ISC with an annual report containing information about category authorisations granted under the Act during the year. The amendment will ensure that the ISC is proactively provided with information about the operation of Part 7A on an annual basis. That will support the ISC in continuing to fulfil its scrutiny role and will enhance the valuable parliamentary oversight the committee provides.

It is appropriate for the ISC to be privy to certain information relating to Part 7A in the exercise of its functions, and that a statutory obligation be placed on the Secretary of State to provide it. This obligation is intended to be consistent with the provisions set out in the Justice and Security Act, and due regard will be had to the memorandum of understanding between the Prime Minister and the ISC when meeting it. It is likely that Amendments 2 and 3, tabled by the noble Lord, Lord West of Spithead, which would require that the report provided to the Secretary of State be also shared with the ISC, would not be in step with that. The information required by the Secretary of State to fulfil their responsibilities in respect of the intelligence services will not necessarily be the same as that which would assist the ISC in performing its functions. The report will almost certainly contain information about live operations, which is outside the scope of the ISC's remit, as well as other information that it may not be appropriate to share with the ISC and which the Secretary of State could properly withhold from the ISC were the ISC to request it.

For that reason, we think it more appropriate that a report be written to meet the ISC's functions that the Secretary of State will send to the ISC. This will provide the additional parliamentary oversight the committee is seeking and would be akin to the existing arrangements in place for operational purposes.

4.15 pm

The noble Lord's amendments would require the intelligence services to provide the same report to the Investigatory Powers Commissioner. There is no need for a requirement to share a report with the IPC. The IPC and anyone acting on his behalf already have access to all locations, documents and information necessary to carry out a thorough inspection regime.

The intelligence services are legally obliged to provide all necessary assistance to the IPC, who is required to report publicly on the findings of his inspections. It is my firm belief that the Government's amendment offers the ISC an appropriate mechanism through which the committee will be able to understand how the regime is working, and that the insights garnered by this reporting will support the ISC in continuing to carry out its oversight functions. I hope this provides

the assurance that the noble Lord, Lord West, and his fellow committee members are seeking and that they will feel able to support the Government's alternative to his amendment.

Amendment 6, tabled by the noble Lord, Lord West, would require that the intelligence services notify the IPC that an individual dataset has been authorised in reliance on an existing category authorisation under Part 7A. This obligation would be more onerous than the requirements under the existing BPD provisions. Not only is this unnecessary, but it would also impose additional burdens on the intelligence services and IPCO, while achieving only a negligible and unnecessary increase in oversight.

The IPC already has extensive oversight of Part 7A. His judicial commissioners have a role in the authorisation process and his inspectors will carry out regular inspections of the intelligence services' use of it. Judicial commissioners will approve every category authorisation and the authorisation of every dataset that does not fall within an existing category authorisation. Category authorisations will expire at 12 months and will then need to be renewed. That decision will also require the approval of a judicial commissioner.

On inspection, IPCO will be entitled to see all authorisations granted under Part 7A and can review the datasets retained in reliance on a category authorisation. Any irregularities or errors may be reported by the IPC in his annual report. This is the approach taken in inspections of the existing Part 7, whereby datasets authorised under class warrants are reviewed by IPCO inspectors. We consider that the overall package of safeguards in Part 7A is appropriate and proportionate to the nature of the datasets with which it is concerned. We do not see the case for adding a new, more onerous, dataset by dataset requirement here, which would not meaningfully improve oversight. I therefore respectfully ask that the noble Lord does not move his amendment today.

Amendment 5, tabled by the noble Lord, Lord Coaker, would require the Secretary of State to publish a report on the Prime Minister's engagement with the ISC relating to investigatory powers. As I said earlier, the ISC plays an important role and the Government value the independent and robust oversight of the intelligence services and the wider intelligence community that the committee provides. The amendment we have tabled today demonstrates that. The Government keep the formal working agreement with the ISC under review. Section 93 of the National Security Act 2023, which came into force on 20 December 2023, places a requirement on the Government to consider whether the ISC's memorandum of understanding with the Prime Minister should be altered to reflect any changes arising out of that Act.

The Government welcome the ISC's views on how the memorandum of understanding may be updated to reflect any changes arising from the National Security Act and will formally reach out in the coming weeks. The Government are clear that the MoU review is the correct forum to discuss relevant potential changes to the agreement between the Prime Minister and the ISC.

Lord Coaker (Lab): I thank the Minister for giving way, because this is an extremely important point. He mentioned with respect to my Amendment 5 that somebody will formally reach out. Does that mean that the Prime Minister will formally reach out to the ISC and meet with it, so that we get a resolution to this non-meeting?

Lord Sharpe of Epsom (Con): I cannot say whether or not that someone will be the Prime Minister at the moment.

As I said, the Government are clear that the MoU review is the correct forum to discuss relevant potential changes to the agreement between the Prime Minister and the ISC. But the Government do not believe a report of this kind is appropriate or necessary and do not support the amendment. The noble Lord, Lord Coaker, has already answered the question from the noble Lord, Lord Murphy, and all I can say from the Dispatch Box is that I will try again.

I turn to the second of the amendments from the noble Lord, Lord Coaker, Amendment 47, which would require the Government to publish a report assessing the potential impact of this legislation on the EU's data adequacy decision. The Government are committed to maintaining their data adequacy decisions from the EU, which play a pivotal role in enabling trade and fighting crime. The Home Office worked closely with the Department for Science, Innovation and Technology when developing the proposals within this Bill to ensure that they would not adversely impact on the UK's EU data adequacy decisions. As the European Commission has made clear, a third country is not required to have the same rules as the EU to be considered adequate. We maintain regular engagement with the European Commission on the Bill to ensure that our reforms are understood. Ultimately, the EU adequacy assessment of the UK is for the EU to decide, so the Government cannot support this amendment.

I turn to the amendments retabled by the noble Lord, Lord Fox, on urgency provisions for individual authorisations under Part 7A and third party dataset warrants under Part 7B. The Government remain opposed to these iterations of the amendments for the following reasons. Urgency provisions are found throughout the IPA and the Government's approach is to mirror those provisions in the regimes in new Part 7A and new Part 7B. Making the proposed amendment solely for these parts would reduce consistency—as the noble Lord, Lord Fox, predicted—and ultimately risk operational confusion where there is no good reason to do so.

It will always be in the interests of the relevant intelligence service—as the noble Baroness, Lady Manningham-Buller, said; I add my comments to those of the noble Lord, Lord Coaker, about a speedy recovery—to notify a judicial commissioner of the granting of an urgent authorisation or the issuing of an urgent warrant as soon as is reasonably practicable. These urgent instruments are valid only for five working days. A judicial commissioner must review and decide whether to approve the decision to issue or grant the instrument within three working days. If the judicial commissioner refuses to approve the decision within that time, then the instrument will cease to have effect. It would be counter-intuitive for an intelligence service to make untimely

[LORD SHARPE OF EPSOM]
notifications, as this increases the risk of the urgent authorisation or warrant timing out because the judicial commissioner is left without sufficient time to make a decision.

In an operational scenario where the urgency provisions are required, such as a threat to life or risk of serious harm, or an urgent intelligence-gathering opportunity, it may not be practical or possible for the intelligence services to ensure completion of paperwork within a 24-hour period, as the noble Baroness, Lady Manningham-Buller, explained rather more eloquently than I have done.

The intelligence services work closely with the Investigatory Powers Commissioner's Office to ensure that the processes for reviewing decisions are timely and work for judicial commissioners. For those reasons, I ask that the noble Lord, Lord Fox, does not press his amendments.

This group also includes the two modest but worthwhile government amendments, Amendments 8 and 9. These make it clear beyond doubt that the new third party BPD regime will fall under the oversight of the Investigatory Powers Commissioner. The robust oversight that IPCO brings will ensure compliance, ensuring that robust safeguards are in place when information is examined by the intelligence services on third parties' systems. I hope that noble Lords will welcome these amendments and support them.

Lord Butler of Brockwell (CB): My Lords, as a former member of the Intelligence and Security Committee, perhaps I may say how much I endorse what has been said by the noble Lords, Lord West and Lord Murphy, and welcome many elements in the—

Lord Fox (LD): We have had the speeches on this group and are moving to a vote. I am sorry to interrupt the noble Lord.

I thank the Minister for his comments and, indeed, the noble Baroness, Lady Manningham-Buller. My interpretation—perhaps I am wrong—of the nature of this Bill was that it was to introduce a new class of data and to deal with it. It was not to reach back into existing law and change it. The noble Baroness raised some important points about why I should have been concerned about the other data, which I did not reach back into. I am happy to advise my colleagues in the Commons and perhaps they can do that, too. However, taking on face value the nature of what we were seeking to achieve today, we looked at this data and came up with this conclusion. We have heard the arguments, but I am afraid that I am not persuaded by them and I would like to test the will of the House.

4.24 pm

Division on Amendment 1

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4.36 pm

Amendments 2 and 3 not moved.

Amendment 4

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

4: Clause 2, page 11, line 16, at end insert—

"226DAA Report to Intelligence and Security Committee

(1) The Secretary of State must for each relevant period provide to the Intelligence and Security Committee of Parliament a report setting out information about category authorisations and renewals of category authorisations granted in that period.

(2) In subsection (1) "relevant period" means—

(a) a period of at least one year and no more than two years beginning with the date on which this Part comes fully into force, and

(b) subsequent periods of no more than one year, beginning with the end of the period to which the previous report related.

(3) Each report must be provided to the Committee as soon as reasonably practicable after the end of the period to which the report relates."

Member's explanatory statement

This amendment requires the Secretary of State to provide to the Intelligence and Security Committee of Parliament reports about category authorisations and renewals of such authorisations under new Part 7A of the Investigatory Powers Act 2016.

Amendment 4 agreed.

Amendments 5 and 6 not moved.

Clause 5: Third party bulk personal datasets

Amendment 7 not moved.

Clause 6: Minor and consequential amendments

Amendments 8 and 9

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

8: Clause 6, page 25, line 15, leave out "and (3)" and insert "to (3A)"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 25, line 30.

9: Clause 6, page 25, line 30, at end insert—

"(3A) In section 229 (main oversight functions), in subsection (9), in the definition of "bulk personal dataset", after "199" insert "(and includes a third party bulk personal dataset (see section 226E))"."

Member's explanatory statement

This amendment clarifies that the Investigatory Powers Commissioner's oversight functions include, amongst other things, keeping under review the use of third party bulk personal datasets by an intelligence service.

Amendments 8 and 9 agreed.

Clause 8: Delegation of functions

Amendment 10

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

10: Clause 8, page 27, line 14, at end insert—

"(aa) deciding under section 90(11) or 257(10) whether to approve a decision of the Secretary of State,"

Member's explanatory statement

This amendment provides that the function of the Investigatory Powers Commissioner ("IPC") of deciding, under section 90(11) or 257(10) of the Investigatory Powers Act 2016 (review of notices), whether to approve decisions may be delegated to a Deputy IPC only where the IPC is unable or unavailable to exercise the function.

Lord Sharpe of Epsom (Con): My Lords, I will speak to the government amendments in this group, Amendments 10 to 14.

The Investigatory Powers Act contains world-leading oversight arrangements and safeguards that apply to the use of investigatory powers. The Bill strengthens these to ensure that the oversight regime is resilient and that the Investigatory Powers Commissioner is able to carry out his functions effectively. These government amendments are designed to maintain this approach, and to tighten the drafting in certain areas to ensure that the scope of the measures in Part 3, in respect of communications data, cannot be interpreted more broadly than is intended.

I will start with government Amendment 12, which will ensure that there is clarity for telecommunications operators regarding their obligations to report personal data breaches relating to warrants issued under the IPA. The proposed new clause will also make provision for such breaches to be reported to the Information Commissioner and the Investigatory Powers Commissioner. This amendment will also ensure that the Investigatory Powers Commissioner has the ability to notify an individual affected by the personal data breach, if it is deemed to be in the public interest to do so and if the Information Commissioner considers the breach to be serious. Such a notification will inform an individual of any rights that they may have to apply to a court or tribunal in relation to the breach. This important amendment will bring much-needed clarity in respect of how personal data breaches committed by telecommunications operators are regulated, and ensure that there is a clear statutory basis for the Information Commissioner and the Investigatory Powers Commissioner to be notified of certain personal data breaches.

I move on to government Amendments 10 and 11. Amendment 11 adds Scottish Ministers to the list of parties, at Clause 9(5), who are to be notified by the Investigatory Powers Commissioner of the appointment of a temporary judicial commissioner. This must be as soon as practicable after any temporary judicial commissioner has been appointed. This will ensure that Scottish Ministers are kept abreast of crucial developments in the investigatory powers oversight regime. A similar requirement already exists in the Bill, which requires the IPC to notify certain persons, including the Secretary of State and the Lord President of the Court of Session, of an appointment of a temporary judicial commissioner.

Government Amendment 10 to Clause 8 allows the Investigatory Powers Commissioner to delegate to deputy Investigatory Powers Commissioners the power to approve decisions following the review of a notice. This brings this function in line with the commissioner's other functions in the Act with regards to delegation

and, as with those powers, allows for delegation in only when the commissioner is unavailable or unable.

I turn now to government Amendments 13 and 14, both of which concern communications data, which I will refer to as CD. Government Amendment 13 clarifies the extent of Clause 11 to ensure that its scope is not wider than intended. Section 11 of the IPA creates the offence of acquiring CD from a telecommunications operator without lawful authority. Clause 11 seeks to carve out from the scope of Section 11 the sharing of CD between public authorities, where one of those authorities was a telecommunications operator.

This amendment to Clause 11 ensures that the public authority carve-out from the Section 11 IPA offence of acquiring CD without lawful authority does not go wider than intended. The new definition is based on the definition of public authority in the Procurement Act 2023. The previous definition was based on the definition of public authority in the Human Rights Act 1998. This latter definition could, in some circumstances, have created doubt over whether it included certain private sector telecommunications operators.

This amendment removes that doubt and clarifies that the public authority carve-out will apply only to telecommunications operators wholly or mainly funded by public funds—in other words, they are public authorities themselves. The IPA was designed to ensure that the acquisition of CD from private sector telecommunications operators for the statutory purposes set out in the Act was subject to independent oversight to safeguard against abuse. This amendment maintains this important safeguard in relation to private sector telecommunications operators.

I turn to government Amendment 14. It is critical that the legislation is absolutely clear on what constitutes CD and the lawful basis for its acquisition. Without this clarity, we risk placing CD that is crucial to investigators out of their reach. Government Amendment 14 therefore seeks to clarify that subscriber data used to identify an entity will be classed as CD.

This amendment is necessary as the existing Act creates a carve-out in the definition of CD to ensure that the content of a communication cannot be acquired under a Part 3 acquisition request. This reflects Parliament's view during the initial passage of the IPA 2016 that the content of a communication is inherently more sensitive than the underpinning metadata: the "who", "where", "when", "how" and "with whom" of a communication. Clause 12 amends the definition of CD in Section 261 of the Act to exclude certain types of data from the carve-out of content from the definition of CD. The effect of this is to include those data types within the definition of CD.

Government Amendment 14 restricts the effect of Clause 12 to ensure that it is not overly broad and cannot be applied to bring unintended, inappropriate types of data within the definition of CD. For example, the amendment will put beyond doubt that the content of recorded calls to contact centres or voicemails is not in scope of the amended CD definition and will not be accessible with an authorisation under Part 3 of the Act. The amendment to Section 261 does not affect the oversight function of the Investigatory Powers Commissioner's Office, which continues to inspect and highlight any errors and provide prior independent authorisation for the acquisition of CD in most cases.

I hope I have convinced noble Lords of the necessity of these government amendments; I ask that they support them. I also hope that these amendments provide reassurance to noble Lords, ahead of the debate on this group, of the Government's commitment to ensuring that the clauses in Part 3 are drafted as tightly as possible and with a proportionately narrow scope.

4.45 pm

Lord Anderson of Ipswich (CB): My Lords, I know that the noble Lord, Lord West, will want to speak to his own amendments, but, perhaps for the sake of good order, I could comment relatively briefly on government Amendment 14 before he does so.

I entirely accept what is said in the explanatory statement, that the amendment is intended to ensure that "unwanted cases" are not brought

"within the definition of 'communications data' in section 261 of the Investigatory Powers Act 2016".

That is a good objective, and I applaud the sentiment behind it. I also accept that the amendment may well be an improvement on the original Clause 12. My concern is that the wording used at the end of the amendment may inadvertently leave that definition broader than it should be, putting within the definition of "communications data" material that should plainly be classed as content.

Proposed new subsection 5B(b) is intended to limit the categories of content defined in new paragraph (a) which are classed as "relevant subscriber data" and thus as communications data. Instead of defining subscriber data tightly, by reference to information identifying an entity or the location of an entity, which would be reasonable, the limiting words in new paragraph (b) provide, more loosely, that it should be

"about an entity to which that telecommunications service is … provided".

That is a wide formulation indeed if you apply it to something such as Facebook or an online dating site. The information that customers may be required to provide to initiate or maintain their access to such services is likely to be very much broader than simply who and where they are. For example, I have it on the best authority that, in the case of a dating site, this information may, for example, include a full online dating profile, which sounds very like content to me. It would be most unfortunate if the wording of new paragraph (b) were to result in an interpretation of this clause—for example, by police reading it in good faith—than was far broader than was intended.

I offer more than the conventional gratitude to the Bill team, who have engaged with me intensively on this issue in an extremely short timescale. It is too late to seek an amendment to Amendment 14, but the Minister would help us and law enforcement out if he could confirm, perhaps in response to this intervention or in his own time, that the aim of Clause 12 in its amended form is to class as communications data only information which is truly needed to obtain or maintain access to a telecommunications service—traditional subscriber data such as name, location and bank details—and that there is no intention to cover information

[LORD ANDERSON OF IPSWICH]
provided as part of using the service, such as the online dating profile that you might be asked to fill out to operate or fully activate an account.

Lord West of Spithead (Lab): My Lords, I rise to speak to Amendments 15 to 20. In Committee, I moved amendments seeking to remove Clause 13 and its associated schedule. This was to retain the current arrangements, which wisely restrict a number of public authorities from being able to compel the disclosure of communications data from telecommunications operations. Parliament restricted this power in the original legislation because it considered it to be potentially very intrusive.

What this means is that, at present, authorities such as the Environment Agency or the Health and Safety Executive are required to take further procedural steps to compel disclosure of communications data. They must obtain an authorisation under the current IPA, a court order or other judicial authorisation, or under regulatory powers in relation to telecommunications or postal operators, or they must obtain the communications data as the secondary data as part of a valid interception or equipment interference warrant.

The Bill seeks to remove that requirement for further procedural steps in relation to a wide range of public regulatory authorities. The Government's argument for removing these restrictions is that a broader array of communications now fall into the category of communications data and a wider number of organisations now constitute telecommunications operators. As a result, the current restrictions prevent some regulatory authorities from acquiring the information necessary to exercise their statutory functions in a way that was not anticipated at the time of the original legislation.

These organisations have argued that this is particularly relevant to bodies with a recognised regulatory or supervisory function which would collect communications data as part of their lawful function but are restricted under the current Act if their collection is not in service of a criminal investigation; in particular, the changes focused on improving the position of certain public authorities responsible for tax and financial regulation, the powers of which were removed in 2018 as a result of rulings by the European Court of Justice. The ISC recognises that such bodies much be able to perform their statutory function effectively; however, we have been told that the Bill delivers only the urgent, targeted changes needed, and we have not thus far been presented with the case for that.

This was a highly scrutinised issue during the passage of the original Act. Parliament rightly ensured that the power to gather communications data was tied to national security and serious crime purposes only, to avoid impinging on the right to privacy without very good reason. We should not lightly brush that aside.

