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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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

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

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

House of Lords

Tuesday 12 March 2024

2.30 pm

Prayers—read by the Lord Bishop of Leicester.

Introduction: Lord Booth

2.37 pm

Sydney John Peter Booth, having been created Baron Booth, of Houghton-le-Spring in the City of Sunderland, was introduced and took the oath, supported by Baroness Pidding and Lord Sharpe of Epsom, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Fuller

2.42 pm

John Charles Fuller, OBE, having been created Baron Fuller, of Gorleston-on-Sea in the County of Norfolk, was introduced and took the oath, supported by Baroness Shephard of Northwold and Lord Porter of Spalding, and signed an undertaking to abide by the Code of Conduct.

Carers: National Strategy

Question

2.47 pm

Asked by ***Baroness Pitkeathley***

To ask His Majesty's Government whether they plan to develop a national strategy for carers to take account of the needs of unpaid carers.

Baroness Pitkeathley (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interests as set out in the register.

Lord Evans of Rainow (Con): My Lords, we have set out our strategic approach for supporting unpaid carers in *People at the Heart of Care*, published in 2021. The enormous contribution made by unpaid carers is reflected throughout *Next Steps to Put People at the Heart of Care*, published in 2023. Ministerial colleagues indicated last year their intention to meet annually, in the run-up to Carers Week, to share ongoing work to support unpaid carers and identify opportunities to work together to achieve more.

Baroness Pitkeathley (Lab): My Lords, I thank the Minister for his response. I never have any difficulty getting agreement that carers are vital to our health and social care system and should be supported, but I doubt if the 5,000 carers just surveyed by Carers UK about a national strategy will be very pleased with his Answer. They emphasise how vital this kind of step change is if they are to be able to continue caring while safeguarding their own health and finances. What they, I and all those who work with carers want is a national strategy that covers all relevant departments and is led by the Prime Minister, as the last one was in 2008 by the then Prime Minister, Gordon Brown. This Government promised a national strategy in 2015. Why are carers still waiting?

Lord Evans of Rainow (Con): I pay tribute to the noble Baroness for the work that she has done and her lifetime service to carers and to the voluntary service. We are fortunate to have her in this place. We will continue to work together across government to support unpaid carers. Ministerial colleagues and senior leaders from the Department for Work and Pensions, the Department for Business and Trade, the Department for Education and the Department of Health and Social Care, as well as NHS England, met last year to share ongoing activity and identify opportunities to achieve more. Ministers indicated their commitment to meeting on an annual basis, most likely in the lead-up to Carers Week. We recognise the importance of continuing to improve data and evidence and will note the results of the APPG/Carers UK survey, in addition to other sources once available.

Baroness Lister of Burtersett (Lab): My Lords, the Minister has talked about a strategic approach and meetings. What exactly are the Government doing to address the disproportionate risk of poverty among carers? Where is the strategic approach on that? Things are getting worse, not better.

Lord Evans of Rainow (Con): This Government are fully committed to the 10-year vision for adult social care set out in the *People at the Heart of Care* White Paper. The Government have made available up to £8.6 billion of additional funding over this financial year and next to support adult social care and discharge.

Baroness Jolly (LD): My Lords, the support received by carers varies according to where they live. Does the department have access to how many unpaid carers there are and where they live? Does it hold information about the ages of carers and those whom they are caring for? If not, why not?

Lord Evans of Rainow (Con): My Lords, the noble Baroness makes an important point. She is right that we need to know where carers are. *People at the Heart of Care*, published in 2021, addresses the identification of unpaid carers by increasing the use of markers in NHS electronic health records and by simplifying current approaches to data collection and registration. In many communities up and down the country, that works very well, but clearly there is more to be done in other communities.

Lord Laming (CB): My Lords, the Minister will recognise that anyone at any time can have a major care role thrust upon them unexpectedly which can transform their lives completely. When the committee that several of us sat on took evidence from unpaid carers, one of the things that astonished us was that carers felt so devalued. When they took the person whom they were responsible for to hospital, they were

[Lord Laming]
not even allowed into the consulting room with a doctor because their status was not considered sufficient to allow them in; it was only the patient who could go in. These carers said to us, "What is the country doing to support unpaid carers?"

Lord Evans of Rainow (Con): The noble Lord is right, and indeed I have experienced that position myself. If you take a loved one to hospital or to the doctor's, and the doctor's surgery has been used to seeing the patient over many years, they look at the carer and think, "Who is this person?" Their records do not reflect things, and that is simply not good enough. Registering a power of attorney with the GP is one way of doing that, but we are a long way from having it in place. It is incumbent on GP practices to get up to speed. When they have patients on their records, there should be a clear segment in the computer system so that if a patient turns up with a carer the practice knows who the carer is and makes them welcome.

Lord Kirkhope of Harrogate (Con): My Lords, there are some deep concerns—I have seen a number of things on television recently—about actual children acting as carers for their parents, when I think the normal assumption is that carers look after elderly people or those who are particularly disabled. Does my noble friend agree that we need to be particularly careful to identify situations where children are carrying out those functions, and assist them as much as possible?

Lord Evans of Rainow (Con): My noble friend is absolutely right and raises an important point. The Department for Education's new data on young carers, collected through the school census published last year, is an important step towards improving their visibility in the school system, allowing schools to better identify and support their young carers. That will also provide an annual data collection to establish long-term trends. We will consider the findings from the census to inform the next steps.

Baroness Wheeler (Lab): My Lords, on International Women's Day last week, Carers UK stressed that older women aged 75 to 79 are providing the most unpaid care—50 hours per week—and that there has been an alarming increase since 2011 in women aged over 85 providing unpaid care. These are not the women who come under the Government's award of one week's unpaid carer's leave from work, and neither will they be first in line for the small amounts of respite care funding that GPs have been allocated. How are the Government addressing this situation, and what specific actions will be taken to help to alleviate the terrible burden of care these women face?

Lord Evans of Rainow (Con): The noble Baroness raises a very important point and, as I have already mentioned, the Government have conducted a census looking at the data to identify those carers. Various groups of carers all have different needs. My noble friend just mentioned child carers, and the noble Baroness just mentioned carers of working age; employers have to be sympathetic and understand.

Baroness Wheeler (Lab): It was over-85s.

Lord Evans of Rainow (Con): Also, it is challenging for those aged over 85. As I alluded to in my previous answer, GP practices have to be able to identify people in that age range so that they can work with social services and the local authority to make sure that they are supported.

The Lord Bishop of Leicester: The Archbishops' Commission on Reimagining Care, based on conversations with many unpaid carers, recommended that there should be a "New Deal" for carers including restorative breaks, financial support and support from employers, including paid leave and the right to request flexibility. Does the Minister agree that any future national care strategy should consider the need for unpaid carers to have flexibility in their paid work?

Lord Evans of Rainow (Con): The right reverend Prelate raises an important point, and we welcomed the report he referred to. The Department for Business and Trade is bringing in a new leave entitlement of one week, available to all employees, including those working in adult social care, providing care for a dependant. This is on top of existing statutory holidays. The Carer's Leave Act 2023 and flexible working regulations will come into force on 6 April. Under the Act, eligible employees will be entitled to one week of unpaid leave per year. This is just the start. The right reverend Prelate is absolutely right: good employers should recognise when employees need time off, because it will happen to the employers at some stage in their lives.

Baroness Tyler of Enfield (LD): My Lords, I will pursue the point on the healthcare needs of unpaid carers and how the NHS treats them. The Government's White Paper on adult social care reform had a range of measures including voluntarily used markers to identify unpaid carers in NHS health records. That was about their own health needs, not about supporting the health needs of those whom they were caring for. What progress has been made in this vital area?

Lord Evans of Rainow (Con): As *People at the Heart of Care* put it in 2021, we set out a strategic approach to empowering unpaid carers, and in October 2023 the Department of Health and Social Care launched an accelerating reform fund. It provides almost £43 million over 2023-24 to support innovation in adult social care and services for unpaid carers. This takes forward our commitment to invest £25 million to bolster the care services that support unpaid carers.

Forest Risk Commodity Regulations

Question

2.58 pm

Asked by ***Baroness Hayman of Ullock***

To ask His Majesty's Government when they will lay the forest risk commodity regulations under Schedule 17 to the Environment Act 2021 to

prevent the importing of goods responsible for illegal deforestation, and what consideration they have given to the merits of widening the scope in include all deforestation.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, secondary legislation will be laid in the near future that will make it illegal for larger organisations and their subsidiaries to use regulated commodities and their derivatives in the UK if produced on illegally occupied or used land. Around 70% of tropical deforestation for agriculture is illegal. Therefore, the Government believe that is the most effective approach to halt and reverse deforestation. It is the most important way of supporting producer Governments to strengthen their forest governance and domestic laws.