There have been a number of reported incidents of the intrusive use of investigatory powers by local councils and other public authorities for purposes that are subsequently deemed neither necessary nor proportionate; for example, things such as dog mess. The Minister said in Committee that the clause

"applies to a relatively small cadre of public authorities in support of specific regulatory and supervisory functions".

Yet in response to my question on which bodies would see their powers restored, he said that

"it is not possible to say with certainty how many public authorities have some form of regulatory responsibilities for which they may require data that would now meet the definition of 'communications data'".—[*Official Report*, 11/12/23; col. 1759.]

How can it be right to expect Parliament to reintroduce sweeping powers for a wide range of public bodies when a previous Parliament deemed that that was too intrusive—and when we cannot even be told which bodies they will be? Noble Lords will need to be sufficiently satisfied that these powers are to be given to bodies that cannot function without them; this cannot be a case of just giving powers back by default. I urge the Minister to consider this further. As it stands, we have not been given the information, or a convincing case, to persuade Parliament of the need for such a complete about-turn. The ISC will continue to pursue this amendment unless robust assurance can be provided that these powers will be restored in a sufficiently limited and targeted way.

Amendment 17 and its two consequential amendments seek to remove the ability of the agencies to internally authorise the use of this new, broader power to obtain internet connection records for target discovery. My amendment would require the agencies to seek approval from IPCO, thereby ensuring proper oversight. As I noted in Committee, Clause 14 creates a new, broader power for the agencies and the NCA to obtain ICRs for the purpose of target discovery. It represents a significant change from the current position because it removes the current requirement that the exact service used, and the precise time of use, be known. Under these new provisions, the agencies will be able to obtain ICRs to identify which person or apparatus used internet services in a period of time—a far broader formulation that will capture a far broader number of individuals.

As I also noted previously, the ISC agrees with broadening the power; what it does not agree with is that there is no oversight of it. The principle remains that increased powers must mean increased oversight. This new, expanded power is potentially very intrusive: it allows the agencies to obtain ICRs from a range of internet services over a potentially long period of time, and they could therefore potentially intrude on a large number of innocent people who would not have been captured previously.

It is essential in a democracy that there are appropriate safeguards on such powers, but in all cases relating to national security and economic well-being, the agencies are able to authorise use of this newly expanded, broader power internally. They make the assessment as to whether it is necessary and proportionate; there is no independent oversight of the agencies' assessment. The Minister argued in Committee that the ISC amendment inserts a disproportionate limitation on the agencies' ability to use condition D, as the Government

"do not assess that the new condition creates a significantly higher level of intrusion".—[*Official Report*, 11/12/23; col. 1761.]

With respect, the ISC not only disagrees with this assessment but finds it incomprehensible. This is about depth and breadth. The new condition D may not represent a new depth of intrusion as ICR requests under the new regime will still return the same type of information, but it certainly represents a much wider

breadth of intrusion as a far greater number of innocent internet users' details will be scooped up by these ICR requests.

The Government may argue that, because those individuals' details will not be retained once they have been checked and found not to be of intelligence interest, this is therefore not an intrusive power. Again, with respect, this is not an answer that Parliament or indeed the public can or should be satisfied with. I doubt any individual would feel that their privacy had not been intruded on if they had been scooped up just because they had not been retained, particularly when the retention of details is currently contingent entirely on the judgment of the agencies themselves, with no external input on whether the judgment is proportionate. The ISC very firmly believes that the new condition is more intrusive, and therefore greater oversight is required to ensure the power is always used appropriately.

Oversight will act as a counterbalance to the intelligence community's intrusive powers and provide vital assurance to Parliament and the public. This amendment and my two linked amendments therefore remove the ability of the agencies to authorise use of this power internally. The agencies would instead be required to seek the approval of an independent judicial commissioner from IPCO to authorise the obtaining of ICRs under this new, broader power. This strikes the right balance between security and privacy and minimises any burden on the agencies.

I move on to Amendment 18 in relation to the new same broader target discovery power in Clause 14. This amendment is to limit the purposes for which this new power would be used. As I outlined previously, target discovery has the potential to be a great deal more intrusive than target development as it will inevitably scoop up information of many who are of no intelligence interest. This is why we must tread very cautiously in this area and be quite satisfied of the need for the power, that the power is tightly drawn and limited, and is properly overseen.

The ISC agrees with the noble Lord, Lord Anderson, who, in his excellent report reviewing the Government's proposal for this Bill, supported the need for this change. The ISC has considered the classified evidence and recognises that due to technological changes the current power is less useful than envisaged due to the absolute precision it requires. However, as this House also recognised, Parliament deliberately imposed a high bar for authorising obtaining internet connection records, given their potential intrusiveness.

The noble Lord, Lord Anderson, also recommended, therefore, that the purposes for which this new broader target discovery power could be used be limited to national security and serious crime only, and that use of it should be limited to the intelligence community. However, the Bill as drafted departs from his recommendations in both respects. Not only does it include the National Crime Agency as well as the intelligence community, but it allows the intelligence community to use the new, broader target discovery power for a third, far less-defined purpose of:

"the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security".

In Committee, the Government argued that this decision had been taken because it is consistent with the statutory functions of the agencies and Article 8 of the European Convention on Human Rights. That is, of course, true. It is consistent, but that is not an argument in favour of simply transporting it here. Not every intrusive power should be available for every purpose that the security services have. Given the potential intrusiveness of this new power, it must be constrained appropriately and the purposes for which it can be used must be crystal clear.

However, what is not yet at all clear is exactly what critical work must be enabled under the umbrella of "economic well-being" as it relates to "national security" which is not already captured under the straightforward national security category. It must be clear exactly what harm would occur if this purpose were not included in the Bill. At the moment, the addition of "economic well-being" serves only to blur the lines between what an ICR can or cannot be used for, something which Parliament should not accept. Therefore, in addition to requiring independent judicial oversight, which is the subject of a separate amendment, this amendment seeks to prevent the agencies from using this newly expanded power for the purposes of economic well-being relating to national security. This will ensure that the rather vague concept of economic well-being is not being used as a catch-all justification for the exercise of these powers.

The agencies will of course still be able to use this power in relation to national security more broadly, and in urgent cases of serious crime. This is proportionate and indeed more in line with the recommendations of the noble Lord, Lord Anderson. Unless the Minister can provide the House with information as to exactly why it is critical to retain economic well-being for the use of these specific powers, not the agency's powers more broadly, I urge noble Lords to support my amendment and strike this from the Bill.

5 pm

Lord Fox (LD): I shall be brief. Not for the first time, your Lordships are in debt to the noble Lord, Lord Anderson, for intervening on an issue that I think all of us failed to note. His request of the Minister is helpful, and I hope the Minister will be able to respond. There is an alternative process which I could suggest to the Minister—I have not had a chance to talk to the noble Lord, Lord Coaker, about this. If the Minister wanted to withdraw this amendment and bring it back at Third Reading, which is applicable in certain circumstances. I am sure we would be very flexible in permitting that as well.

Lord Ponsonby of Shulbrede (Lab): My Lords, we support the introduction of the Government's amendments. I echo what the noble Lord, Lord Fox, said about the amendment in the name of the noble Lord, Lord Anderson, and I look forward to the Government's response on that point.

I would also be interested to hear what the Government have to say about my noble friend Lord West's amendments. He has taken a keen interest in this part of the Bill, and I hope the Government will be able to answer the questions, in particular on data disclosure

[Lord Ponsonby of Shulbrede]
powers, as I think they can give a more detailed response to the expansion of disclosure powers to regulatory bodies than was given in the original legislation. It is also very likely to be further analysed and looked at as the Bill moves down to the other end of the Corridor. Nevertheless, we support the amendments as they are currently.

Lord Sharpe of Epsom (Con): My Lords, I thank noble Lords for this short debate and the scrutiny on these important issues. First, I will address Amendments 15 and 16 tabled by the noble Lord, Lord West of Spithead, which seek to remove Clause 13 and the Schedule from the Bill. We have covered some of the same ground as we did in Committee, and I am afraid that much of my response will make similar points to those I made then. However, I can appreciate why he has raised the points he made about these provisions, and I hope that I can still provide him with assurance on why these measures are needed and proportionate.

As the Government have been clear, the purpose of Clause 13 is to ensure that bodies with regulatory or supervisory functions are not inhibited from performing the roles expected of them by Parliament. It restores their pre-existing statutory powers to acquire CD in support of those functions. When the IPA was passed in 2016—under the expert stewardship of the noble Lord's fellow ISC member in the other place, the right honourable Member for South Holland and The Deepings—it made specific provision, at Section 61(7)(f) and (j) respectively, for the acquisition of CD for the purposes of taxation and oversight of financial services, markets and financial stability. The noble Lord and his fellow committee members have queried whether we are "unmaking" these measures in the 2016 Act through Clause 13 of the Bill. I would therefore like to put beyond doubt what has happened since then to lead us to this point of needing to refine rather than unmake these provisions.

Following the Tele2 and Watson judgment from the Court of Justice of the European Union in 2016, the Government took the opportunity to streamline the statute book, including but not limited to some changes in response to that judgment. This streamlining included the removal of the regulatory provisions contained in the IPA because, at that time, those public authorities with regulatory or supervisory functions were able to acquire the data they needed using their own information-gathering powers, and Section 12 of the IPA had not yet been commenced, removing many of those powers. The relevant data was outside of the provisions of the IPA at this time and therefore not considered to come within the definition of CD.

Since then, businesses have operated their services more and more online. This has meant that many have become, in part at least, telecommunications operators as defined by the IPA. As a consequence, growing amounts of the data that they collect—which regulatory and supervisory bodies would have previously been able to access using their own information-gathering powers—now fall within the IPA's definition of CD. The effect of this is that public authorities are increasingly unable to acquire the CD that they need to perform their statutory civil or regulatory functions.

In summary, the IPA has been changed since it was commenced in 2016 to remove tax-related and financial stability-related powers to acquire CD and to introduce the serious crime threshold. Technology and society have moved on, with the result that more relevant data amounts to CD. Section 12 of the IPA has been commenced to remove general information powers. The combination of these changes has meant that public authorities are experiencing increased difficulty in carrying out their statutory functions. For example, the Financial Conduct Authority, His Majesty's Revenue & Customs and the Treasury are all examples of public authorities that already have the power to acquire CD using a Part 3 request but that may be unable to do so in the exercise of some of their functions as a result of the issue I have just set out.

These bodies perform a range of vital statutory functions using CD, including tackling breaches of sanctions regimes, enforcing the minimum wage and providing oversight of banking and financial markets. Schedule 4 to the IPA provides a list of public authorities that can acquire CD under Part 3 of the Act. The new definition of public authorities inserted by this clause will apply in the context of the sharing of CD between public authorities. This will include government departments and their arm's-length bodies, and executive agencies administering public services. While data sharing between government entities is covered under other legislation including the Data Protection Act and GDPR, or under separate data-sharing agreements, its sharing for legitimate purposes should not be discouraged or prevented by the IPA.

Clause 13 is needed to ensure that such bodies can continue to fulfil these existing statutory duties in the context of a world that takes place increasingly online. It strikes an appropriate balance between necessity and proportionality. In particular, I re-emphasise that it makes clear that the acquisition by these regulatory bodies should be only in support of their civil and regulatory functions, and not used in support of criminal prosecutions. Furthermore, the Government have retained the serious crime threshold that applies when acquiring CD for the purposes of a criminal prosecution.

The codes of practice will also provide additional safeguards and clarity on how this should work in practice. The Government published these in draft ahead of Committee to illustrate this. Any changes to the existing codes will be subject to statutory consultation before being made and will require approval from Parliament under the affirmative procedure. I am therefore confident that the changes will be subject to a high level of scrutiny. To be clear, this applies to a limited cadre of public authorities with the necessary statutory powers conferred on them by Parliament and only specifically when in support of regulatory and supervisory functions—it is not creating a way to circumvent the safeguards in the IPA. It ensures that the acquisition routes and associated strong oversight by the Investigatory Powers Commissioner are reserved for those areas where it is most essential and has the most serious potential consequences in terms of criminal prosecutions.

I am happy to provide the reassurance—or I hope I am—that the noble Lord, Lord Anderson, sought. I am grateful to him for his comments regarding

government Amendment 14, for engaging with officials to work through the concerns they raised and for his generous comments about the officials.

Our view is that the amended Clause 12 will be narrower in scope than the original drafting, which carried a risk of permitting access beyond the "who" and "where" of an entity. I assure noble Lords that the codes of practice will set out the further safeguards and details on the practical effect of Clause 12 so that operational partners are clear on the lawful basis of CD acquisition. It is appropriate that the technical detail is set out in this way rather than in primary legislation. The codes of practice will be subject to a full public consultation and will be laid in Parliament under cover of an SI, via the affirmative procedure. I reassure the noble Lord that we will consult with partners and the regulators of the IPA to ensure that the high standards of the CD acquisition regime remain world leading. I am happy to continue this conversation, and for my officials to continue with the extensive engagement already undertaken with the users of the CD powers, to see whether any further refinement is needed.

Finally, I confirm that the intention behind the amendment is to include the type of subscriber data that is necessary to register for, or maintain access to, an online account or telecommunication service. Examples of such data would include name, address and email address. It is not intended to include all types of data that an individual might give a telecommunication service that is not necessary for the purpose of maintaining or initiating access to that service.

I turn to Amendments 17, 19 and 20 on internet connection records, also tabled by the noble Lord, Lord West. Much of the argument I have heard relies on a perception that the new condition D is inherently more intrusive than the existing conditions B and C. I will set out why this is not the case.

The safeguards for the new condition D replicate the well-established and extensive safeguards already in place for CD authorisations. The authorisation process for CD varies according to the purpose for which the data is being sought and the type of CD to be acquired. This regime works effectively and has been considered by the Court of Appeal and found to be lawful.

The purpose of new condition D is to enable ICRs to be used for target detection, which is currently not possible under existing Part 3 authorisations. The level of appropriate oversight and safeguards is linked to the sensitivity of the data to be disclosed and the impact that disclosure may have on the subject of interest.

As I have said, the Government do not believe that condition D is inherently more intrusive than conditions B or C. Conditions B and C authorise "target development" work, and as such enable the applicant to request data on a known individual's internet connections. As an example, this means that the NCA could request records of the connections a known subject of interest has made in a given time period, provided that request was judged to be both necessary and proportionate by the Office for Communications Data Authorisations. In comparison, condition A enables the requesting agency to request who or what device has made a specific connection to an internet service.

Similarly, condition D would enable an agency to request details about who has used one or more specified internet services in a specified timeframe, provided it was necessary and proportionate—for example, accessing a website that solely provides child sexual abuse imagery. The actual data returned with condition D will most likely constitute a list of IP addresses or customer names and addresses. No information concerning any wider browsing that those individuals may have conducted will be provided. Information about that wider activity would be available only under a further condition B or C authorisation. Condition D is therefore no more intrusive than conditions B and C in terms of what data is actually disclosed. As such, we see no benefit or logic to imposing a different authorisation route for condition D when the existing safeguards have proven sufficient in terms of ICRs applications under conditions A, B and C.

I use this opportunity to remind all noble Lords of the importance of this new condition D and how it will support investigations into some of the most serious crimes, as well as supporting the critical work against both state and cyber threats. ICRs could be used to detect foreign state cyber activity. For examples, ICRs could be used to illuminate connections between overseas state actors and likely compromised UK infrastructure. We understand that these actors have an intent to target UK-based individuals and organisations, including government and critical national infrastructure, from within UK infrastructure, which we typically would not see. The ICR data returned from TOs would be highly indicative of the extent of malicious infrastructure and could assist with victim exposure. Furthermore, improved access to ICR data would enable the National Cyber Security Centre to detect such activity more effectively and in turn inform incident management and victims of compromises. Using data to flag suspicious behaviour in this way can lead to action to protect potential UK victims of foreign espionage and attacks.

I now turn specifically to the ability of the intelligence agencies and the NCA to internally authorise condition D applications. The intelligence agencies and the NCA must obtain approval from the Investigatory Powers Commissioner for ICR applications for the purpose of preventing or detecting serious crime, other than in urgent circumstances. In urgent circumstances, such as threat to life or serious harm to an individual, the intelligence agencies and the NCA are able to obtain CD authorisations from internal designated senior officers in the same way that police forces are. In practice, the volumes of non-urgent requests are such that the IPC delegates responsibility for the authorisation of ICR and other CD requests to the OCDA.

In terms of oversight, the IPC could, if he wished to, consider specific types of CD authorisations himself. The IPC also has the power to directly inspect any part of the CD regime. If he wishes to focus attention on condition D applications, he has the necessary powers to do so. The approach we have adopted for condition D authorisations is therefore consistent with the wider CD regime and gives the IPC flexibility in how he exercises his powers and resources.

As is also consistent with the wider CD regime, condition D applications relating to national security

[LORD SHARPE OF EPSOM]
will be authorised by a designated senior officer within the intelligence agencies. The CD codes of practice state that the designated senior officer must be independent of the operation and not in the line management chain of the applicant. This independence is declared within each application, and each designated senior officer completes training prior to taking up this role. Furthermore, each agency has one or more single point of contact officer, accredited by the Home Office and the College of Policing, who facilitates lawful acquisition of CD.

5.15 pm

Introducing a different approvals process solely for condition D applications that require judicial commissioner approval is unnecessary, unhelpful and unwarranted. A consistent approach to the authorisation of these applications has real value, encouraging efficiency and compliance. The amendment would simply increase the complexity of the regime and increase the risk of errors occurring because of the different approval approaches for otherwise very similar techniques. In this context, I again remind noble Lords that in IPCO's most recent annual report published in 2023, it found that both GCHQ and MI5's CD acquisition processes were

"working to a high standard … and were supported by strong internal governance procedures".

The regime and its oversight are working. The amendment would make the regime more complicated and less flexible.

In addition to this assurance, it may be helpful if I detail the legal history for this arrangement. In 2022, the High Court held that applications from the intelligence services which related solely to serious crime had to receive independent authorisation, other than in urgent circumstances, on the same basis as those from law enforcement, which is why such applications now go to the Office for Communications Data Authorisations. The situation is different for national security cases, including economic well-being cases which must be relevant to national security, both because of the more sensitive context of national security and because of the different treatment provided to national security by retained EU law.

Noble Lords may also wish to note that Amendment 19, which would remove condition D2, would prevent any urgent requests for an internal authorisation being made by the NCA or the intelligence agencies for condition D ICRs. There again, not even EU law prevented internal authorisation for urgent CD requests.

To summarise, it is essential that the intelligence agencies and the NCA can self- authorise condition D ICR applications in urgent circumstances. Requiring the intelligence agencies to seek authorisation from the Investigatory Powers Commissioner for condition D is inconsistent with all other national security CD authorisations. It would add administrative burdens to those agencies and increase the risk of errors because of the inconsistency with other CD requirements, despite the very similar techniques and levels of intrusion involved in condition D when compared to conditions A to C. Finally, it would achieve nothing significant that is not already available in terms of oversight, because the IPC can already inspect the agencies' use of CD. I therefore respectfully suggest that Amendments 17, 19 and 20 should not be moved.

I promise that I am getting to the end and I apologise for the length of my speech, but this is important and requires significant detail. I now address Amendment 18, also tabled by the noble Lord, Lord West of Spithead, which seeks to remove

"the economic well-being of the United Kingdom"

as a lawful purpose under condition D. The use of the economic well-being of the UK as a justification is permitted only in so far as those interests are also relevant to the interests of national security.

My understanding of the reasoning of the noble Lord, Lord West, for amendment 18 is that the economic well-being of the UK when relevant to national security is already included within the purpose of national security, and it is therefore unnecessary to specify it separately in relation to condition D. If that were the case, there would have been no reason for Parliament to specify economic well-being separately in the IPA or in the intelligence agencies' foundational Acts or other Acts which relate to those agencies.

If this amendment removes "economic well-being" as a statutory purpose for condition D on the belief that it is already included within national security, the ICR conditions A to C will all refer to economic well-being, while condition D will not. The obvious implication from this is that Parliament deliberately left out "economic well-being" from condition D, so it is not available as a statutory purpose. It would be unwise to rely on Pepper v Hart to provide the clarity missing from the legislation that would be caused by Amendment 18.

At these times of heightened state threats, it is entirely sensible and prudent to include economic well-being as a statutory purpose of the use of condition D. Its inclusion is necessary, given that there are countries in the world which strive to harm the UK's economic well-being in their desire to achieve increased geopolitical influence or dominance. The Government therefore believe that it is not in the wider public interest to remove this provision.

For example, noble Lords may be aware of the National Security and Investment Act 2021, which was made necessary to protect critical industries and enterprises from being controlled by those who would do our country and our democracy harm. The use of ICRs could help to support the necessary investigatory work that supports actions and decisions taken under that Act to safeguard the United Kingdom's open business system. Amendment 18 would be an act of national self-harm because it would prevent a potentially useful capability in condition D being used to protect the economic well-being of the United Kingdom from attack by our adversaries.

Finally, because economic well-being is a permissible ground only in so far as it is also relevant to the interests of national security, drawing clear lines between cases which fall under the core national security ground and those which fall under the economic well-being ground can be difficult. This amendment would therefore add to legal uncertainty.

I hope that this rather lengthy explanation provides noble Lords with reassurance on why this provision and others have been included and the amendments are unnecessary.

Amendment 10 agreed.

Clause 9: Temporary Judicial Commissioners

Amendment 11 agreed.

Amendment 12 agreed.

Clause 11: Offence of unlawfully obtaining communications data

Amendment 13 agreed.

Clause 12: Meaning of "communications data": subscriber details

Amendment 14 agreed.

Clause 13: Powers to obtain communications data

Amendment 15 not moved.

The Schedule

Amendment 16 not moved.

Clause 14: Internet connection records

Amendments 17 to 20 not moved.

Clause 16: Extra-territorial enforcement of retention notices etc

Amendment 21

Moved by ***Lord Fox***

21: Clause 16, page 34, line 29, leave out from "insert" to end of line 30 and insert ""(where the requirement or restriction applies to a person within the United Kingdom)"."

Member's explanatory statement

This amendment specifies that enforcement of retention notices applies only to UK recipients of such notices.

Lord Fox (LD): My Lords, I will move Amendment 21 and speak to the other amendments in this group in my name.

Amendment 21 specifies that the enforcement of retention notices applies only to UK recipients of such notices. It is one of a suite of amendments in this group that return to the issue of extra-territoriality—I see the Minister blow out his cheeks at the prospect. Amendments 22, 25, 28 and 31 are similarly directed and each largely seeks to limit extra-territoriality by ensuring that operators can make changes to their services for users outside UK jurisdiction.

The reason for tabling the amendments, the others of which I will not move, is that there remains a huge gulf of understanding between the tech companies and the Government when it comes to the interpretation of the Bill with respect to its territorial reach. I am again presenting the Minister with a golden opportunity to set out in clear language the territorial ambitions that the Government have for this Bill. I believe there is some element of miscommunication going on here, though I am not sure in which direction. I hope that the Minister can dispel that.

Clearly, we have international tech companies that are incorporated in another country with subsidiaries all around the world and data residing in many different domains—companies that offer services to customers all over the world. In essence, we need to understand what would happen as a result of this Bill if such a business proposed to change a global service that is used by consumers all over the world, including in the UK. How do the Government use this Bill to deal with such situations? I am looking forward to the response.

Amendments 23, 24, 29 and 30 would raise the threshold for calling in a change from "negative effect" to "substantially limit". Again, this increases the bar before the Government can start the process. Negative effect is a very low bar which will catch almost everything. It is not in the interests of the authorities to have everything coming through. There needs to be some sense of funnel. This is an opportunity for the Minister to define what negative effect is and what it is not, because it is a very low bar. He would be wise to take our advice and look at the language there, certainly when it comes to the code coming later.

Moving on, my Amendment 27 is a retread of an amendment I tabled in Committee, and it was there as a placeholder. I am pleased to see that it is unnecessary, as government Amendments 26 and 32 very much embrace the spirit of what I was seeking to achieve in that amendment. I thank the Minister for responding, and therefore will not be speaking to or indeed moving Amendment 27.

I now turn to Amendment 35. Currently, while there is a requirement for the Secretary of State to consult the operator before giving notice, there is no requirement on the Secretary of State to consult ahead of making regulations that will specify what "relevant change" includes, and therefore what needs to be notified. My Amendment 35 therefore introduces a requirement for pre-legislative consultation on the definition of "relevant change". The amendment specifies that the Secretary of State must consult the Technical Advisory Board. There is a precedent for consultation with this board in Section 253(6) of the 2016 Act. As your Lordships know, the Technical Advisory Board is comprised of independent and industry representatives; the amendment also specifies a wider range of consultees.

The amendment then requires the Secretary of State to have regard to the impact on users, including on their privacy and on operators' ability to innovate. Again, there is precedent for this in the 2016 Act. Such considerations must be taken into account when a public authority is deciding whether to issue a TCN or NSN, or where a judicial commissioner approves a DRN. As such, we feel it is worth while also to consider these factors when legislating for a "relevant change", because delaying a critical security update could negatively impact users and operators. In a

[Lord Fox]
sense, all we are asking for is consultation. We are not asking to change the law, and this gives the Government a power to abide by that consultation or not. But we feel that this is an important definition, and it needs to be more widely consulted on.

I hope the Minister will agree, but in the event that he declines, I will be moving Amendment 35. I beg to move Amendment 21.

Lord Ponsonby of Shulbrede (Lab): My Lords, we have had much welcome interaction from stakeholders on the issues summarised in this group, as well as some useful briefings from the Home Office and the noble Lord's team, for which we are grateful.

As the noble Lord, Lord Fox, has just said, there appears to be a gulf in both position and understanding between the Government and the tech companies, both on the principle of the notice and its details, which is, in a sense, frustrating scrutiny of the Bill. I understand that there is a disagreement about the introduction of notification notices in general. It is right that we look at the details to ensure that the process takes place in a way that reflects the realities of international law, and the need of the intelligence services to maintain levels of data access and the necessary safeguards.

Concerns raised by stakeholders keep striking at the same places: how this notice would work with access agreements with other countries; why there is no double lock on the notification notice, despite the clear impact it would have on tech companies' activities; and why the definition of telecoms operator is perhaps in reality wider than the Government intend.

We will not be supporting Amendment 35, in the name of the noble Lord, Lord Fox, although we understand the intent behind it. We encourage the Government to keep talking to stakeholders, and we believe that this part of the Bill will benefit from further discussion in the other place.

5.30 pm

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Lords, Lord Ponsonby and Lord Fox, for their remarks in this debate. I reassure the noble Lord, Lord Fox, that any cheek-blowing he witnessed was more a reflection of the previous marathon speech than a reflection on his amendments.

Amendment 21, moved by the noble Lord, Lord Fox, would require that the enforcement of data retention notices—DRNs—would apply only to UK recipients of those notices. DRNs and technical capability notices—TCNs—can be given to a person overseas, but only TCNs are currently enforceable overseas. Clause 16 seeks to amend Sections 95 and 97 of the IPA to allow the extraterritorial enforcement of DRNs in order to strengthen operational agility when addressing emerging technology, bringing them in line with TCNs. It is vital to have this further legal lever, if needed, to maintain the capabilities that the intelligence agencies need to access the communications data they need to, in the interests of national security and to tackle serious crime.

The Government therefore oppose Amendment 21 as it goes fundamentally against what the Government are seeking to achieve through Clause 16 and would not provide any additional clarity to telecommunications operators. As DRNs are already enforceable against UK recipients, there is no need to re-emphasise that in the Bill.

I turn to the amendments to Clause 17 concerning the notice review period. This clause is vital to ensure that operators do not make changes that would negatively impact existing lawful access while a notice is being comprehensively reviewed. Maintaining lawful access is critical to safeguard public safety, enabling law enforcement and the intelligence community to continue protecting citizens during the review period.

Let me be clear: operators will not be required to make changes during the review period to specifically comply with the notice. Rather, under Clause 17 they will be required to maintain the status quo so that law enforcement and intelligence agencies do not lose access to any data that they would have been able to access previously. The review process is an important safeguard, and that right of appeal will remain available to companies.

On Amendment 27, tabled by the noble Lord, Lord Fox, the Government have noted the strength of feeling from parliamentarians and industry regarding the current uncertainty over the timeframe for conducting a review of a notice. We have therefore tabled Amendments 26, 32 and 33 to Clause 17 to address that uncertainty and provide further clarity and assurances regarding the notice review process.

The existing powers within Sections 90 and 257 of the IPA do not give the Secretary of State the power to specify in regulations the time period within which a review of a notice must be completed. The Government are therefore introducing a new regulation-making power to enable the Secretary of State to specify in regulations the length of time the Secretary of State can take to reach a decision on the review of a notice upon receipt of the report by the judicial commissioner and the Technical Advisory Board, and the overall length of time that a review can take.

The amendments will also make provision for a judicial commissioner to issue directions to the Secretary of State and the person seeking the review, as they see fit, to ensure the effective management of the review process. That will give the judicial commissioner the power to issue directions to both parties, specifying the time period for providing their evidence or making representations, and the power to disregard any submissions outside those timelines. These amendments will provide operators the certainty they require regarding how long a review of a notice can last, and therefore how long the status quo must be maintained under Clause 17. They will also provide further clarity on the process and management of that review.

Specifying timelines will require an amendment to the existing regulations concerning the review of notices. The Government commit to holding a full public consultation before the amendment of those regulations and the laying of new regulations relating to Clause 20, which provides for the introduction of the notification notices. Representations received in response will be

considered and used to inform both sets of regulations, which we have clarified in the Bill are subject to the affirmative procedure.

Amendment 35, tabled by the noble Lord, Lord Fox, seeks to specify in statute who the Secretary of State must consult before laying regulations relating to Clause 20 and the introduction of notification notices, and the factors that the Secretary of State must have regard to when making those regulations. I hope the commitment that I have just made to hold a full public consultation provides the necessary reassurance to the noble Lord that all relevant persons will be consulted before making the regulations, and that he will agree that is it unnecessarily prescriptive, and potentially restrictive, to put such details in the Bill.

Amendments 22, 25, 28 and 31, also tabled by the noble Lord, Lord Fox, seek to limit the extraterritoriality of Clause 17 and ensure that operators can make changes to their services and systems for users in other jurisdictions during a review. To be clear, the Bill as currently drafted means that companies can make changes to their services during a review. They could choose to roll out new technologies and services while the review is ongoing, including in other jurisdictions, so long as lawful access is built into them as required to maintain the status quo. Furthermore, the status quo will apply only to whichever of their systems and services are covered by the notice in question. Naturally, anything outside the scope of the notice is unaffected by the requirement. I also emphasise that the control of telecommunications systems used to provide telecommunications services in the UK does not stop at borders, and it is highly likely that any such arbitrary geographical limitations would in fact be unworkable in practice.

Amendments 23, 24 and 29 seek to raise the threshold with regard to relevant changes that an operator must not make during a review period to a change that would "substantially limit" their ability to maintain lawful access. This would not make the position any clearer as "substantially" is a subjective test. Moreover, it would constrain Clause 17 in a way that would fundamentally prevent it from achieving its objectives: to ensure that the same level of lawful access available before the notice was issued is maintained during a review period.

Lawful access provides critical data to law enforcement and intelligence agencies. Constraining access to data that was previously available, in a limited capacity or substantially, may seriously undermine investigations and the ability to protect our citizens. It is therefore vital that the status quo is maintained during the review period. It would also be difficult to define "substantially limit" without referring to a "negative effect on" a capability.

Amendments 36 to 38 to Clause 20, also spoken to by the noble Lord, Lord Fox, seek to raise the threshold and provide more proportionality. As I have emphasised on every occasion we have debated the Bill, necessity and proportionality constitute a critical safeguard that underpins the IPA. Authorisations are approved by an independent body and all warrants and notices must be approved by a judicial commissioner. There is considerable oversight of authorisations, meaning that the threshold is already high. Necessity and proportionality justifications are considered for every request for a notice, warrant or authorisation and, by extension, whether it is reasonable to issue that request to the operator. Once operators are in receipt of such a request, they are required to provide assistance. The proposed amendments are therefore not required.

Finally, government Amendment 34 is a consequential amendment necessitated by the introduction of Clause 19, which amends the functions of a judicial commissioner to include whether to approve the renewal of certain notices.

I am grateful to all noble Lords who have spoken in this debate—

Lord Fox (LD): Before the Minister sits down, winding back to the point about territoriality, he spoke of national boundaries as being arbitrary. It would help me to understand what kind of activity the Government envisage reaching across those boundaries, which he refers to as arbitrary; in other words, what would the Government be seeking to do extraterritorially?

Lord Sharpe of Epsom (Con): If it would help, I am happy to write to the noble Lord with some sensible and practical scenarios because I do not think it is appropriate to make them up at the Dispatch Box, if that is acceptable.

I was just about to thank the noble Lord for the time he has taken to talk me through his concerns ahead of Report and at various other stages of the Bill on various other issues. However, I hope that I have provided reassurances through my comments at the Dispatch Box and the government amendments that we have tabled. I therefore invite the House to support these amendments and invite the noble Lord to withdraw Amendment 21 and not move the others he has tabled.

Lord Fox (LD): I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Amendments 22 to 25 not moved.

Amendment 26

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

26: Clause 17, page 35, line 18, at end insert—

"(b) in subsection (5)—

(i) after "must" insert ", before the end of the review period,";

(ii) after "(1)" insert "(and accordingly decide what action to take under subsection (10))";

(c) after subsection (5) insert—

"(5A) In subsection (5) "the review period" means—

(a) such period as may be provided for by regulations made by the Secretary of State, or

(b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (14)), such extended period."

(d) after subsection (9) insert—

"(9A) The Commissioner may give a direction to the operator concerned or the Secretary of State specifying the period within which the operator or the Secretary of State (as the case may be) may provide evidence, or make representations, in accordance with subsection (9)(a).

[Lord Sharpe of Epsom]

(9B) If the Commissioner gives such a direction to the operator or the Secretary of State, the Board and the Commissioner are not required to take into account any evidence provided, or representations made, by the operator or the Secretary of State (as the case may be) after the end of that period.”;

(e) in subsection (10)—

(i) for “may” substitute “must”;

(ii) after “Commissioner” insert “but before the end of the relevant period, decide whether to”;

(f) after subsection (11) insert—

“(11A) In subsection (10) “the relevant period” means—

(a) such period as may be provided for by regulations made by the Secretary of State, or

(b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (15)), such extended period.”

(g) after subsection (13) insert—

“(14) Regulations under subsection (5A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State where the extension is agreed by the Secretary of State, the telecommunications operator concerned and a Judicial Commissioner.

(15) Regulations under subsection (11A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State—

(a) where the Secretary of State considers that there are exceptional circumstances that justify the extension, or

(b) in any other circumstances specified in the regulations.

(16) Where regulations under subsection (11A)(a) include provision mentioned in subsection (15), the regulations must also include provision requiring the Secretary of State to notify a Judicial Commissioner and the telecommunications operator concerned of the duration of any extended period.””

Member’s explanatory statement

This amendment enables the Secretary of State to make regulations, and a Judicial Commissioner to give a direction, setting time limits in connection with reviews carried out under section 90 of the Investigatory Powers Act 2016 (review of retention notices).

Amendment 26 agreed.

Amendments 27 to 31 not moved.

Amendments 32 and 33

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

32: Clause 17, page 35, line 41, at end insert—

“(b) in subsection (4)—

(i) after “must” insert “, before the end of the review period,”;

(ii) after “(1)” insert “(and accordingly decide what action to take under subsection (9))”;

(c) after subsection (4) insert—

“(4A) In subsection (4) “the review period” means—

(a) such period as may be provided for by regulations made by the Secretary of State, or

(b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (13)), such extended period.”

(d) after subsection (8) insert—

“(8A) The Commissioner may give a direction to the person concerned or the Secretary of State specifying the period within which the person or the Secretary of State (as the case may be) may provide evidence, or make representations, in accordance with subsection (8)(a).

(8B) If the Commissioner gives such a direction to the person or the Secretary of State, the Board and the Commissioner are not required to take into account any evidence provided, or representations made, by the person or the Secretary of State (as the case may be) after the end of that period.”;

(e) in subsection (9)—

(i) for “may” substitute “must”;

(ii) after “Commissioner” insert “but before the end of the relevant period, decide whether to”;

(f) after subsection (10) insert—

“(10A) In subsection (9) “the relevant period” means—

(a) such period as may be provided for by regulations made by the Secretary of State, or

(b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (14)), such extended period.”

(g) after subsection (12) insert—

“(13) Regulations under subsection (4A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State where the extension is agreed by the Secretary of State, the person concerned and a Judicial Commissioner.

(14) Regulations under subsection (10A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State—

(a) where the Secretary of State considers that there are exceptional circumstances that justify the extension, or

(b) in any other circumstances specified in the regulations.

(15) Where regulations under subsection (10A)(a) include provision mentioned in subsection (14), the regulations must also include provision requiring the Secretary of State to notify a Judicial Commissioner and the person concerned of the duration of any extended period.””

Member’s explanatory statement

This amendment enables the Secretary of State to make regulations, and a Judicial Commissioner to give a direction, setting time limits in connection with reviews carried out under section 257 of the Investigatory Powers Act 2016 (review of national security and technical capability notices).

33: Clause 17, page 35, line 41, at end insert—

“(6) In section 267(3) (regulations: affirmative procedure)—

(a) in paragraph (e), after “90(1)” insert “, (5A)(a) or (11A)(a)”;

(b) in paragraph (j), after “257(1)” insert “, (4A)(a) or (10A)(a)”.”

Member’s explanatory statement

This amendment applies the affirmative procedure to regulations made under section 90(5A)(a) or (11A)(a) or 257(4A)(a) or (10A)(a) of the Investigatory Powers Act 2016 (time limits in connection with reviews of notices).

Amendments 32 and 33 agreed.

Clause 19: Renewal of notices

Amendment 34

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

34: Clause 19, page 37, line 25, at end insert—

"(4A) In section 229 (main oversight functions), in subsection (8)(e)(i), for "or varying" substitute ", varying or renewal"."

Member's explanatory statement

This amendment is consequential on clause 19(4) and (6) (renewal of notices). It inserts into section 229 of the Investigatory Powers Act 2016 (main oversight functions) a reference to the Investigatory Powers Commissioner deciding whether to approve the renewal of certain notices.

Amendment 34 agreed.

Clause 20: Notification of proposed changes to telecommunications services etc

Amendment 35

Tabled by ***Lord Fox***

35: Clause 20, page 39, line 23, at end insert—

"(3A) Before making regulations under this section the Secretary of State must consult the following persons—

(a) the Technical Advisory Board;

(b) persons appearing to the Secretary of State to be likely to be subject to any obligations specified in the regulations;

(c) persons representing persons falling within paragraph (b); and

(d) persons with statutory functions in relation to persons falling under that paragraph.