Baroness Hayman of Ullock (Lab): My Lords, we understand the importance of getting these measures right and of working with partners to ensure they have the greatest possible impact. However, waiting more than two years after the passage of the Environment Act is a choice. The Minister knows there is appetite for regulation, including in the financial services industry, where separate commitments have been made. What does "near future" mean? Can he guarantee today that these important provisions will be in force by 2025? If not, other than grabbing some headlines during COP 26, what are the Government actually doing to prevent deforestation?

Lord Benyon (Con): The Government are doing a lot to prevent deforestation in addition to this measure, which, as she knows, came from the Glasgow leaders' declaration we led on at COP 26 to put an end to deforestation and land degradation by 2030. We are putting this in place. The noble Baroness asked for the date on which it will be laid. We have a few tweaks to make, because we are in negotiation with the EU to make sure that we are getting this right for Northern Ireland. We are working with the EU. With products that come from other countries and are then processed and exported to the EU, we will be working under two systems, and we want to make sure we are getting that right.

In addition, we are doing a range of different activities, including our investments in forests and sustainable land use. Our Partnership for Forests has mobilised £1 billion in private investment and has brought 4.1 million hectares of land under sustainable management and benefited over 250,000 people. I could go on. We are doing a lot in addition to this measure.

Earl Russell (LD): My Lords, while we welcome these measures, we note that Defra consulted on them in December 2021. They only cover illegal goods and apply to businesses that have a global turnover of over £50 million per year and use over 500 tonnes of beef, leather, cocoa, palm or soya oil per year. Will the Government commit to full alignment with the EU's deforestation regulations, which cover all forest commodities sourced from both illegal and legal deforestation?

Lord Benyon (Con): The EU's deforestation regulation is far from settled and it is causing great concern. I have had meetings with representatives from a number of producer countries. On trips to countries such as Costa Rica, I met many others. It is not right to say that the EU system is done and dusted. There are great concerns among producer countries that it could mitigate against precisely the people who are living sustainably close to or in forest environments. We have started with these four and we will have a very fast—for these sorts of measures—review in two years' time, which will see possible additions. That may comply with what the EU is doing, but we have no idea whether the EU is going ahead with all six or will go ahead with the same four that we are.

Baroness Boycott (CB): My Lords, in a recent investigation by Global Witness, it was found that both HSBC and Barclays are financing companies that are purchasing product made on illegally deforested land, particularly in the Cerrado. This is a complex ecosystem that is not covered as tropical rainforest. It has fallen between two stools, but it is producing an enormous amount of meat. Schedule 17 is meant to cover it, but it has weak definitions. The beef produced as a result of deforestation does not necessarily end up here in the UK, so we cannot just focus on the trade alone to stop it; we have to look at the money and where it is flowing. Do the Government remain committed to developing "clear due diligence standards" for the financial sector through the Treasury's review of deforestation finance, which was commissioned in the Financial Services and Markets Act and committed to in the other place by the then Economic Secretary to the Treasury, Andrew Griffiths?

Lord Benyon (Con): Yes, we do. The Treasury is proceeding with its review. Alongside that, we have the Taskforce on Nature-related Financial Disclosures. It is not just for financial institutions in this country but has become the international byword on making sure that financial institutions are themselves regulated and making it clear to other investors and shareholders that the supply chains they are investing in are in accordance with the Glasgow leaders' declaration.

Lord Randall of Uxbridge (Con): My Lords, I congratulate my noble friend. I know he shares a great and deep concern on this issue. He is probably as impatient as many of us to get this, but we know it is not always that easy. Will the Government require commodities and products that are in scope to be traced back to farm level?

Lord Benyon (Con): I thank my noble friend. We are indeed working as quickly as we can to get this on the statute book. We want to make sure that those companies that are in scope, as the noble Earl on the Liberal Democrat Benches described, are able to say from their supply chains right back to where the project came from in the first place, that they are in accordance with these regulations. If not, we have a very clear sanctions programme that we will bring forward in the statutory instrument, which will hold them to account.

Lord Clark of Windermere (Lab): My Lords, we know that we have fewer trees in this country than most countries in Europe, yet we also know that trees capture CO_2 and other noxious gases. If we are to meet our national obligations to try to reduce global warming, we will have to step up our planting of trees; there is no other way we are going to be able to do it.

Lord Benyon (Con): The noble Lord is absolutely right: we have to practise what we preach domestically, which is why we have put an enormous amount of money through the Nature for Climate fund to promote that and through other schemes. We are encouraging land managers to look at tree planting and are seeing an increased number being planted. The supply chain to support that is so important. I have just come back from Costa Rica, which has doubled its tree cover in recent years, and we want to increase ours significantly in the UK.