(3B) When making regulations under this section the Secretary of State must have regard to—

(a) the public interest in the integrity and security of telecommunications systems and postal services;

(b) the impact on users arising from any delay to implementing relevant changes;

(c) the desirability of encouraging innovation by relevant operators; and

(d) any other aspects of the public interest in the protection of privacy."

Member's explanatory statement

This amendment, together with others in the name of Lord Fox, place a duty on the Secretary of State to consult with relevant persons before making regulations that will specify what a "relevant change" will include.

Lord Fox (LD): I heard what the Minister said on Amendment 35, and it is reassuring that the consultation will be occurring, so I do not intend to move Amendment 35.

Amendment 35 not moved.

Amendments 36 to 38 not moved.

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

Amendment 39

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

39: Clause 21, page 42, line 8, leave out "is unavailable to decide whether to give approval under subsection (2)" and insert "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 in relation to Clause 21 and the so-called triple lock for targeted interception and targeted examination of communications relating to Members of relevant legislatures—that is, people like us and MPs et cetera. These changes are replicated in the three amendments I have tabled to Clause 22, which we shall come to later, which relate to the triple lock for targeted equipment interference warrants.

Noble Lords will, I am sure, agree that the communications of Members of relevant legislatures 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 the approval of any such warrant in the IPA. This ensures that these warrants would 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 essential that any changes as a result of this Bill do not undermine these three layers.

The ISC recognises that, on occasion, the requirement that a warrant be approved by the Prime Minister personally may affect the operations of the intelligence agencies where they are seeking a targeted interference warrant that is very time sensitive, and the Prime Minister is unavailable. We therefore support the intention to provide an element of resilience whereby, in truly exceptional circumstances, it may be appropriate for a Secretary of State to temporarily deputise for the Prime Minister on these matters. However, the clauses as drafted go too far.

My three amendments are designed to ensure that decisions are delegated only in the most exceptional circumstances; that the decision may be designated only to the limited number of Secretaries of State who are already responsible for authorising relevant warrants; and that the Prime Minister retains sight of all warrants relating to Members of a relevant legislature. The first of the three amendments relates to the circumstances in which a decision may be delegated by the Prime Minister to a Secretary of State. These circumstances must be very clearly specified—there can be no ambiguity—and they should be limited to situations in which the Prime Minister is genuinely unable to take a decision.

My amendment specifies that the Prime Minister must be "unable" to decide whether to give the necessary approvals, rather than simply "unavailable", which is rather a subjective test. It then very clearly sets out those circumstances, which are "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. The draft codes of practice published by the Government give these two scenarios as examples of the circumstances in which the Prime Minister might use this designation power. This is a step in the right direction. But the first problem is that they give them only as examples, which means that there could be any number of other unspecified circumstances about which Parliament would be kept in the dark. That cannot be acceptable.

There should be no question of the delegation of this power becoming routine, so there must be absolute clarity as to the exact scenarios when the power can be used. If, in future, other scenarios arise in which the Government seek to use this designation power—I note that they are currently unable to conceive of what they might be, as they have never arisen before—they must return to Parliament to make the case for it.

The second problem is that to which I referred in my opening remarks: matters as important as this must be in the Bill, where they cannot be amended or diluted by Administrations present or future without first returning to Parliament. This amendment provides what the agencies require but, when combined with the requirement

"that there is an urgent need for the decision",

it also provides the necessary assurance to Parliament that the Prime Minister's responsibility will be deputised only in specified exceptional circumstances.

5.45 pm

Finally, I note that my amendment does not include the third circumstance—a conflict of interest—that the noble Lord, Lord Anderson, and the noble and learned Lord, Lord Hope, included in their amendment. The ISC is very grateful to them and is particularly grateful to the noble Lord, Lord Anderson, for the light his excellent report has shed on the reforms included in the Bill.

The ISC has, very unusually, departed from the position of the noble Lord, Lord Anderson, on this point, because it is concerned that the inclusion of a "conflict of interest" scenario may create uncertainty and an element of subjectivity in the process. For example, what is the threshold, and who within the Government would be responsible for escalating such an incident? Our aim was to limit the scenarios in question to the minimum number and to ensure that they did not allow for any subjectivity. I therefore urge noble Lords to support my Amendment 39.

My second amendment to Clause 21 would specify the Secretaries of State who can act as a designate for the Prime Minister in these circumstances. As drafted, the Bill includes all Secretaries of State as potential designates for the Prime Minister in relation to triple-lock warrants. However, only a limited number of Secretaries of State have any statutory responsibility for warrants 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 the seriousness of intercepting the communications of a Member of a relevant legislature, 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.

On this point, the Government appear to be in agreement with the ISC. The published draft code of practice states that

"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".

However, again, it is not sufficient to rely on codes of practice. These are serious matters, so the amendment limits the Prime Minister to a specified number of Secretaries of State and clarifies that these should be those who are already

"required in their routine duties to issue warrants under section 19 or section 102"

of the IPA.

I am grateful to the Minister for his engagement on the wording of this part of the Bill, although it is a shame that the Government did not bring forward their own amendments on Report to address our concerns. Nevertheless, the ISC has listened to the points put forward by the Government. We have therefore changed the specified number of Secretaries of State from two, as we proposed in Committee, to five, to address concerns about the resilience of the system if multiple suitable Secretaries of State happen to be unavailable at the time. I therefore hope that the Government, along with noble Lords, will now see no reason not to support the amendment.

My third amendment to Clause 21 seeks to ensure that the Prime Minister retains sight of every targeted interception and targeted examination warrant which involves communications to or from Members of the relevant legislature. As I outlined earlier, the Intelligence and Security Committee considers it essential that the three existing planks of the triple lock are not weakened by any changes the Bill makes. That means that we must ensure that the Prime Minister's overall oversight of these warrants is retained, even if in designated cases it would be retrospective. I have therefore tabled this amendment to require that the Prime Minister be notified or informed of any decision taken by a designated Secretary of State on their behalf as soon as the circumstances have passed which prevented the Prime Minister from approving that warrant in the first place.

This is a less onerous amendment than that which I put forward in Committee, which sought to ensure that the Prime Minister substantively review any delegated triple-lock warrants. While that may have been preferable, I have noted the Minister's concern that the Bill provide for the Secretary of State to act as the Prime Minister, and that to insert a review power would therefore require wholesale changes. This amendment requires only notification, not reconsideration, but that will at least ensure that the Prime Minister is aware of every

instance in which the communications of elected representatives are being intercepted. I suggest to noble Lords that this is an absolute red line.

Lord Anderson of Ipswich (CB): My Lords, it is a pleasure to follow such a strong and powerful speech, and to agree with so much of it. I will speak to Amendment 40, which is based on my report of last year and repeats an amendment that I tabled in Committee and that was introduced there by the noble and learned Lord, Lord Hope of Craighead, my co-signatory then as now. The amendment has two objectives. The first is to ensure that the third part of the triple lock is not too easily wrested away from the Prime Minister.

We are often told that someone is unavailable when they are travelling, are in a meeting, have stepped out of the office or have simply asked not to be disturbed for the afternoon. Indeed, the noble Baroness, Lady Manningham-Buller, used the word in the first of today's debates on the Bill, albeit in a different context, to describe the status of a Minister, as she put it, during the night or over the weekend. Nobody suggests that reasons such as these should be sufficient for the third lock of the triple lock to be handed to someone else. Unavailable is simply the wrong word. The public interest, in clear and accessible laws, requires us to use the right word. Using the wrong word and then glossing it by guidance or Statements from the Dispatch Box is not a good alternative. I suggest that the right word is "unable", and I am delighted that the Intelligence and Security Committee and the noble Lord, Lord West, had the same thought in their Amendments 39 and 43.

The second objective of Amendment 40 is to allow provision to be made for the situation in which a Prime Minister is available to apply the third lock but might be considered, or consider himself, unable to do so by reason of conflict of interest. This could be the case if the communications in question were addressed to or from a Prime Minister's sibling in Parliament. I see that the noble Lord, Lord Johnson of Marylebone, has just left his place. It could be the case if those communications were addressed to or from the Prime Minister himself or herself. Nobody doubts that the agencies currently have the power, and will continue to have the power after the Bill is passed, to request a Prime Minister's communications to be intercepted. Nor is there any mystery about what will happen if such a request is ever made. It will be put to a Secretary of State for authorisation—presumably the Home Secretary or the Foreign Secretary, depending on the context. If that authorisation is granted, a judicial commissioner—presumably the most senior of them, the Investigatory Powers Commissioner—will be asked to approve it. So far, so uncontroversial.

The issue that arises is what should happen next. Under Clause 21, the request must be put before the Prime Minister unless it happens that he is ill or away from secure communications, in which case the third lock can be passed on to another Secretary of State and the Prime Minister's communications can be intercepted without his knowledge. A precedent for the delegation of this most sensitive of powers already exists; indeed, it exists in the text of this Bill. But what if the Prime Minister is available? In such a case, the third lock must, under Clause 21, be left in the hands of the Prime Minister himself. He is statutorily barred from passing it on to anyone else, even if he—or, let us say, the Cabinet Secretary on his behalf—took the view that he is unable to take the decision for reasons of conflict of interest. That is notwithstanding the fact that conflict of interest, as the noble and learned Lord, Lord Hope, said in Committee,

> "surely is a reason why a Prime Minister, although available, should not exercise the power".—[*Official Report*, 13/12/23; col. 1902.]

That principle is so important that perhaps the undoubted practical difficulties to which the noble Lord, Lord West, referred need to take second place to it.

The triple lock was designed to ensure that the communications of parliamentarians could be intercepted only with the consent of the Prime Minister. It was not designed to give the Prime Minister himself an effective veto over the interception of his own communications. Immunities or quasi-immunities of that kind might have their place in some presidential systems, but they seem out of place in a parliamentary system in which the Prime Minister is primus inter pares. However, just such an immunity is perpetuated by Clause 21, and the amendments on this theme from the noble Lord, Lord West, which I otherwise support, do not remedy the situation.

Amendment 40 does not prescribe a detailed solution to this sensitive problem, but it leaves the door open to one. My concern in tabling it was to ensure that we do not legislate in such a way as to prevent a solution being found to the situation in which a conflict of interest arises in circumstances that would be vanishingly rare but that, if they ever did arise, could be of the highest importance to our national security.

I have reflected on what could be done without Amendment 40 if there were serious grounds to intercept a Prime Minister's personal communications because one of his correspondents or the Prime Minister himself were under suspicion. Perhaps a possible answer would be to wait until the Prime Minister was out of reach of secure communications and then proceed with the interception if the approval of a judicial commissioner and two Secretaries of State could be secured. That is not a very principled or satisfactory answer to the issue of conflict of interest, but it is permitted by Clause 21 and might still be better than a prime ministerial veto. I should say that everything I have said about Clause 21 and interception applies also to equipment interference under Clause 22.

I hoped to generate a debate on this topic by tabling this amendment and, thanks to your Lordships' indulgence, I have had a chance to do so. I would like to have invited the House of Commons to debate it too, but without the numbers to press this amendment to a vote there will be no such invitation, at least by this route. None the less, I am grateful to the ministerial team and to their shadows in your Lordships' House and the Commons for discussing this issue with me in a degree of detail. Neither team suggested to me that the prospect of intelligence interest in the communications of a Prime Minister was too fanciful a prospect to be worth considering, although it may be that the two teams have different examples in mind of why it is not.

[Lord Anderson of Ipswich]
However, I detected a developing sense on both Front Benches that the conflict issue might be one for the "too difficult" box.

I will not divide the House, but I close with these questions to the Minister: is it the Government's position that the Prime Minister, uniquely among members of the Government, should have a veto over the interception of his own communications in circumstances in which the normal authorisation and approval criteria have been met? If so, why? If not, what answer do they have to the issue of conflict of interest?

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow that brilliant exposition by my noble friend of the problem that he tries to deal with in Amendment 40. After yesterday's slightly more tense proceedings in this House, I have had a pleasant afternoon supporting the Government. In that spirit, I wish briefly to add some words to what has been said by my noble friend.

The notion of conflicts of interest is not a difficult one. Lawyers dealing with extremely complex cases have to deal with that problem more or less every day. It is something with which we are familiar. The notion that a Prime Minister could face a conflict of interest is not ludicrous. If we just look at the way in which proceedings have proceeded so far in the Covid inquiry, for example, we know that the most intense examination is now given to past communications. We are in a different age from the era when Prime Ministers did not use social networking. We are coming to a period when there will be a Prime Minister whose youthful exchanges with his or her friends will be available to public inquiries in the years to come. It is easy to imagine circumstances in which conflicts of interest might occur. For example, there could be conflicts of interest arising from kinship, as my noble friend Lord Anderson mentioned. Conflicts of interest could arise from earlier employment or from books and articles that person has written. We recently had a Prime Minister who has written quite a lot of interesting books but certainly provoked some interest of another kind when he was Prime Minister.

I urge the Minister not to brush aside this issue of conflict of interest, because it could happen, and it is better to anticipate these things than to leave them till later. I ask the Government to take seriously Amendment 40, for the reasons that have been given by the noble Lord, Lord Anderson, so we can return to this matter before the Bill is passed.

6 pm

Lord Evans of Weardale (CB): My Lords, I was not intending to speak in this debate, but it is a pleasure to follow the noble Lords, Lord Carlile and Lord Anderson. I will make two brief observations.

First, I support the suggestion that airing this question of conflict of interest is important. I remember from when I was in the service considering with colleagues —purely theoretically, I hasten to add—what one would do if one had serious national security concerns about a Prime Minister. You would certainly go to the Cabinet Secretary. Would you go to the Palace? I see that the noble Lord, Lord Young of Old Windsor, is in his place. How would you resolve this issue? It was unresolved—it is not an easy issue to resolve, and it may well not be an issue to be resolved in the margins of a separate Bill. But it is worth at least airing these issues, rather than merely considering them in private. I welcome the opportunity to put these issues into the public domain, since it is not impossible to conceive that they might become real issues at some future point.

Secondly, I support Amendment 41 from the noble Lord, Lord West of Spithead, and particularly the second proposed new subsection, which says that any individual designated as one of the five individuals to whom the Prime Minister can delegate powers under the triple lock should be an experienced Minister who is used to signing warrants. I have had experience myself of trying to explain to inexperienced Ministers for whom this was unfamiliar territory what on earth they were being asked to do. The occasional look of either panic or horror when it was revealed what they were being asked to do stick in the mind. It is really important that, if these powers are to be delegated, they should be delegated to Ministers who are experienced and understand the judgments of proportionality and necessity that are made in these important decisions relating to authorisation of intrusion. Therefore, I strongly support in particular that aspect of the amendment proposed by the noble Lord, Lord West.

Lord Fox (LD): My Lords, at Second Reading I raised the issue of the Prime Minister in a slightly different context, but it has taken the legal brains of the noble Lord, Lord Anderson, and the noble and learned Lord, Lord Hope, to put it into a frame. I am happy to have co-signed that, and happy to find myself back on the same side as them on this argument.

It is clear that we will not resolve this here today, but it is perhaps something that we will take to the gap between here and the Commons to try to resolve. I rely on the wisdom of noble Lords who have spoken to take this forward.

On the other point, I support the amendments of the noble Lord, Lord West, and I hope that the Government will find his persuasion conducive.

Lord Hope of Craighead (CB): My Lords, I spoke in Committee about the difference between "unavailable" and "unable". I am greatly encouraged by Amendments 39 and 43 proposed by the noble Lord, Lord West. The one point of difference between us is that he narrows the meaning of "inability", for reasons he has explained. If it came to a vote, I think I would support his amendments—but, like the noble Lord, Lord Anderson, I think that further thought needs to be given to whether that narrowing of "inability" or "unable" is really appropriate, considering the effect that it has, particularly in situations of conflicts of interest.

Lord Coaker (Lab): My Lords, I do not have much to add to the debate. From these Benches, we fully support the amendments proposed by the noble Lord, Lord West, and the excellent way in which he presented them. They have the support of the whole ISC, which

in this respect has done a great service to us all in taking forward the discussion. These amendments certainly improve the Bill.

The point that the noble Lord, Lord West, made is exceptionally important—the fact that this has to be in the Bill, and that we need it to guide us in how we take this forward. For those who read our proceedings, it is important to repeat that what we are discussing here is the interception of communications of parliamentarians, and the fact that the triple lock was introduced to give additional protection to that. The role of the Prime Minister becomes crucial in that, for obvious reasons.

I join others in thanking the noble Lord, Lord Anderson, for the way in which he has presented his arguments, and the discussions and debates that have gone on in this Chamber and outside it. He has done a great service to all of us by tabling what seems on the face of it a simple amendment—simply changing one word, from "unavailable" to "unable"—but is actually of huge significance. We have concerns about it, which we have expressed in this Chamber and elsewhere—indeed, the noble Lord, Lord West, explained them. Notwithstanding the remarks of the noble Lord, Lord Carlile, and others, we are worried about where it takes us with respect to conflicts of interest, and who decides that there is a conflict of interest for the Prime Minister in circumstances in which the Prime Minister themself does not recognise that there is a conflict of interest. I agree with the noble Lord, Lord Anderson, and others, that there may be a need for this discussion to continue—but who decides whether the Prime Minister has a conflict of interest, if the Prime Minister themself does not recognise that, is an important discussion to have. In the end, the system rests on the integrity of the Prime Minister.

The way in which the ISC has tried to bring forward some conditions to what "unavailable" means is extremely important, and we support that, as indeed we support the amendments that try to ensure that those who take decisions are those various Secretaries of State who may be designated under the Bill to take decisions, should the Prime Minister be unavailable. It is extremely important for those Secretaries of State to have experience of the use of those warrants. Again, the amendments proposed by the noble Lord, Lord West, deal with that, and we are very happy to support them.

Lord Sharpe of Epsom (Con): My Lords, I offer my thanks to the noble Lords, Lord Anderson of Ipswich, Lord Fox, and Lord West of Spithead, and the noble and learned Lord, Lord Hope of Craighead, for their amendments and for the points that they have raised during this debate. I also thank the noble Lord, Lord Evans, for his perspective, and the noble Lord, Lord Carlile, for supporting the Government, which obviously I hope becomes a habit.

I have discussed the triple lock at length with noble Lords and many others in Parliament and across government. We are all in agreement that this is a matter of the utmost importance, and it is imperative that we ensure that the triple lock operates correctly. That means that the triple-lock process, when needed urgently, has the resilience to continue in the most exceptional circumstances, when the Prime Minister is genuinely unavailable, while ensuring that the alternative approvals process is tightly and appropriately defined.

On Amendment 40, I thank the noble Lord, Lord Anderson, for the valuable engagement he has taken part in with my ministerial colleagues, Home Office officials and me regarding this amendment. I take this opportunity to explain why the Government do not support this amendment. The expressed intention of the noble Lord's amendment is twofold: first to tighten the requirement in the current clauses, which use the word "unavailable"; and, secondly, to introduce a potential provision for dealing with a conflict of interest, as one of the circumstances in which the alternative approvals process could be used.

There is certainly merit in limiting the circumstances in which the alternative approvals process may be used. However, the noble Lord's amendment introduces the requirement for a judgment to be made on the Prime Minister's ability to consider a warrant application, for any number of reasons, including conflict of interest. This raises a number of challenges.

The first challenge is that "unable" draws into the legislation the principle of ministerial conflict of interest. This poses a constitutional tension and a challenge to Cabinet hierarchy. The inclusion of "unable" would allow for someone other than the Prime Minister to decide whether the Prime Minister is subject to a conflict of interest in a particular scenario, which goes against clear constitutional principles regarding the Prime Minister's powers. This would be a subjective decision on the Prime Minister's ability, rather than an objective decision on his availability.