Baroness Jones of Moulsecoomb (GP): My Lords, do we have to continue with biomass subsidies after 2027? I would like some confirmation on that. Secondly, ancient forests in Canada are still being cut down to make wood pellets to supply companies such as Drax, which has had billions in subsidies. It is not clean energy, it is highly polluting and it is not economical, so why are the Government still doing that?

Lord Benyon (Con): I will write to the noble Baroness about Drax, because it is a very complicated issue. It fits into the UK's net zero balance sheet in terms of what Canada is doing, where the woodchip comes from. I want to be absolutely right in my answer, so I will write to her.

Lord Forsyth of Drumlean (Con): My Lords, further to the question from the noble Baroness, I entirely agree with her. What are the Government doing spending hundreds of millions of pounds in subsidies to Drax in order to have trees cut down in America and then brought across the Atlantic? All of this is because somebody has designated "burning wood" as ticking the box for "saving the planet", which it clearly is not.

Lord Benyon (Con): Biomass is a perfectly legitimate renewable energy source if the wood that is being used is a renewable and sustainable harvest. My noble friend and the noble Baroness are absolutely right that if the wrong sort of timber is used and being shipped to this country at huge carbon cost, taxpayers, shareholders and investors need to know the precise and genuine cost to our net zero commitments that that poses.

Baroness Ritchie of Downpatrick (Lab): My Lords—

Baroness Sheehan (LD): My Lords—

Noble Lords: Order.

Baroness Williams of Trafford (Con): My Lords, it is the turn of the Liberal Democrat Benches.

Baroness Sheehan (LD): My Lords, in my capacity as chair of the Environment and Climate Change Committee, I wrote to the Secretary of State for Defra, Steve Barclay, on this issue on 14 February. As yet, I have not had a reply and nor has the chair of the Environmental Audit Committee in the other place, who wrote to him earlier than I did. Will the Minister use his good offices to ask when a reply might be forthcoming?

Lord Benyon (Con): I am not clear what the letter was about—whether it was about Drax or the forest risk commodities. Whatever it is, I will chase it and make sure that the noble Baroness gets her answer.

Land Use Framework

Question

3.09 pm

Asked by ***Baroness Young of Old Scone***

To ask His Majesty's Government what steps they are taking to make progress on the delayed land use framework for England, when it will be published, and whether it will be subject to consultation.

Baroness Young of Old Scone (Lab): I beg leave to ask the Question standing in my name on the Order Paper, and draw attention to my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Douglas-Miller) (Con): My Lords, I declare my land management interests, as set out in the register. I appreciate that it has been a long wait, and I am happy to confirm that the land use framework will be published before the Summer Recess this year. The Government have made significant progress in the areas that your Lordships' Land Use in England Committee identified as policy priorities. The Government intend to engage widely on the framework, both pre and post publication, but are not planning to consult formally on the framework.

Baroness Young of Old Scone (Lab): I thank the Minister for his response. He said that it had been a long time waiting and, indeed, I have 40 successive *Hansard* assurances over the last two years that the land use framework would be finished and published by December 2023. The last one dated from November 2023—so that did not happen. I welcome the Minister's assurance that it will be published before the Summer Recess, but I am not holding my breath.

Can the Minister assure the House on a number of issues to do with the framework? Will it integrate all the key land uses, including infrastructure, housing and transport, not just those for which Defra has a responsibility in terms of agriculture, carbon and biodiversity? Will the Government in their engagement before and after the publication of the framework, as the Minister outlined, engage widely with the 140,000 landowners who ultimately own the land and will decide on how their land will be used? He needs to

reassure them that such a framework is not a top-down diktat and that they will still be able to make decisions about their own land and will be incentivised for adopting options that are broadly in line with national policies and targets.

Lord Douglas-Miller (Con): I thank the noble Baroness for her questions. She raises some really important points. I think that the noble Lord who has been the recipient of the previous 40 questions on the land use framework might be sitting quite close to me at the moment. As the 41st recipient to respond to this query, I am incentivised to come up with the answer before the Summer Recess, as I said.

There are many uses of our land, and we need to anticipate for the future. Naturally, several government departments have interests, and we are working closely with them to understand their land use expectations and feed them into the framework. The Government support the principle of multifunctional land use—in essence, land sharing rather than land sparing. The framework will provide land managers and farmers, and other interested parties, with guidance, so they can make effective decisions based on local knowledge and local strategies, as well as understanding national requirements. The framework is not intended to be prescriptive or to force people into certain categories. It is essentially guidance.