As such, rather than strengthening the current drafting, the amendment as proposed could be considered to constitute a watering down of the triple lock, in that it was always designed to be exercised by the Prime Minister. Someone else making a decision about whether the Prime Minister is able to make a decision, given they can be said to be available and therefore technically able to consider an application, risks the intention of the triple lock. As drafted, the original clauses require a binary decision to be made about whether the Prime Minister is available or not, whereas, in deciding whether the Prime Minister may have a conflict of interest, a judgment must be made which is not binary and therefore has much less legal clarity.

The noble Lord, Lord Anderson, asked me if it is right that the Government believe that it is proper for the Prime Minister to consider a warrant application relating to the Prime Minister's own communications. The best answer I can give is that the Bill is intended not to tackle issues relating to Prime Ministerial conflicts of interest, but rather to improve the resilience of the warrantry process. Conflict of interest provisions and considerations relating to propriety and ethics are therefore not properly for consideration under this Bill. The Prime Minister is expected, as are all Ministers, to uphold the Nolan principles in public life. For these reasons, the Government cannot support this amendment.

The Government have, however, recognised the concerns expressed by Members of both Houses, and the seeming consensus that a more specific, higher bar should be set with relation to the circumstances in which the alternative approvals process may be used.

[LORD SHARPE OF EPSOM]
This high bar is of particular importance because of the seriousness of using these capabilities against Members of relevant legislatures. We accept that we are not above the law and it is appropriate for it to be possible for us to be subject to properly authorised investigatory powers. However, it is right that the significance that this issue was given in the original drafting of the Investigatory Powers Act is respected, and the communications of our fellow representatives are properly safeguarded.

I therefore thank the noble Lord, Lord West of Spithead, for his amendments, and for the close engagement on this Bill which I, the Security Minister and my officials have had with the members and secretariat of the Intelligence and Security Committee. Following engagement with Members of both Houses on these amendments, it is clear that there is good consensus for these measures, and the Government will not be opposing them today. While they will reduce the flexibility of the current drafting somewhat, the Government agree that these amendments strike an important and delicate balance between providing the flexibility and resilience that the triple-lock process requires, while providing the legal clarity and specificity to allow for its effective use. The amendments will also provide further confidence to members of relevant legislatures, including those of this House, that the protection and safeguarding of their communications is of paramount importance.

I should note that the Government do not quite agree with the precise drafting of these amendments, and we expect to make some clarifications and improvements in the other place, particularly to the references to routine duties under Sections 19 and 102 of the Investigatory Powers Act 2016, but I am happy that we seem to have reached broad agreement today.

Lord West of Spithead (Lab): I just want to be clear, as I have never had an amendment accepted in 14 years —is the Minister saying that the Government accept my Amendments 39 and 41?

Lord Sharpe of Epsom (Con): Yes. The noble Lord, Lord Fox, says, "Don't get too excited", and he is right.

I now turn to the government amendment in this group, Amendment 46. This proposed new clause amends the Investigatory Powers Act's bulk equipment interference regime to ensure that sensitive journalistic material gathered through bulk equipment interference is subject to increased safeguards. Currently, Section 195 of the IPA requires that the Investigatory Powers Commissioner be informed when a communication containing confidential journalistic material or sources of journalistic material, following its examination, is retained for any purpose other than its destruction.

This amendment introduces the need for independent prior approval before any confidential journalistic material or sources of journalistic material are selected, examined, and retained by the intelligence agencies. It also introduces an urgency process within the new requirement to ensure that requests for clearance to use certain criteria to select data for examination can be approved out of hours.

The Government recognise the importance of journalistic freedom and are therefore proactively increasing the safeguards already afforded to journalistic material within the IPA. In doing so, we are also bringing the IPA's bulk equipment interference regime into alignment with bulk interception, which is being amended in the same way through the Investigatory Powers Act 2016 (Remedial) Order 2023; that is being considered in the other place today.

In wrapping up, I once again thank noble Lords for the constructive engagement we have had on the Bill, singling out in particular the noble Lords, Lord Anderson, Lord West, Lord Coaker and Lord Fox. With that, I hope that noble Lords will support the Government's amendment.

The Deputy Chairman of Committees (Lord Beith) (LD): If Amendment 39 is agreed to, I cannot call Amendment 40 by reason of pre-emption.

Amendment 39 agreed.

Amendment 40 not moved.

Amendment 41

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

41: Clause 21, page 42, leave out lines 13 and 14 and insert—

"(2C) The Prime Minister may designate up to five individuals under this section.

(2CA) The Prime Minister may designate an individual under this section only if the individual holds the office of Secretary of State and is required in their routine duties to issue warrants under section 19 or section 102."

Member's explanatory statement

This amendment would permit the Prime Minister to nominate up to five Secretaries of State to act for the Prime Minister if he or she is unable to decide whether to give approval under subsection (2A). The amendment also specifies that those nominated Secretaries of State must already have responsibility for the issuing of warrants under sections 19 or 102 of the Investigatory Powers Act 2016 (which governs warrantry for Interception and Examination of Communications, and Equipment Interference).

Amendment 41 agreed.

Amendment 42 not moved.

Clause 22: Equipment interference: Members of Parliament etc

Amendments 43 and 44

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

43: Clause 22, page 42, line 38, leave out from "Minister" to end of line 39 and insert "is unable to decide whether to give approval under subsection (3) or (as the case may be) (6), 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.

44: Clause 22, page 43, leave out lines 4 and 5 and insert—

"(7C) The Prime Minister may designate up to five individuals under this section.

(7CA) The Prime Minister may designate an individual under this section only if the individual holds the office of Secretary of State and is required in their routine duties to issue warrants under section 19 or section 102."

Member's explanatory statement

This amendment would permit the Prime Minister to nominate up to five Secretaries of State to act for the Prime Minister if he or she is unable to decide whether to give approval under subsections (3) or (6). The amendment also specifies that those nominated Secretaries of State must already have responsibility for the issuing of warrants under sections 19 or 102 of the Investigatory Powers Act 2016 (which governs warrantry for Interception and Examination of Communications, and Equipment Interference).

Amendments 43 and 44 agreed.

Amendment 45 not moved.

Amendment 46

Moved by **Lord Sharpe of Epsom**

46: After Clause 25 insert the following new Clause—

"Bulk equipment interference: safeguards for confidential journalistic material etc

(1) The Investigatory Powers Act 2016 is amended as follows.

(2) For section 195 (additional safeguard for confidential journalistic material) substitute—

"195 Additional safeguards for confidential journalistic material etc

(1) Subsection (2) applies if, in a case where material obtained under a bulk equipment interference warrant ("BEI material") is to be selected for examination—

(a) the purpose, or one of the purposes, of using those criteria to be used for the selection of the BEI material for examination ("the relevant criteria") is to identify any confidential journalistic material or to identify or confirm a source of journalistic information, or

(b) the use of the relevant criteria is highly likely to identify confidential journalistic material or identify or confirm a source of journalistic information.

(2) The BEI material may be selected for examination using the relevant criteria only if the use of those criteria has been approved by—

(a) the Investigatory Powers Commissioner, or

(b) in a case where a senior official acting on behalf of the Secretary of State considers there is an urgent need to do so, the senior official.

(3) The Investigatory Powers Commissioner or a senior official may give an approval under subsection (2) only if the Commissioner or official considers that—

(a) the public interest in obtaining the information that would be obtained by the selection of the BEI material for examination outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information, and

(b) there are no less intrusive means by which the information may reasonably be obtained.

(4) Subsection (5) applies where—

(a) material obtained under a bulk equipment interference warrant ("the relevant material") is retained, following its examination, for purposes other than the destruction of the relevant material, and

(b) the person to whom the warrant is addressed considers that the relevant material contains confidential journalistic material or material that would identify or confirm a source of journalistic information.

(5) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the relevant material as soon as reasonably practicable.

(6) Unless the Investigatory Powers Commissioner considers that subsection (8) applies to the relevant material, the Commissioner must direct that the relevant material is destroyed.

(7) If the Investigatory Powers Commissioner considers that subsection (8) applies to the relevant material, the Commissioner may impose such conditions as to the use or retention of the relevant material as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of confidential journalistic material or sources of journalistic information.

(8) This subsection applies to material containing—

(a) confidential journalistic material, or

(b) material identifying or confirming a source of journalistic information,

if the public interest in retaining the material outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information.

(9) The Investigatory Powers Commissioner—

(a) may require an affected party to make representations about how the Commissioner should exercise any function under subsections (6) and (7), and

(b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).

(10) "Affected party" has the meaning given by section 194(14).

(For provision about the grounds for retaining material obtained under a warrant, see section 191.)

195A Section 195: procedure where use of criteria approved by senior official

(1) This section applies where material obtained under a bulk equipment interference warrant is selected for examination using criteria the use of which was approved by a senior official under section 195(2).

(2) The Secretary of State must, as soon as reasonably practicable, inform the Investigatory Powers Commissioner that the approval has been given.

(3) The Investigatory Powers Commissioner must, as soon as reasonably practicable—

(a) consider whether the relevant condition is met as regards the use of the criteria for the selection of the material for examination, and

(b) notify the Secretary of State of their decision.

(4) For this purpose, "the relevant condition" is that—

(a) the public interest in obtaining the information that would be obtained by the selection of the material for examination outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information, and

(b) there are no less intrusive means by which the information may reasonably be obtained.

(5) On the giving of a notification of a decision that the relevant condition is not met, the senior official's approval ceases to have effect.

(6) Nothing in subsection (5) affects the lawfulness of—

[Lord Sharpe of Epsom]

(a) anything done by virtue of the approval before it ceases to have effect, or

(b) if anything is in the process of being done by virtue of the approval when it ceases to have effect—

(i) anything done before that thing could be stopped, or

(ii) anything done which it is not reasonably practicable to stop."

(3) In section 229 (main oversight functions), in subsection (8), before paragraph (g) insert—

"(fb) deciding whether—

(i) to approve the use of criteria under section 195(2)(a),

(ii) subsection 195(8) applies for the purposes of subsection 195(6) and (7),

(iii) the relevant condition is met for the purposes of subsection 195A(3)(a).""

Member's explanatory statement

This amendment replaces section 195 of the Investigatory Powers Act 2016 with new sections 195 and 195A which include additional protections in relation to confidential journalistic material and sources of journalistic material.

Amendment 46 agreed.

Amendment 47 not moved.

Arrangement of Business

Announcement

6.17 pm

Lord Gascoigne (Con): My Lords, we have not quite got all the pieces in place for the next business. I understand that one key element is about to appear, we hope very soon. I suggest that we adjourn for a few minutes—until 6.25 pm—if at all possible; forgive me for the change.

Sitting suspended until 6.25 pm.

Church of England (Miscellaneous Provisions) Measure

Motion to Direct

6.26 pm

Moved by ***The Lord Bishop of Chichester***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Church of England (Miscellaneous Provisions) Measure be presented to His Majesty for the Royal Assent.

The Lord Bishop of Chichester: My Lords, this is the latest in a series of miscellaneous provisions measures. It makes provision for a range of matters concerning the Church of England that do not merit separate, freestanding legislation. It includes provisions relating to the General Synod, ecclesiastical offices, ecclesiastical jurisdiction, Church property, elections to representative bodies, the functions of the Church Commissioners, appointments to the Church of England pensions board and the conduct of various types of meeting. I do not propose to take noble Lords through each of its 22 clauses in turn, but I thought I should draw attention to some of the more significant provisions.

Clause 1 puts the ability of the General Synod of the Church of England to hold remote or hybrid meetings on a permanent basis. Clause 2 amends the Legislative Reform Measure 2018 by removing the sunset provision. This amendment to Clause 2 repeals a sunset provision: the Church has found the power to make legislative reform orders a useful one, and three significant orders have been made since the power came into being. The amendment will secure the power to make further orders.

Clause 7 and Schedule 1 make it possible for cathedrals that wish to do so to appoint lay residentiary canons. Clauses 9 to 12 update the practice and procedure of the Church's courts and statutory tribunals in various ways. Clause 20 and Schedule 2 make provision for a range of Church of England bodies, at local as well as national level, to hold their meetings remotely or as hybrid meetings. The Ecclesiastical Committee of Parliament has reported on the measure and has found it to be expedient. I beg to move.

Lord Davies of Brixton (Lab): My Lords, it is my practice, when we get the *Forthcoming Business*, always to search for the word "pension", which is a prime interest of mine—among others, of course. And, of course, this came up, so I did a bit of investigating. It is not an issue of direct relevance to me: the pensions of clergymen are outside my normal involvement, although I do have relations who are members of the scheme.

I have two questions. First, I am not sure whether the right reverend Prelate will be able to help me on this, but what is our exact role in this process? Clearly, the measure has to come through this House: I understand that, but is this an issue which is ever debated and discussed? Ultimately, is it possible for us to say, "We don't like this particular proposal", or is this really, in practice, a matter of us being notified as to what is happening?

The more substantive question is: what is happening to these pension arrangements? I did a bit of digging, and it seems rather odd that, every few years, somewhat irregularly, we get this request to extend the period where capital can be drawn down to pay pre-1998 pensions for another seven years. But it was known and stated when this arrangement was first started that the outstanding pensions would be payable for another 60 years: I assume there was some advice on how long these pensions were going to be payable, but it was expected that these moneys would be drawn down year by year for another 60 years—but for some reason the power has to be reapplied for and reinforced every seven years. The initial estimate was that up to 50% of the capital assets—the Queen Anne's Bounty, or wherever they came from—would need to be drawn down over those 60 years in order to pay the pensions that the Church is legally obliged to pay to the beneficiaries.

6.30 pm

As I say, it is an issue of pensions, in which I am interested. Is this just being rolled over because it is there, or has there been any reassessment as to whether this is the right way to handle this obligation of the Church to pay pre-1998 pensions? So I just urge the right reverend Prelate, when he replies, to provide a bit of explanation, because it is simply not there in the papers that have been provided to us. There is a total lack of information in the papers that have been submitted to the House, yet we are still being asked to make a decision. I have questions in my mind as to exactly what we are doing here as part of this process. Is it, in fact, just a form of ritual, or is there some substantive decision being made? I think it is reasonable to ask the representatives of the Church here today to provide us with a bit more background.

Baroness Butler-Sloss (CB): My Lords, as chairman of the Ecclesiastical Committee, perhaps I could answer some of the questions from the noble Lord, Lord Davies, but not, I have to say, the last question, save to say that I have no doubt that it was discussed at length in Synod. Synod is where the decisions are made and then they are passed by Parliament.

The position of the Ecclesiastical Committee is that we are a statutory committee of Members of the House of Commons and Members of the House of Lords, usually chaired by a former lawyer. We have very careful explanations from the Church, nearly always from a bishop and the lawyers from Church House. We debate it among ourselves and then we declare whether it is or is not expedient. That is the wording of the 1919 statute. We went through that process. We had the bishop, the lawyers and in my recollection an archdeacon. We certainly had five or six members of the Church. We had a full explanation and we declared, on behalf of both the House of Commons and the House of Lords statutory committee, that we found it expedient. I therefore support the Motion in the name of the right reverend Prelate.

The Lord Bishop of Manchester: My Lords, I wonder if I might help here. I declare an interest: I am a member of the Church of England pensions scheme. I expect to draw my pension from it, including some service from pre-1998, which will be funded by the Church Commissioners. I was, for a time, the vice-chair of the Church of England pensions board, and more recently the vice-chair of the Church Commissioners. I have therefore had a foot in all the various camps.

It is important that we come to Parliament every seven years for a refreshing of that power to spend down capital. The Church Commissioners' fund is, in effect, a permanent endowment, so capital should be spent only with clear authority as to why it is necessary. Clearly it is necessary in order to pay pensions, so we come back to both Houses of Parliament via the Ecclesiastical Committee on a regular basis to check that they are still happy for that power to continue for the next seven years.

Of course, it is entirely up to the committee to declare it non-expedient or for this House or the other place to determine that it does not want that power to continue. For me, seven years is enough time to allow the Church Commissioners and the pensions board to plan ahead with what they are doing, but it is not giving a blank cheque. It is not saying that permanent endowment can be spent down willy-nilly for the whole of the 60 years.

The good news is that when I last looked at the figures the amount of the Church Commissioners' total endowment that will be necessary to pay out those remaining pensions over that period—and I hope my retirement will be long and healthy when it comes—is now down to something more like 20% than 50%. It is reducing with time, so more and more of the resources of the Church Commissioners are free to support the mission and ministry of the Church of England on a wider basis. It is important that we have this power renewed and that Parliament, which scrutinises the work of the Church Commissioners, gets a chance to tell us whether it is expedient to continue to spend that money from capital on pensions on a regular basis. That is part of our accountability to your Lordships' House and to the other place.

Lord Shipley (LD): My Lords, I am grateful to the right reverend Prelate the Bishop of Chichester for explaining these Measures, and for the subsequent explanations by the noble and learned Baroness, Lady Butler-Sloss, and the right reverend Prelate the Bishop of Manchester.

It seems to me that the tidying up of the Church legislature is a good thing, and the main Measure here is a prime example of what the Church of England is hoping to achieve. It takes a number of matters which need amending but which do not individually merit free-standing legislation. It is the 13th in a series of miscellaneous provisions Measures, which have all been through the various and exhaustive stages, culminating in a vote in the General Synod. These now come to us in this Chamber for our ratification.

The Church of England (Miscellaneous Provisions) Measure includes provisions that relate to the General Synod, enabling it to continue to hold remote or hybrid meetings, if it so wishes—that is important. It removes a sunset provision in a complex system of legislative reform orders and includes a minor safeguarding code revision, simply ensuring that everyone uses the same language throughout the process—those are important. It removes the need for the General Synod's approval to a change of name of a suffragan see and it addresses the terms of service for clergy and some laity who serve under what is called common tenure: a person who is licensed to exercise ministry as a member of a religious community.

The Measure allows delegation of episcopal functions, whereby either of the two archbishops may delegate their functions if they have to be away for any reason. Other general and uncontroversial items are gathered under this Measure, none of which have caused concerns.

The Church of England Pensions (Application of Capital Funds) Measure is about extending the power to resort to capital by a further seven years until the end of 2032. Such an extension, as we have heard, has

[LORD SHIPLEY]
occurred several times in the past, beginning in 1997, and has of course been explained further in the debate that we have just heard.

This Measure, along with the previous one, has caused the Ecclesiastical Committee no disagreement or concern and they should therefore be commended to this House.

The Lord Bishop of Chichester: My Lords, I am grateful for the questions and comments, which have ranged widely and possibly beyond the Motion that we were initially addressing, which addressed the miscellaneous provisions Measure.

Motion agreed.

Church of England Pensions (Application of Capital Funds) Measure

Motion to Direct

6.38 pm

Moved by ***The Lord Bishop of Chichester***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Church of England Pensions (Application of Capital Funds) Measure be presented to His Majesty for the Royal Assent.

The Lord Bishop of Chichester: My Lords, we have already given some attention to this Measure. Unless any further questions attach to it, I beg to move.

Motion agreed.

House adjourned at 6.40 pm.

Grand Committee

Tuesday 23 January 2024

Arrangement of Business

Announcement

3.47 pm

The Deputy Chairman of Committees (Viscount Stansgate) (Lab): My Lords, if there is a Division in the Chamber, which is not impossible, the Committee will adjourn immediately and resume after 10 minutes.

Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of Schemes) (Amendment and Modification) Regulations 2024

Considered in Grand Committee

3.47 pm

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

That the Grand Committee do consider the Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of Schemes) (Amendment and Modification) Regulations 2024.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations make a number of technical changes to support the effective implementation of the overseas funds regime, prior to the first funds marketing under it, and ensure the correct treatment of recognised overseas funds.