Lord Deben (Con): Will my noble friend confirm that this will cover not only Defra's subjects but the wider range of things to which the noble Baroness pointed? A land use strategy that does not cover the whole range of areas, including infrastructure, is not going to be one which is very acceptable. How are we going to consult, if there is to be no consultation?

Lord Douglas-Miller (Con): I thank the noble Lord for his question. Several government departments have targets with land use implications, and we are working with them to understand and take account of their land use expectations, as well as those within Defra. That includes the Department for Energy Security and Net Zero, the Department for Levelling Up, Housing and Communities, the Department for Transport and the Department for Science, Innovation and Technology. We are in consultation with all those departments at the moment.

The Earl of Devon (CB): My Lords, I attended a soil health conference this morning which was excellently chaired by the noble Baronesses, Lady Hayman and Lady Bennett. Soil health is synonymous with appropriate land use. The repeated refrain from the experts was the importance of localised knowledge to manage our essential soils, including at individual field levels. In developing that land use strategy, what steps will the Government take to ensure that local land managers, who know their land best, are properly and actively consulted?

Lord Douglas-Miller (Con): The Government are not currently planning to consult formally on the framework. We are not convinced that the benefits of formal consultation outweigh the burdens it could place on the many sectors involved in land management. We have engaged with relevant groups during the development of the land use framework, including other government departments, as I said, the devolved Administrations, and academics, including the Royal Society. We intend to engage more widely ahead of the framework's publication. Most importantly, the development of the framework has also been informed by those managing land and farming. We have worked with farmer groups and investigated the decision-making processes of those farming in different landscapes across England.

Lord Cameron of Dillington (CB): My Lords, the Minister has answered the questions about the involvement of other departments and about getting expertise in from the outside. The House of Lords report was adamant that this should be an ongoing process. How often do Defra and the Government envisage that this strategy should be renewed? Would it, for instance, be coincidental to the three-yearly statutory obligation on Defra to report on the self-sufficiency of UK food supplies? I would hope that we could combine the two. All the consultation that is being described is quite a big exercise. I hope that we can have a consistent body to further this process.

Lord Douglas-Miller (Con): I pay tribute to the noble Lord and to the other members of his committee for their excellent report. He rightly points out that this is an iterative process; we are not going to do it just once to put it into a file where it will sit for ever as a rigid structure. I do not yet have the exact details as to how this process will be updated. I very much hope that this will form part of the final report when it comes from the Secretary of State shortly.

Baroness Hayman of Ullock (Lab): My Lords, the delay in the publication of the strategy is disappointing. Previously, the Minister has assured us that we would be seeing it "shortly". It is interesting that "shortly" has now become "before the Summer Recess". I thought I would look up the definition of "shortly" in the Cambridge dictionary; it is "soon". The example given is:

"We will shortly be arriving in King's Cross Station".

Does the Minister agree that it is a jolly good job that he is not in charge of our railway services? Can he guarantee that we will see the strategy before the Summer Recess, or will we be seeing the use of "shortly" shortly?

Lord Douglas-Miller (Con): As a frequent user of the train service between here and Edinburgh, I appreciate that "shortly" can mean lots of different things. When the Secretary of State took up his position at the beginning of December, he wrote to the noble Lord, Lord Cameron of Dillington, saying that that was a really important subject. It is crucial that the Secretary of State is completely happy with a report that will go out in his name. It is right that he takes the time to reflect on the report that was being formulated at the time, put his own stamp on it and make sure that he is entirely comfortable with it when it comes out, before the Summer Recess.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, how are the Government approaching the design of financial and policy levers to encourage decision-makers at all spatial scales to reach decisions which are broadly in line with delivering national targets and policies?

Lord Douglas-Miller (Con): Sorry, I did not actually hear the question.

Baroness Bakewell of Hardington Mandeville (LD): How are the Government approaching the design of financial and policy levers to encourage decision-makers at all spatial scales to reach decisions which are broadly in line with delivering national targets and policies?

Lord Douglas-Miller (Con): I thank the noble Baroness for her question. I caught most of it, but perhaps I might write to her in due course with the answer once I have caught the whole thing.

Lord Carrington (CB): My Lords, I declare my interests as set out in the register. The primary concern in any such framework needs to be its flexibility to react to circumstances. This means that, at best, it can only be guidance, as the Minister has affirmed. More specifically, can he confirm that valuation issues will be carefully studied, as confiscation of value due to arbitrary designation will be a major concern for those who work the land?