The overseas funds regime is a new route that will allow overseas funds to be recognised for the purpose of marketing to UK retail investors, where the Government have determined that their regulatory regime is equivalent to that of the UK. Prior to the introduction of the overseas funds regime, there were two recognition routes for overseas funds allowing them to market to UK retail investors. If they were passporting to the UK prior to the UK's exit from the European Union, funds may now have temporary recognition, which is due to expire at the end of 2025. The second route enables funds to be individually recognised by the Financial Conduct Authority, but this can be costly and time-consuming for both the fund and the regulator.

At present, there are more than 8,000 funds recognised via the former route and 48 funds recognised via the latter route. This is more than double the number of UK-authorised funds. The cross-border nature of asset management means that the overseas funds regime will be critical to ensuring a competitive funds sector for UK investors with an appropriate range of choice.

At present, no funds have been recognised under this regime. However, the Government are currently undertaking the first equivalence assessment for the states in the European Economic Area in respect of retail funds, specifically undertakings for the collective investment in transferable securities—to note, money market funds are excluded from this assessment. Ahead of any equivalence decision or any funds becoming recognised under the overseas funds regime, it is important that the statute book adequately reflects its introduction.

This instrument makes two groups of technical changes. First, it makes amendments to ensure that, where appropriate, funds recognised under the overseas funds regime are treated in the same way as overseas funds which have been individually recognised for the purpose of marketing to retail investors. Secondly, it makes modifications to ensure that recognised sub-funds are appropriately captured. This is because it is common for funds to be structured as an umbrella, with multiple sub-funds beneath it, each with their own investment strategies.

More specifically, this instrument makes changes in the following areas. First, in relation to different pieces of rehabilitation of offenders legislation, it makes consequential amendments to the definition of "relevant collective investment scheme" to include reference to the overseas funds regime. This means that funds recognised under the overseas funds regime are accounted for in the same way as existing individually recognised funds in these pieces of legislation, such as in relation to the disclosure of spent convictions by associates of these funds. The instrument also makes modifications to these pieces of legislation to ensure that recognised sub-funds are appropriately captured.

Secondly, it modifies the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 to ensure that recognised sub-funds are treated appropriately for accounting purposes.

Thirdly, it amends the financial promotions order to allow certain communications made by operators of funds recognised under the overseas funds regime to be exempted from the general restriction on financial promotions. These are limited to cases where the fund in question is communicating with existing investors. This legislation is also modified to appropriately account for recognised sub-funds.

Finally, retained EU law on disclosure for packaged retail and insurance-based investment products is amended such that funds recognised under the overseas funds regime must provide the same retail disclosure documents as other recognised funds.

These changes are technical in nature and, as set out in the Explanatory Memorandum for the statutory instrument, are extremely unlikely to have any impact on business or public services. However, they are necessary to ensure that funds recognised under the overseas funds regime are treated appropriately and that the regime is able to function effectively. I beg to move.

Lord Sharkey (LD): My Lords, we are grateful for the Minister's clear and concise explanation of what this SI does and why it is necessary. I note the thorough and helpful consultation report, published as long ago as 2020. We are happy to support this instrument and have only a few questions.

The first question is to do with timing. The new OFR will come into operation only when the appropriate equivalence determinations have been made by HMT. The introduction of this new regime has been foreseen for at least two years. During that time, I am sure

HMT has been working diligently to decide on the appropriate equivalence determinations. When might we expect these determinations to be published?

My second question arises from the 2020 consultation report. It makes clear the decision not to extend FOS and FSCS protection to the newly authorised funds. This is despite the recommendation of the Financial Services Consumer Panel. Can the Minister explain why these basic consumer protections were omitted?

My third question arises from the decision to reject these protections. In paragraph 2.44, the consultation report notes that:

"In general, respondents to the consultation considered that if the scope of FOS and FSCS remain unchanged, funds should inform investors through disclosures in the fund prospectus".

The Government agreed that some form of disclosure was necessary, and in paragraph 2.46 said:

"The government will consider the appropriate framework for disclosing the absence of FSCS and FOS in the future. The FCA will also explore whether it is necessary and appropriate to require enhanced risk warnings or explicit acknowledgement from investors about the lack of availability of FOS and FSCS coverage".

That was over two years ago. How is HMT getting on with the framework thinking? How is the FCA getting on with its exploration? Can the Minister tell us what HMT has concluded about the appropriate framework for disclosing the absence of FOS and FSCS cover and what the FSA has concluded about enhanced risk warnings? If at this late stage there is as yet no conclusion from HMT or the FCA, will she commit to write to us, setting out the conclusions when they are finally arrived at?

Lord Jones (Lab): My Lords, the Minister is clearly up to speed on these detailed matters, as I know my noble friend Lord Livermore is—but I am not. I recollect that, when I was in another place, the late Lord Cecil Parkinson, a very able Minister, introduced his great City finance reforms—what we knew then in the other place as the "big bang". Lord Parkinson was a clever and adept Minister; he rose to even higher rank in government, and was a party chair for the late Lady Thatcher. But it seems to me that, in his reforms, simplicity was not one of the ingredients. With reference to the Explanatory Memorandum, at paragraph 7.1, what are sub-funds? Might the Minister throw some light on that detail?

Lord Livermore (Lab): My Lords, I am grateful to the Minister for introducing this statutory instrument. We support these regulations, as they will provide smoother market access for overseas funds that have been determined to be equivalent to the UK's in relation to consumer protection. This SI is part of a wider set of measures to bring the overseas funds regime, or OFR, online. The regime will apply to funds from jurisdictions that the Treasury has deemed "equivalent", so the OFR will become operational only once those decisions by the Treasury have been made.

When this SI was debated in the Commons, my honourable friend the shadow Economics Secretary asked the Minister when the Secretary expected to take the equivalence decisions that would enable overseas funds to utilise the streamlined approach envisaged under the new overseas funds regime. In his answer, the Minister was able only to say, "very soon, I hope". Given this, is the Minister able to go any further in providing greater clarity on the timing of these equivalence decisions? Is she able to provide any indication of how many equivalence decisions the Treasury expects to make in the first instance?

Baroness Vere of Norbiton (Con): I am grateful to all three noble Lords for their contributions to this brief debate. On the matter of timing, both of the laying of the SI and where things will go in the future, the laying of the SI is being done now because there is parliamentary time. The assessment of equivalence is still under way, and therefore there is no urgency about this. As the noble Lord, Lord Sharkey, pointed out, the consultation took place a little while ago. The only real rationale is that the technical changes need to be made by the time that the funds are recognised under the overseas funds regime. Obviously, there is a lead-in time required for an assessment to be undertaken of any countries, or indeed territories.

The noble Lord, Lord Sharkey, pointed out that there is an ongoing assessment of the EEA. I can go no further than the Economic Secretary did in the other place. It is right that the ongoing assessment does its work effectively. As noble Lords will know, it started in autumn 2022, but we cannot possibly commit to timelines at this stage, as it is key that the work is done well. However, the overseas funds regime remains a government priority and we are working at pace to finalise this assessment. The temporary arrangements are in place until 2025, so there is a little time available.

The noble Lord, Lord Sharkey, mentioned the consultation. A significant amount of consultation went on prior to the primary legislation that was put in place. He asked some specific questions about consumer protections and the absence of FOS cover. I will write to him with further information on that.

The noble Lord, Lord Jones, spoke about the "big bang". I joined the City slightly after that. It introduced an element of simplicity—that is clear—but, sadly, the City is now a different place and complexity has crept back in. This includes sub-funds, which are basically funds that sit under an umbrella fund, each of which may have different investment objectives. This is just to make sure that, if somebody has invested in a sub-fund, it can be reflected properly in their accounts in Wales and that the laws on the disclosure of spent convictions apply.

I cannot go further on timings but I am grateful to all noble Lords. As I said, I will write with further details on a couple of other things, in particular the measures around consumer protections that were mentioned by the noble Lord, Lord Sharkey.

Motion agreed.

Local Government Finance Act 1988 (Prescription of Non-Domestic Rating Multipliers) (England) Regulations 2023

Considered in Grand Committee

4 pm

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

That the Grand Committee do consider the Local Government Finance Act 1988 (Prescription of Non-Domestic Rating Multipliers) (England) Regulations 2023.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, although these draft regulations may appear at first sight obscure and technical, they are essential to the smooth functioning of the business rates system for the financial year 2024-25 and beyond.

The regulations serve two main purposes. The first is to preserve the threshold for those businesses that pay rates by reference to the lower small business multiplier at a rateable value of below £51,000. This has been government policy since 2017 but, due to the passing of the Non-Domestic Rating Act 2023 in October, it must be reaffirmed here.

The second is to ensure that this threshold of £51,000 not only applies to occupied properties, as it has done previously, but extends to charities, unoccupied properties and those on the central list that are not subject to full relief. Moving these properties from the higher standard multiplier to the lower small business multiplier will place the entire business rates system on an even footing. It will also constitute a modest tax cut for those properties that will move to the small business multiplier for the first time, to the tune of around £5 million per year.

The Committee may find it helpful if I set out a quick reminder of how the business rates multiplier works. A multiplier is, in effect, a tax rate used to calculate business rates. There are two kinds of multipliers. The standard multiplier applies to businesses with a rateable value of £51,000 or above. The small business multiplier applies to businesses with a rateable value of less than £51,000. The relevant multiplier is multiplied by the yearly rental value of a property, known as the rateable value, to calculate its business rates bill before any reliefs are applied.

These regulations have been precipitated by the Non-Domestic Rating Act 2023, which implemented the reforms announced at the conclusion of the 2020 business rates review. As I am sure many noble Lords are aware, this important legislation introduced more frequent revaluations, bringing the revaluation cycle down from every five years to every three years to make the system fairer and more responsive. The Act also introduced a new improvement relief to incentivise businesses to invest in their properties; legislated for improved transparency in how business rates valuations are calculated; and introduced a number of administrative reforms to the business rates multiplier to streamline and improve the system.

This last point is most relevant here, as those reforms provide the Government with a power to set and alter in secondary legislation the thresholds for which properties are eligible for each multiplier. As these new reforms will come into force from the 2024-25 financial year, the Government must bring forward these regulations in order to maintain the threshold for which properties pay the multiplier at its existing level of £51,000 rateable value. If these regulations are not passed, the small business multiplier will instead apply only to businesses in receipt of small business rates relief. This would constitute a tax hike for hundreds of thousands of businesses whose properties have a rateable value of between £15,000 and £51,000.

The second purpose of these regulations is to bring unoccupied properties, charities and properties on the central list in line with occupied properties, by bringing properties with a rateable value of below £51,000 into the scope of the small business multiplier. The proposal to bring unoccupied properties and charities within the small business multiplier was initially made in the technical consultation following the business rates review. The Government committed to this change in the summary of responses to that document in March 2023. To maintain consistency across the business rates system, it was subsequently decided to bring properties on the central list—the centrally managed list of properties that span multiple local authority areas, such as utilities pipelines—within the scope of the small business multiplier.

The content of this instrument is therefore very simple. The instrument continues and extends existing government policy, applying the small business multiplier to properties with a rateable value of below £51,000 that are not subject to full relief. Properties valued at £51,000 and above that are not subject to full relief will pay business rates by reference to the standard multiplier.

For the majority of ratepayers, then, this statutory instrument merely preserves the status quo. Ratepayers are used to a £51,000 rateable value threshold for the small business multiplier, and this instrument maintains that threshold under the legislative reforms made by the Non-Domestic Rating Act 2023. The instrument promotes stability and predictability in the business rates system. For unoccupied properties, charities and properties on the central list with a rateable value of below £51,000, this instrument will provide a small tax cut, as these properties are brought into the scope of the small business multiplier. The regulations will make the multiplier more consistent and place all properties on a fair and level playing field. I beg to move.

Lord Jones (Lab): My Lords, I thank the Minister for her helpful and brisk exposition, and I will not delay for mischief or malice these regulations that come to the Committee. It is the settled view of the usual channels that it should be so—and rightly so. I rise briefly in the traditional manner to ask the Minister questions, simply and briefly, to hold the Executive to account. So often the Grand Committee considers regulations of great importance to citizens but debate is so brief.

Paragraph 2.2 of the Explanatory Memorandum is welcome. Can the Minister tell us the Government's estimate of the numbers of small businesses in England and Wales? Does the department have any idea of how many there may be?

Paragraph 12.1 of the Explanatory Memorandum baldly states that this is a "tax cut". Surely the Minister who comes to this Committee with a tax cut should be congratulated. For the Minister arriving with a tax cut, it raises confidence when next she gives her expert and brisk introductory remarks.

On paragraph 14 of the Explanatory Memorandum, who will carry out monitoring and review? Shall it be civil servants, independent consultants or simply the Minister's section in her department?

Under the heading "Consultation outcome", paragraph 10 mentions small businesses. Has the Federation of Small Businesses—or the chambers of trade, for example —been involved in this consultation? Details might be available from the Minister or her officials.

Lastly, local government tells of its great problems concerning finance. Does the Minister know that local government throughout the nation hopes that, in the imminent Budget, the Chancellor will offer more money to hard-pressed local authorities in a time of austerity?

Lord Shipley (LD): My Lords, I thank the Minister for her introduction. I welcome strongly the decision to ensure, through this instrument, that charities and unoccupied properties will be eligible for the small business multiplier. It is also helpful that the Government have decided to extend the small business multiplier to central list properties below the £51,000 rateable value threshold.

Business rates are simply too high, particularly for small businesses. I recognise that there has been a freezing of the small business multiplier. At Third Reading of the Non-Domestic Rating Bill in October, I said that what is now the Act made some very welcome changes, particularly around more regular revaluations. However, business rates used to be around half the rental value of a property and they are now closer to 100%—they are almost equal. This financial burden is putting huge pressure on many businesses and impacting on our high streets, particularly our retail sector.

I want to ask the Minister this. We had assurances during the passage of the Non-Domestic Rating Bill that the legislation would be kept under review. Will the Government continue to keep under review the amount that small businesses have to pay? Even though there is a discount, at 49.9p in the pound, compared to other businesses, at 51.2p in the pound, small businesses need greater help today. I hope very much that the Minister will be able to say that the Government are well aware of the financial pressures that small businesses have and are alert to the need to ensure that those pressures, in the current economic context, do not get worse. Might the Government find ways to review the business rates system, which we debated at some length during the passing of the Non-Domestic Rating Bill, but also the level that is paid by many businesses which have been struggling?

Lord Livermore (Lab): My Lords, I thank the Minister for introducing this statutory instrument. I would be grateful if she could provide further detail about the Government's understanding of what constitutes an unoccupied property. The Government consulted on business rates avoidance and evasion in July last year, and in that consultation document they made it clear that they were concerned about the potential abuse of empty property relief by owners who use a brief period of apparent occupation to reset their properties' eligibility for that relief. The consultation document stated:

> "There is no statutory definition of what constitutes 'occupation' of a property, and minimal occupation possibly of no material benefit to the occupier, except as a method to avoid paying rates, may be sufficient to allow ratepayers access to a further rate-free period."

As there is no statutory definition of what constitutes occupation of a property, I would be grateful if the Minister could set out what definition the Government are using in identifying unoccupied properties for the purpose of this SI. I would also be grateful if she could confirm when the Government are intending to set out their response to the business rates avoidance and evasion consultation, and when they will bring forward any actions they intend to take to combat avoidance and evasion within the business rates system.

4.15 pm

Baroness Vere of Norbiton (Con): Once again, I am grateful to noble Lords for sharing their thoughts in this short debate.

As ever, the noble Lord, Lord Jones, rightly held the Executive to account. I always appreciate his questions. He asked how many small businesses there are. There are hundreds of thousands of them. I can tell the noble Lord that 90% of properties come under the small business multiplier, so only 10% pay at the standard rate; of course, that covers hundreds of thousands of properties, some of which may be used by a single business. We must recognise that the small business multiplier is really important because it covers most properties. As the noble Lord, Lord Shipley, pointed out, it was frozen at the Autumn Statement because we recognise and share his concerns about the impact of business rates on our high streets, which we want to keep as vibrant as possible.

The noble Lord, Lord Shipley, is right that this is a tax cut. Sadly, it is quite limited, but, nevertheless, we will take tax cuts wherever we can find them. As I mentioned in my opening remarks, it amounts to around £5 million and goes to charities. Charities get other reliefs as well, which is why the impact is probably smaller than one might otherwise think.

Monitoring and reviewing business rates is a really important area. The Valuation Office Agency is responsible for valuing non-domestic property for business rates purposes. As I mentioned, we have decided to reduce the revaluation period from five years to three years to make it a bit more flexible and agile. The agency is required by law to compile and maintain accurate rating lists for non-domestic properties in England; it must do this impartially and independently of central government. It follows international valuation standards and the RICS mandatory guidance on the appropriate method of valuation. Of course, the VOA remains happy to talk to ratepayers to ensure that it gets the number for the rateable value right.

It is also important to recognise that the VOA is undergoing a period of transformation. There are some opportunities to digitise business rates. There is also a positive opportunity to link business rates to the HMRC system, to make it much easier and so that there is better targeting and understanding of how the business rates system works with the tax data from businesses themselves. This reform programme is called the digitalisation of business rates, and it will be a major step forward in modernising the entire system.

The noble Lord, Lord Shipley, went on to ask what small businesses think of this and whether we have heard from them. I am pleased to be able to tell him that there was the 2023 business rates review consultation and the technical consultation. We heard from the Federation of Small Businesses and many other representative groups in those consultations; they provided us with valuable feedback on how we can make the business rates system more productive.

The noble Lord, Lord Jones, mentioned the issue of some in local government feeling the pinch at the moment. The provisional local government finance settlement for 2024-25 has made an additional increase of 6.5% in councils' core spending power. A consultation with the sector closed on 15 January and we are considering the responses. The final settlement will be confirmed in early February. The Department for Levelling Up, Housing and Communities always stands ready to speak to any council that has concerns about its ability to manage its finances or faces pressures that it has not planned for. We are aware that a small number of local authorities have recently suffered financial distress because of issues specific to them. As I say, we are keen to work with local authorities to ensure that they continue to deliver services for the public.

The noble Lord, Lord Shipley, said that business rates are too high, although he gave credit to the Government, noting that we held the small business multiplier for 2024-25 in the Autumn Statement. That is a positive thing. There is an enormous number of reliefs available for different types of businesses—I was briefed on this—and it is worth making sure that businesses are aware of them. Noble Lords will be aware of the reliefs that we have been able to extend for hospitality, to ensure that our high streets remain vibrant places to go to and socialise. Indeed, there are plenty of others, such as the improvement relief. I think it is possibly quite complicated, but necessarily so, because it targets money to where we need it most.

The noble Lord, Lord Livermore, asked about unoccupied properties. Local authorities are responsible for administering business rates at a local level, and they would determine the occupation of the property. However, if there is any more information or guidance around that that I can provide him with, I will certainly write to him with an update on business rate evasion and avoidance.

Motion agreed.

The Deputy Chairman of Committees (Viscount Stansgate) (Lab): It may be for the convenience of the Grand Committee that we adjourn now, as there is about to be a vote in the Chamber, and reconvene 10 minutes from the moment the Division Bells begin.

4.22 pm

Sitting suspended for a Division in the House.

Iran (Sanctions) Regulations 2023

Considered in Grand Committee

4.34 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Iran (Sanctions) Regulations 2023.

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, this instrument contains measures to deter the Government of Iran, and groups backed by Iran, from conducting hostile activity against the UK and our partners. It was laid on 13 December 2023 under powers in the Sanctions and Anti-Money Laundering Act 2018. The measures entered into force the following day. The instrument has been considered and not reported by the Joint Committee on Statutory Instruments.

The Iranian regime poses a clear threat to the UK and our partners, with hostile acts ranging from assassination plots to significant support for armed groups. The new legislation provides sanctions powers to respond to this appalling behaviour. We can now introduce sanctions designations in relation to Iran's hostile actions in any country. It could be used in response to Iranian support to Russia, destabilising conduct in the Middle East or hostile acts in any partner country. We can use these powers where acts are perpetrated by Iran or by armed groups backed by Iran.

Since January 2022, the UK has identified at least 15 threats emanating from Iran to the lives of UK-based individuals. This is totally unacceptable. Furthermore, Iran continues to destabilise the Middle East through its development and use of weapons, along with support for groups such as Hamas, Hezbollah and the Houthis.

Our priority is the safety and security of the UK, the people who live here and our international partners. That is why we have taken action, using this legislation, to sanction the head of the Islamic Revolutionary Guard Corps Quds Force, Esmail Qaani, and other senior IRGC figures involved in Iran's long-term support to Hamas and Palestinian Islamic Jihad. We will not stop there. For as long as Iran continues to threaten the UK, our interests and our partners, we will respond firmly and decisively. We will use this legislation as a key tool within the broader diplomatic approach aimed at deterring Iran.

Sanctions are particularly effective when imposed alongside international partners and combined with other diplomatic tools. For example, following the murder of Mahsa Amini, a 22 year-old Iranian woman, we sought to expose the extent of Iran's abuses on the international stage, including at the UN Human Rights Council. This was accompanied by regular sanctions designations co-ordinated with partners including the EU, the US and Canada. We delivered a clear message of international condemnation while holding those responsible for human rights abuses to account through sanctions.

I turn now to trade measures, the other substantive addition made by this legislation. Iran continues to expand its drones programme and is sending them to Russia to use against Ukraine. We have already sanctioned a range of entities and individuals involved in the provision of Iranian drones to Russia, using the existing Russia sanctions regime. However, drones are also a feature of Iran's hostile activity beyond Ukraine. This legislation imposes new restrictions on the Iranian regime's drone programme, targeting UAVs and their components, which is crucial to its collaboration with

[LORD BENYON]
Russia. It draws on knowledge of the Iranian drones deployed in Ukraine and elsewhere. The trade restrictions strengthen our existing export controls on drone components, ensuring that no UK business or person, wherever they are in the world, can facilitate the trade of these items.

This legislation also maintains existing trade measures on goods and technology that might be used for internal repression, such as riot shields and water cannons, and on goods, technology and services that may be used for interception and monitoring. This will ensure that the UK plays no part in enabling the Iranian regime's trampling of human rights. We strongly support the right of the Iranian people to freedom of expression and assembly.

The legislation maintains our unwavering support for human rights in Iran. The regime continues to treat women and human rights defenders with contempt, executing eight people in 2023 for their participation in the "Woman, Life, Freedom" movement. The recent death of Armita Geravand, a 17 year-old Iranian girl, after an alleged assault by the morality police shows the brutal reality of life for women and girls in Iran. Since October 2022, we have sanctioned 95 individuals and entities responsible for violating human rights in Iran. The Iran (Sanctions) (Human Rights) (EU Exit) Regulations have been revoked and designations made under those regulations are saved under the new regulations, allowing us to continue to hold the people and institutions responsible to account.

These new regulations demonstrate our determination to target those responsible for Iran's malign activity. They maintain our commitment to human rights law, allowing us to hold to account those in Iran who fail to uphold and respect them. We will continue to work with like-minded partners to disrupt, deter and respond to threats from the Iranian regime and co-ordinate sanctions action. These regulations send a clear message to the Government of Iran and those who seek to harm the UK and our partners. I beg to move.

Lord Purvis of Tweed (LD): My Lords, these measures go beyond the human rights sanctions already in place, as the Minister has said, and are now much broader in their scope and, potentially, their depth. They address Iran's regrettably growing internal oppression and external aggression. I support the measures and am grateful to the Minister for the clear way that he introduced them.

The noble Lord, Lord Collins, and I have debated Iran on a number of occasions in Grand Committee and the Chamber. The fact that its activities at home and abroad warrant debates in this House is testimony that the United Kingdom has considerable interest in ensuring the safety of our nationals, both at home in the UK and abroad, as well as that of our allies. It is regrettable that these measures need to be in place. As they are broader, deeper and country-wide and could set precedents for other areas, it is right that they be scrutinised. I wish to ask the Minister a number of questions. I fully understand if he cannot answer them today but I would be grateful if he could write to me.

As the Minister said, the context of the repression is the reprehensible persecution and oppression of women and young women in Iran by both the morality police and the judiciary, which cannot be considered free and independent. I would be grateful if he could outline the interaction between those bodies that are now open to sanctions within the police and the revolutionary guard and, as human rights measures are to be put in place, their interaction with members of the judiciary. We have seen all too frequently in Russia and Belarus how judiciaries are now completely captured by regimes and are not independent arms. Can the Minister clarify whether members of the judiciary will also be covered by these measures?

I asked a broader question at the outset about women and girls. I have raised the point repeatedly in the Chamber and to the noble Lord, Lord Ahmad. There had been opportunities for those persecuted to seek refuge in the UK through asylum routes, but there is now no longer a safe and legal route for migration to the UK for Iranian women seeking asylum. This was highlighted in a Home Office report just a number of days ago. Can the Minister write to me about what safe and legal routes exist beyond that offered by UNHCR, which is not a comparable direct route?

We know that Iran often operates not alone but with other countries, through proxies or with other state entities. The Minister was clear that these sanctions will cover Iran's activities in other countries. What are the consequences for those countries facilitating them? What sanctions can be applied to those bodies that effectively provide proxy support?

4.45 pm

Turning to the measures themselves, I note that a condition that needs to be met for sanctions to be put in place is the Secretary of State herself—or the United States, the European Union, Australia or Canada—having put in place relevant provisions. I would be grateful if the Minister could write to me—I do not expect him to answer today—on the sanctions regimes in those countries that are comparable to the UK. Both the noble Lord, Lord Collins, and I have often asked questions about why, for example, the European Union has put measures in but the UK has not, or whether Canada has put in measures while the UK has not. The noble Lord, Lord Ahmad, has repeatedly said that they operate under their own sovereign sanctions regimes; that is absolutely the case, and I am not disputing that fact, but now, as I read it, we have an automatic triggering for sanctions under condition B. I would be grateful if the respective comparable sanctions regimes that would allow the UK to trigger could be laid out. I say at the outset that I am not opposed to this but just seeking clarity.

I turn to those associated with a person who could be sanctioned under these regimes, including those with a financial benefit or other material benefit from the person. The Minister will know well enough that the UK has had an issue with facilitators in both the legal services and the consultancy services. I would be grateful if the Government consider that a person "associated with" a sanctioned person would cover a UK legal representative. Regrettably, there have been times when legal services have been used for malicious purposes—we have debated those cases—and I would like to be reassured that there are no loopholes with regard to that.

I will jump to Regulation 60, on treasury licences. The Minister may recall that one difficult issue was Treasury licences being offered for legal services to be deployed for a sanctioned individual to effectively offer a malicious legal case. I would be grateful if the Minister could confirm that there will be no loophole for legal services and Treasury licences.

On assets overall and asset freezes, this is welcome, but I would be grateful if the Minister could state whether the sanctions applied to asset freezes for individuals who would be sanctioned under these regimes—Iranian officials—can be extended to the joint assets that Iran will have, connected either to other states or to proxy finance. As I indicated, the Minister knows all too well that Iran does not operate solely in many of the activities he outlined. Often, it is through proxy organisations or in some form of partnership with other groups, whether it be proxies for the Putin regime or others. I campaigned for and welcomed very warmly the Government proscribing the Wagner Group, for example, which is an illustration of how non-government bodies can effectively carry out operations on behalf of Iran. We will come on to talk about the sanctions regime with regards to Russia, and diamonds, gold and oil, and this is an area where Iran has been very active.

My final question relates to shipping and the naval aspect, which is topical at the moment, given the Statement that will be repeated tomorrow on the actions against the Houthis. As I understand it, the sanctions will allow for someone, a body or a particular vessel to be designated so that they will not have access to UK ports of entry. This is under Regulation 55. I seek clarity on British Overseas Territories. My reading of this is that the sanctions will provide exceptions to entries by those sanctioned into overseas territory ports. I hope I am not correct about that being exempted. I hope it is not the case that a sanctioned vessel would be prohibited from landing at a British port but would be able to land at a British Overseas Territory port. Again, I hope I am not correct, so I seek clarification on that.

The Government have indicated that they do not consider a review clause in this instrument appropriate. I gently differ slightly with them, because, as I said, this is a broad set of sanctions and there could well be consequences. I understand that it is absolutely in the Government's power to remove or bring forward amendments to sanctions if they consider it appropriate, but a review mechanism would be helpful; if the intent is to change the behaviour and practices of a sovereign state, knowing the impact and effectiveness of that—and sharing it with Parliament—will be important. Although the Government have said that they do not believe that a review clause in the instrument is appropriate, I hope Ministers will be free to brief Members, either privately or publicly in the House, on the impact and effectiveness of these measures.

With those questions, I support the measures.

Lord Collins of Highbury (Lab): My Lords, when the Foreign Secretary made the announcement on these sanctions, we had an opportunity to repeat his Statement in the House. I do not really want to repeat everything that I said then.

We very much welcome these actions, in particular the co-operation with other states. I totally agree that, for sanctions to be effective, we must work in conjunction with others—certainly the US, Australia, New Zealand, Canada and the EU. I have no problems with that. However, at the time, I asked that we not limit ourselves to those countries. I asked the noble Lord, Lord Ahmad, what we are doing to ensure that we get broader co-operation on these sanctions, not least with some of the Commonwealth members that could have an impact here.

As the noble Lord, Lord Purvis, indicated, we have discussed and raised the human rights abuses mentioned by the Minister. One area that we are particularly concerned about is the attacks on freedom of speech and the operation of journalists, not least the impact of this on the BBC World Service and the people who work for it—including the threats that have been applied to the families of BBC World Service employees. It would be good if the Minister could mention that—in particular the activities of this rogue state in threatening our citizens, not only abroad but here—in relation to how we will co-operate across Whitehall in addressing these issues. It is important for us to be reassured on that point.

We very much welcome the regulations and their broad nature. We are certainly committed to supporting any efforts to contain Iran and counter its efforts to sponsor terrorism across the globe, not least in supporting the Houthi terrorists operating in Yemen.

There is another question. I will not repeat the questions asked by the noble Lord, Lord Purvis—particularly on the operation of licences, which we have raised before. I totally understand why the conventions that we are signed up to permit that but it would be good to have a detailed explanation. However, one thing I have raised is this: while it is one thing to designate sanctions and agree with other countries about designating them, they must be effective. What I mean is, what are we doing to ensure that we can see the evidence that the Government are actually prosecuting sanctions evasions? People may not realise that there are consequences for evading the sanctions but may face severe consequences, so I would be particularly keen to hear how we are supporting actions to chase people who evade or seek to evade sanctions, or even offer services to facilitate their evasion. These are really important areas.

Of course, we then have the issue of the sunset sanctions from the JCPOA. What are we doing there? These regulations are part of that but what are we doing to beef up some of the designations of Iranian targets? It would be really important to understand that. With those brief comments, I reiterate our support for these regulations, as we did in December.

Lord Benyon (Con): I thank both noble Lords for their questions and their support for this measure. I want to address the important issues that they raised.

The noble Lord, Lord Purvis, asked about the judiciary. He is absolutely right that the judiciary in Iran is not independent. It is an agent of the state and its members are part of the architecture of that state, which has caused some of the grossest human rights

[LORD BENYON]
abuses. They are available to be sanctioned. We have sanctioned members of that judiciary and will continue to do so as and when we get evidence to support doing that. He also asked about safe and legal routes. We are always looking at this issue. It is obviously a responsibility of the Home Office, with which we work closely; we also work internationally to make sure that safe and legal routes exist. I am very happy to give the noble Lord a more detailed briefing on that.

The noble Lord is absolutely right about the proxies and other states, individuals and companies through which the Iranian Government operate. We work with the EU, as well as with our partners in the US, Canada and many other countries, to try to ensure that a comprehensive regime exists. The Secretary of State can take urgent action under our sanctions regime to replicate sanctions that are implemented by the US and Canada. We will certainly take that action as soon as it is required, and can do so at great speed. Very often, the information comes out in relation to a particular incident or individual, and sometimes that requires speedy action. The Foreign Secretary and the Government are happy to move quickly on that and keep noble Lords informed about what we are doing.

The issue of facilitators is perhaps more relevant to the next SI but it is absolutely right that the noble Lord raised it. Unlike Iran, we are a free country with independent institutions, such as the judiciary. However despicable an individual's acts, whether the crime is a murder or whether, in a case such as this, an individual feels that they have been wrongly sanctioned, they must have the ability to be supported by the legal system. No one argues with that; where we have a problem is with some people who have made a lot of money out of dirty money coming into the UK. We want to ensure that they are given the full glare of publicity and are understood to have been part of the problem.

5 pm

The noble Lord, Lord Purvis, rightly talked about malicious legal cases, which can have a huge impact on the taxpayer and delay the system under which we have operated, particularly on asset freezes. This can be more complicated if a country such as Iran is using proxy organisations, of course, but we remain absolutely determined to shine a light on any state or individual actor being used by Iran to avoid sanctions. We will make sure that those matters are kept under constant review.

I note the noble Lord's point about shipping. He is absolutely right that there is no point in denying a ship access to our waters and ports if they can just go to a near neighbour. That is why we work extremely closely with the International Maritime Organization and others to try to make sure that we have a universal system that is accepted across the world.

We have sanctioned more than 400 Iranian individuals and entities, including the IRGC in its entirety, in response to the regime's human rights violations, nuclear escalation and terrorism. Since the protests began in October, we have sanctioned 204 individuals and entities, including 54 linked to the IRGC. Our sanctions against Iran account for a significant proportion of our sanctions work across the department.

The noble Lord, Lord Collins, talked about broader co-operation. This is a matter of great priority for the G7, which is doing great work in looking at asset seizures and making sure that we have both a comprehensive regime across our allies and actions that work in lockstep with those countries.

It has rightly been said that all areas of responsibility of the British Government must be part of this. The UK sanctions regime applies in all UK overseas territories and Crown dependencies, either by Orders in Council or through each jurisdiction's own legislation. The United Kingdom, the Crown dependencies and the overseas territories stand united in condemning the Russian Government's aggression and the behaviour of the Iranian Government, and are working in lockstep with us to enforce UK sanctions, including freezing over $9 billion of assets. Each territory's Government are responsible for the implementation and enforcement of sanctions within their territory. We and the Office of Financial Sanctions Implementation provide technical support through the targeted use of EDI funds to build capacity and strengthen sanctions enforcement with other restrictions.

Both noble Lords talked about how we are judging and reviewing this mechanism and making sure that we are creating a transparent system that holds us to account. The creation of the Office of Trade Sanctions Implementation was announced on 11 December. This new unit will strengthen the implementation and enforcement of our trade sanctions and ensure that UK sanctions are as impactful as possible. We will also legislate to give the OTSI a toolkit of civil enforcement powers, including the ability to levy civil monetary penalties, similar to the powers of the Office of Financial Sanctions Implementation. These new civil enforcement powers will complement HMRC's existing criminal enforcement powers in relation to trade sanctions. The OTSI will become fully operational this year, once it has its new legal powers, and more information on timing will be available in due course.

We have listened closely to the concerns of industry, particularly in the light of Ukraine. We want to support and foster better understanding and compliance with the UK's trade sanctions. I think that covers most of the questions.

Lord Purvis of Tweed (LD): I thank the Minister; he has been very generous in responding to our points. I am still a little unclear with regard to the issue of Crown dependencies and the overseas territories when it comes to some of the shipping aspects. I would be happy for the Minister to write to me about this. I hope that I am not correct that, while a sanctioned individual and, therefore, vessel, would be prohibited from landing in UK waters, it would be able to land in the waters of overseas territories or Crown dependencies. This would be very attractive to that potential vessel, especially to individuals or an individual's vessels. As I said, I would be happy if the Minister could write to me to clarify that point as I was not entirely sure of his response.

Lord Benyon (Con): I entirely accept the noble Lord's point. I want to give myself the clear comfort that he seeks. It is not the case that a vessel or an

individual not allowed into United Kingdom waters or ports, or to receive refuge in any form, can then go to a Crown dependency or overseas territory and get access. What I hope I said was that these measures cover all our overseas territories and Crown dependencies. However, I will write to him because I want to make absolutely certain that we are being clear.

I have been seeking inspiration for that reply and have now received a note; I may be able to avoid writing him a letter. There is an overseas territory order that applies on legislation. The UK sanctions regime applies in all United Kingdom overseas territories and Crown dependencies. I think I have just saved a stamp.

Lord Purvis of Tweed (LD): I am grateful to the Minister. However, I think that the exemption would be an exemption from that order because it is an exemption under this order. If there is an exception for authorised conduct in a relevant country and the relevant country is the Channel Islands, the Isle of Man or a British Overseas Territory, I do not know the interaction between the exception that we are approving under this when it comes to the overall application of UK sanctions to the overseas territories. I understand that the overseas territories have that application owing to that other instrument but this is an exception to that.

Lord Benyon (Con): I understand the noble Lord's concerns. I am informed that he need not worry but I want to make sure that he does not worry; I will therefore put it in a letter to him.

These measures represent a step forward in our capability to respond to hostile Iranian activity and keep our people safe. The UK Government are committed to using sanctions to hold the Iranian regime to account for its malign activity, both in the UK and elsewhere.

Motion agreed.

Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2023

Considered in Grand Committee

5.07 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2023.

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, these regulations amend the Russia (Sanctions) (EU Exit) Regulations 2019. These instruments were laid on 14 December 2023 under powers provided by the Sanctions and Anti-Money Laundering Act 2018. They entered into force on 15 and 26 December 2023, and 1 January 2024. The instrument has been considered and not reported on by the Joint Committee on Statutory Instruments.

These instruments contain trade and financial measures, co-ordinated with our international partners, to increase the pressure on Putin over his brutal and illegal war against Ukraine. They ratchet up the pressure on Russia's war machine and economy as part of the most severe package of economic sanctions that that country has ever faced.

The No. 4 regulations continue the UK Government's commitment to ban the export of all items that have been used by Russia on the battlefields to date. Building on existing extensive prohibitions, these regulations ban the export of further products that could be used by the Russian military or industry, including electronics and machine parts. The legislation also delivers on commitments made by the Prime Minister at the G7 leaders' summit last May to ban imports of Russian metals, including copper, aluminium and nickel, by the end of 2023. It extends the existing prohibition on luxury goods to include a ban on services ancillary to their movement and use. This means that those subject to UK sanctions can no longer provide financial services and funds, technical assistance and brokering services related to luxury goods.

There are also amendments to other product definitions and coding to ensure clarity and consistency with partners. On the financial side, this includes new obligations for persons designated under the Russia financial sanctions regime to report any assets that they own, hold or control in the UK or worldwide as a UK person to the relevant authorities. A further requirement has been placed on relevant firms to inform HM Treasury of any foreign exchange reserves and assets belonging to the central bank of Russia, the Russian Ministry of Finance or the Russian National Wealth Fund.

The regulations also amend existing regulations that prohibit UK credit and financial institutions processing sterling payments that have travelled to, from or via sanctioned credit and financial institutions, in order to expand this prohibition to include non-sterling payments. The prohibition adds a new exception to enable UK credit and financial institutions to transfer funds internally in certain circumstances for the purpose of compliance and regulation.

Finally, alongside the No. 4 regulations, we have introduced a new financial sanctions licensing ground to support UK entities in divesting their Russian interests. The licensing ground will also permit UK entities to buy out investments from designated persons and the Russian state, provided those funds go into a frozen account. We will proceed with a further prohibition on ancillary services related to metals when this can be done in concert with international partners.

The No. 5 regulations deliver the Prime Minister's commitment, made at the G7 summit last May, to tackle the revenue that Russia generates from the export of diamonds. They prohibit the import, acquisition, supply and delivery of diamonds and diamond jewellery produced by Russia. A further G7-wide ban on the import of Russian diamonds processed in third countries is expected to come into force from 1 March this year.

[LORD BENYON]

I should add that the Joint Committee on Statutory Instruments has been informed of a minor drafting error in the Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2023. To remedy this, we have identified another instrument where this error can be corrected; we aim to lay it this later this year, with it coming into force as soon as possible. I wrote to the noble Lord, Lord Collins, with some detail on this; it is important that I put this part of my letter on the record. We consider that the Russian regulations can stand as they are in the meantime because, although the incorrect terminology was used, the exceptions set out in Regulation 60DC(2)(d) of the Russia regulations remain clear. The Government plan to lay a separate miscellaneous sanctions amendment statutory instrument later this year, as I said. I hope that, with that assurance, I can give the Committee the absolute understanding that this minor drafting mistake does not impact on the measure.

These latest measures demonstrate our determination to target those who participate in or facilitate Putin's illegal war. Overall, the UK has sanctioned more than 1,900 individuals and entities, of which 1,700 individuals have been sanctioned since his full-scale invasion of Ukraine. More than £20 billion-worth of UK-Russia trade is now under sanction, resulting in a 94% fall in Russian imports into the UK—comparing one year pre invasion to one year post invasion—as well as a 74% fall in UK exports to Russia.

Sanctions are working. Russia is increasingly isolated, cut off from western markets, services and supply chains. Key sectors of the Russian economy have fallen off a cliff, and its economic outlook is bleak. The UK Government will continue to use sanctions to ratchet up the pressure until Putin ends his brutal invasion of Ukraine. We welcome the clear and continued cross-party support for this action. I beg to move.

5.15 pm

Lord Purvis of Tweed (LD): My Lords, I thank the Minister for outlining the instruments. My party supports them. I am grateful to the Minister for outlining them in clear terms. I understand that it is a long-held practice that, if Ministers write to inform about new things, they write to both Front Benches. I do not think I received the letter to the noble Lord, Lord Collins, that the Minister referred to.

I have just two points to raise. One is to welcome the diamonds element that was announced at the G7. I know there have been questions about how long it took, but nevertheless we are grateful that it is there. I have often raised Russia benefiting from the continuing gold trade, which is illegitimate and channelled through the Gulf. I would be grateful if this could be raised. On Friday, we will have a full-day debate on Ukraine, in which we will raise wider issues.

I have a question about the figures for the impact of the sanctions so far, to which the Minister referred. I read his colleague Leo Docherty MP citing the same statistics about UK imports from Russia falling by 94% but our exports to Russia falling by 74%. I have not been able to find a breakdown of the sectors, and I would be grateful if the Minister could provide one in writing because I am curious about why there is a differential, and why sanctions have been more impactful for the UK importing goods from Russia than for exports, which is what we should be trying to target. As the Government say, if sanctions are working, we need to be able see that.

My second question is about the ability to effectively buy frozen assets, which the Minister raised. This will require further consideration and debate because there could well be some complexities with regard to it, especially in the context of the decision made by the EU yesterday to approve a windfall tax on frozen assets. I believe the UK should be moving ahead on this. I would be grateful if the Minister could outline His Majesty's Government's policy on this because it could be significant. The Minister referred to sums of £20 billion. As I understand it, the EU has estimated that it would be able to utilise €2.3 billion in interest and taxes on the assets alone. Given that €125 billion-worth went through Euroclear Belgium and €300 million is immobilised across Europe as a whole, the decision to have a windfall tax on that means it could be used to benefit Ukraine. I hope that allowing entities to buy frozen assets would not mean that, if the UK were to decide to recover the interest on the assets by having a windfall tax on them, that would effectively mean that those assets would be frozen not just from the Russians whom we are sanctioning but effectively from the Ukrainian people, who should be able to benefit from taking interest or a windfall tax or recovering them. I hope the Minister can provide clarity on those points.

Lord Collins of Highbury (Lab): My Lords, I very much welcome these additional amendments on further sanctions. I certainly welcome the fact that we are focusing on trying to weaken the war machine that this illegal invasion of Ukraine is supporting. I certainty welcome Regulation 5, on luxury goods, too.

In the previous debate, the Minister mentioned the Office of Trade Sanctions Implementation, which aims to crack down on sanctions evasion. I very much welcome that because, as I mentioned, we have seen before evidence of companies circumventing the sanctions. He also mentioned the toolkit, which will, I hope, enable us to avoid repeating some mistakes made in the past. It would be good to better engage on how we will support this new office.

One thing that the noble Lord, Lord Purvis, has raised previously is this: how do we ensure that Britain's offshore financial centres are properly able to implement the sanctions? Of course, we have been extremely concerned about transparency and the need to introduce public beneficial ownership registers speedily. Without them, we will not be able to see exactly what UK firms or individuals are up to. With opaque entities, sanctions will sometimes be evaded, though perhaps not deliberately. We need to address this properly.

The Government recently updated Parliament with another timeline for the expected delivery of public registers. However, I note that the British Virgin Islands will not have its appropriate frameworks in place as late as 2025. I hope that the Minister will express the same opinion as me: that this is too late and we really need to speed things up.

The noble Lord, Lord Purvis—I nearly called him Lord Putin then—mentioned frozen assets. We will certainly address them in our debate on Friday. Since we also raised this issue in Oral Questions, I note that the Foreign Secretary—the noble Lord, Lord Cameron—mentioned his belief at Davos that frozen assets are an issue that need international co-operation. Can the Minister give us a bit more detail on that?

The noble Lord, Lord Purvis, also referred to the stats that were mentioned by the Minister. I have here a letter dated 19 January from Anne-Marie Trevelyan. It repeats those figures but she says that we have

"sanctioned more than £20 billion of UK-Russia goods trade, contributing to a 99% drop in UK goods imports from Russia and a 82% drop in UK goods exports to Russia".

I do not know why there is a difference there, especially as it is so recently put. I welcome that letter because it gives a lot of detailed information. One thing that Minister Trevelyan says, in referring to metals, diamonds, oil and stuff, is what we have addressed before: the leakage that seems to happen, particularly with luxury goods. Her letter says:

"The UK, EU and US have sent joint delegations to the UAE, Kazakhstan … Uzbekistan, Georgia, and Armenia, and we have delivered senior bilateral engagement with Turkey and Serbia, yielding positive results".

I am not sure from the letter whether we have received positive results from all of these visits.

I was in Tbilisi late last year, and I noted that there was a big increase in the import of luxury cars into Georgia. It was also reported that, since the war, trade going from Georgia into Russia has increased, despite its public position. I welcome the fact that we have sent delegations and that the Minister is saying that there are positive results, but can he tell us exactly what they are? Even from my observations, it certainly looks as though there is an ability to evade sanctions.

With those brief comments, I reiterate the Opposition's position: we are absolutely at one with the Government in supporting Ukraine and ensuring effective sanctions against Russia's illegal invasion. We welcome these amendments to the sanctions regulations.

Lord Benyon (Con): I again thank both noble Lords for their interest and support for these measures. I will seek to answer all the questions raised. I will ensure that future letters go to both Front Benches; I apologise to the noble Lord for missing him out in that exchange.

Gold is a sanctionable trade. Sometimes it is harder to detect, but it is certainly an element of trade that is within the sanctions regime.

I cannot give the noble Lord a breakdown of the sectors that create the 74%. I do not know why there is a discrepancy with the letter he received from my colleague Anne-Marie Trevelyan, but I will look into it. My understanding is that there has been a 96% reduction in trade from Russia and a 74% reduction in trade in the other direction. That will have caused hardship to some legitimate businesses, and we respect that, but this is an international incident which requires the strongest possible response, and our sanctions regime has had to take this decision.

I will write to both noble Lords about the buying of frozen assets and what impact that could have if those assets were then released, say, to Ukraine, to help pay for the war. We want to make sure that we are not diminishing the amount that that country should get to pay for the damage that has been done to it.

The G7 has repeatedly underscored that Russia's obligations under international law are clear: it must pay for the damage it has caused to Ukraine. How we ensure that Russia does so is the subject of active and urgent discussions with G7 partners. Leaders have tasked the relevant G7 Ministers to report back on progress by the two-year mark of Russia's invasion at the end of February. The UK remains fully committed to working with allies to pursue all lawful routes through which Russian assets can be used to support Ukraine.

While these G7 discussions continue, we have taken a number of steps domestically. We were the first to introduce legislation explicitly enabling us to keep sanctions in place until Russia pays for the damage it has caused; we have announced a route by which sanctioned individuals who want to do the right thing can donate frozen funds for Ukraine's reconstruction; we introduced new powers to compel sanctioned individuals and entities to disclose assets they hold in the UK; and we are stepping up efforts to use funds from the sale of Chelsea Football Club to support humanitarian causes in Ukraine.

The noble Lord referred to the EU's proposal to use the profits being incurred by funds trapped in Euroclear to support Ukraine. We are looking closely at that, but this situation is unique to the EU's institutions. We and other G7 partners fully support the EU's efforts but we do not believe that we can replicate them within our system. However, we are looking at any opportunities to increase the pressure. As I say, the EU's proposal is unique to its institutions and we want to ensure that we use our frozen assets regime as effectively as possible.

5.30 pm

Through a separate annual frozen asset review process, £21.6 billion of assets were reported frozen due to UK financial sanctions regulations, across all sanction regimes, as of 30 September 2022. This £21.6 billion is a marked increase on the frozen asset review 2021 figure of £12.4 billion, provided in the OFSI annual report. This included £7.9 billion reported under the Russia sanctions regime, an increase from £44.5 million in 2021.

We want to make our position on overseas territories absolutely clear. They are self-governing jurisdictions, responsible for their own financial services regulation. There should be no safe havens for illicit funds and the OTs are committed to meeting the highest standards in tackling illicit finance, including those set by the Financial Action Task Force. UK and OT senior officials met the British Virgin Islands between 12 and 14 September 2023 as part of a ministerial-level annual dialogue on tackling illicit finance. The OTs already share confidential information on company beneficial ownerships with UK law enforcement bodies via exchange-of-notes arrangements.

I will finish by setting out what has happened recently. Over the last few months, Ukraine has pushed significant parts of the Black Sea fleet out of Crimea and opened up export routes that do not depend on Russia. This has assisted its economy. Russia remains

[LORD BENYON]
internationally isolated: in the last few weeks, it has failed to get elected on to the Human Rights Council—it would have been a hideous result if it had been. It has failed to get on to the International Court of Justice, the executive board of UNESCO, the council of the International Maritime Organization and the executive council of the Organisation for the Prohibition of Chemical Weapons, and rightly so.

Since February 2022, total military, humanitarian and economic support has been more than £3.9 billion; we have given £4.7 billion in non-military support to Ukraine. With our allies, we are providing the military and economic capabilities that Ukraine requires, including winter support. We are maintaining pressure on Russia's ability to wage its war of aggression, including through sanctions, and supporting Ukraine to export its goods, including grain. This includes ensuring that the maritime corridor it has established is secure against Russian attacks and commercially viable. We have helped to develop a private sector insurance facility for shipping, using the corridor, and are working with allies to support our military-industrial complexes to provide the sustainable support that Ukraine needs.

In Kyiv this month, the Prime Minister announced a further £8 million to fortify and rebuild Ukraine's energy infrastructure and a number of events are coming up where further international collaboration on this can be achieved. For example, at the UK-hosted European Political Community in the spring and at NATO's 75th anniversary summit in Washington in July, we want to make sure of this continued level of support. The programme we are debating can be seen in the context of that wide international support.

The noble Lord, Lord Collins, talked about public registers. I will write to him on that because I want to make sure we get that absolutely right. I have said what we are doing with BVI but there are other issues relating to that.

In terms of other countries' trade with Russia—not just its neighbours—we monitor that and use our status in various diplomatic organisations, not least the UN, to ensure that we are putting pressure, with our allies, on other countries not to liberalise their trade with that country. In doing so, we show our support for the Russian people but our condemnation of the Russian regime, which is stealing money from its people and putting them in danger, not least on the front line in Ukraine and through its horrendous human rights abuses.

Lord Collins of Highbury (Lab): Can I just interrupt the Minister on this point? It is something that I picked up from Anne-Marie Trevelyan's letter of 19 January, where she talks about these joint delegations "yielding positive results". I agree with the Minister that this is not about attacking the Russian people but is about luxury goods, which are certainly leaking in. I wondered what the Minister meant in her letter about yielding positive results. Do we have figures on that? Has there been an impact on the trade, which seems to be leaking?

Lord Benyon (Con): I am sure that we do have figures, although I do not have them here. I will write to the noble Lord setting out what successes we are having in those negotiations and bilateral discussions.

These measures are the latest addition to our package of sanctions, which is having a damaging effect on Putin's war machine and regime. The UK Government are committed to using sanctions to keep up the pressure until Putin ends his brutal and senseless war. We in this Committee stand resolute with the people of Ukraine and will continue to support them until they prevail.

Motion agreed.

Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2023

Considered in Grand Committee

5.36 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2023.

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2024

Considered in Grand Committee

5.38 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2024.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Penn) (Con): My Lords, this instrument makes changes to correct minor errors in the Representation of the People (Postal and Proxy Voting etc) (Amendment) Regulations 2023—or the 2023 regulations, as I will refer to them—in relation to how the transitional arrangements for the new rules concerning proxy voting are displayed on poll cards.

The Elections Act 2022 set out a wide range of changes to numerous aspects of the electoral system. This included changes to the rules surrounding the number of people for whom an individual can act as a proxy when voting. The changes were implemented by the 2023 regulations that I have just referred to and are supported by new offences. They came into force on 31 October 2023.

The new arrangements limit the number of electors for whom a person may act as a proxy to four, of which no more than two can be domestic electors—that is, an elector who is not registered as an overseas or service voter. The 2023 regulations also updated all

relevant prescribed forms, for example poll cards, to make sure that the new limits are clearly explained to electors.

To ensure a smooth change of rules, the 2023 regulations set out a transition period, which would allow proxy arrangements that had been set up prior to the new rules coming into force to continue until 31 January 2024, and longer if a poll were already under way on that date. This was to avoid a cliff edge where all pre-existing proxy arrangements were cancelled simultaneously, which could create administrative issues and could leave insufficient time for electors to reapply for new proxy arrangements.

The change in proxy rules also needed to be reflected in the information provided on elections forms, such as poll cards, and these needed to be updated for polls held during the transition period as well as for polls held after it. The 2023 regulations provided the necessary updates for the forms used for any polls for which notice was given prior to 31 January 2024—that is, until the end of the transition period. The forms for postal poll cards and proxy postal poll cards for any polls held after the transition period are set out in a different set of regulations: the Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023. However, these forms do not come into force for any polls where the day of the poll is prior to 1 May 2024. There is therefore a gap in the transitional provisions for any polls for which notice is given on or after 31 January 2024 and the day of poll is on or before 1 May 2024 where no transitional provision has been given. Any polls taking place during this time would have to use the postal poll cards and proxy postal poll cards used prior to the 2023 regulations coming into force, which would provide incorrect information on the rules and offences surrounding proxy voting.

The same gap applies in respect of postal signing petition notices and proxy postal signing petition notices for any recall petition for which the Speaker's notice is given on or after 31 January 2024 and for which the beginning of the petition signing period is on or before 1 May 2024.

This instrument will correct the error in the 2023 regulations by adding updated information about the new voting offences for persons voting by proxy to postal poll cards and proxy postal poll cards for polls that are commenced and held during this gap. This will ensure that the proxy voting changes are clearly explained to electors and so avoid any confusion.

The instrument also amends two minor typographical errors in the 2023 regulations. I beg to move.

Lord Rennard (LD): My Lords, the Minister need not fear that I will ask any particularly difficult, tricky or awkward questions on this legislation. There is a simple explanation for that: I could not think of any. I looked at the proceedings in Committee in the other place, and nor could anyone there, so I will confine my remarks simply to a question and an observation. The observation is that we seem to have had a lot of changes to election law in the year before a general election. Does the Minister accept that there may be a greater risk of an error in the conduct of our elections as a result of the large number of changes to election law being made in the year before a general election, and with local elections in May? Could she tell us—perhaps she will write to us in due course—how many pages of legislation are in the secondary legislation instruments brought before us in the last 12 months? It seems a lot of pages.

Lord Khan of Burnley (Lab): My Lords, I thank the Minister for introducing this statutory instrument. It corrects very minor errors in a previous statutory instrument. We are pleased that the Government are correcting the errors and understand why this instrument must be introduced. The Minister outlined the huge task as a result of the changes made in the Elections Act. I have sympathy with her in the task of introducing so many complex changes in electoral statutes. If there are other mistakes in the Elections Act that the Government want to rectify, we are happy to support them.

I have a few questions for the Minister. Is the department now examining instruments relating to the Elections Act to ensure that all other transitional arrangements are correct? Do the Government plan to lay any further regulations relating to the Elections Act prior to the elections in May? Has the Minister discussed the regulations with those responsible for implementing them?

Another concern on these Benches is that we have already stretched electoral administrators up and down the country, who are getting their heads around the changes that the Government are making, sometimes rectifying errors. This is deeply concerning. Will those electoral officers be further resourced? How will they be strengthened to deal with the impacts and changes that have been outlined today? The noble Lord, Lord Rennard, spoke about this. I look forward to the Minister's response.

5.45 pm

Baroness Penn (Con): My Lords, I thank both noble Lords for their succinct contributions to the debate. As noted, this statutory instrument makes minor changes to correct an error in previous ones. However, both noble Lords noted the changes that we have made through the Elections Act and those we are bringing forward through secondary legislation. When it comes to this statutory instrument, electoral law is complex and highly detailed as a result of the need to ensure that all processes are carried out in a specific fashion consistently across the country. When drafting legislation in a complex area of law such as this, small errors can occasionally occur. Through the regulations we are debating today, we are able to correct that error before it has any impact.

We are conscious of the changes that we have brought forward through the Elections Act, but we have worked carefully to sequence their implementation. Both noble Lords asked about the number of changes being made and the support and engagement we are giving to those implementing them. We are engaged carefully with those implementing the changes; we receive constant feedback from them. As I said, we have carefully sequenced the changes that we are seeking

[BARONESS PENN]
to make, conscious that we may be coming up to an election year. Of course, there is an outside chance that 2025 could be the election year, and recent experience tells us that elections can be called earlier than we may anticipate, so there is not necessarily a good time to make these changes. We also have to take into account the regular drum beat of local and mayoral elections.

On the question of resources, we have done a new burdens assessment and assigned additional resources to local authorities to make some of the changes, and they are able to apply for further funding where needed.

On the question of whether there will be any more regulations stemming from the Elections Act before the elections in May, my understanding is that there will be no further statutory instruments. As to whether we have looked at related changes that may need to be made in other statutory instruments, my understanding is that some of these provisions in relation to local elections and others were made through negative SIs, and we have already reviewed and amended them where necessary to reflect the changes that we have had to make through this correction.

Finally, I do not know whether anyone has counted the number of pages of secondary legislation, but I will go to find out, and if I can provide an answer for the noble Lord, I will certainly write to both noble Lords with that figure. With that, I commend these regulations to the Committee.

Motion agreed.

Committee adjourned at 5.48 pm.