Lord Douglas-Miller (Con): The noble Lord is absolutely correct that this framework is not designed to be prescriptive in any way. It will take into consideration all aspects of land ownership, land management and land use. I can assure him that making sure that there is no value destruction for those at the recipient end will be at the top of my radar.

Ministers: Legal Costs

Question

3.19 pm

Asked by ***Lord Clement-Jones***

To ask His Majesty's Government what assessment they have made of taxpayer-funded legal costs incurred by Government Ministers, following the recent libel settlement funded by the Department for Science, Innovation and Technology.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, in line with established practice under multiple Administrations of all political colours, Ministers are provided with legal support and representation where matters relate to their conduct and responsibilities as a Minister. As set out in Chapter 6 of the *Cabinet Manual*, Ministers are

"indemnified by the Crown for any actions taken against them for things done or decisions made in the course of their ministerial duties. The indemnity will cover the cost of defending the proceedings, as well as any costs or damages awarded against the minister".

Lord Clement-Jones (LD): My Lords, I thank the Minister for that reply. The Prime Minister put it rather differently. He said

"it is a long-standing convention stretching back many years … that the government will fund those legal disputes when it relates to government ministers doing their work".

How can making party-political libel posts on X on Friday at midnight constitute "Ministers doing their work"? Why should this settlement come out of the public purse? Is this not a breach of the Ministerial Code, after all?

Baroness Neville-Rolfe (Con): As I said, it is long-standing practice. Indeed, the Secretary of State concerned made a statement this morning at the Lords Science and Technology Committee and explained the circumstances in full, including how she was engaged in official work and got support from officials on the disputed letter.

Lord Harris of Haringey (Lab): My Lords, will the Minister just explain how all of that works if this was a post on X at midnight?

Baroness Neville-Rolfe (Con): I think the Secretary of State explained very fully. It took the course of two days to draft, clear and send the letter to UKRI's CEO to ask for an investigation. She highlighted it on X, using the same medium as the original issue.

Lord Wallace of Saltaire (LD): My Lords, may I ask the Minister about the Civil Service dimension of this? It is reported that a number of senior civil servants were working until midnight on a Friday evening on a non-emergency text message that the Secretary of State wished to send. This seems an entirely unreasonable use of civil servants' time. Civil servants do work out of hours, but only for emergencies. If they are asked to work late into the night and over the weekend, that is an abuse by Ministers of civil servants.

Baroness Neville-Rolfe (Con): The Secretary of State has explained her actions fully. I refer noble Lords to her statement. The important thing is that legal advice was taken, and subsequently there was a full and final settlement of the dispute. The Secretary of State made it clear that she should have sent the letter in confidence to UKRI and apologised for that. The basic principle is that it is very important that Ministers can seek advice on work that they carry out as part of their official duties, otherwise there would be a chilling effect on public life. This has been important to all Administrations.

Baroness Chapman of Darlington (Lab): My Lords, if the chilling effect were to extend to preventing Ministers posting things on social media at midnight, we might all be able to live with that. The Minister said that the indemnity covered the activities of her fellow Minister while fulfilling her duties, so can she advise the House which of her ministerial responsibilities the Secretary of State's comments attacking two academics were fulfilling? Will she also explain why the taxpayer should foot the bill for a blatant abuse of position and

power by the Secretary of State that further undermines the standing of the very UK research institution that her department is supposed to be promoting?

Baroness Neville-Rolfe (Con): The Secretary of State is responsible for the non-departmental public body UK Research and Innovation. She was operating in that context. Her intentions were always to do the right thing. It is very important that Ministers can do this. Of course, insurance is available to MPs, which is provided by the House at the taxpayers' expense, in cases where professional indemnity insurance covers defamation. The House of Lords Commission is due this week to discuss the provision of professional indemnity insurance to Peers. Of course, there is indemnity insurance in the private sector because directors have to act in good faith and in the wider interest.

Lord Watts (Lab): My Lords, might I suggest that the protection should last only while pub hours are in place, because it is quite clear what happened in this case?

Baroness Neville-Rolfe (Con): The truth is—as I know well—that as a Government Minister you do work late. Government officials often work late as well. This is a serious point about how to make sure that Ministers are properly advised on issues. That is what happened on this occasion.

Baroness Chakrabarti (Lab): My Lords, the Government seem very keen to lecture everybody else about extremism these days. Would they like to take a look closer to home at the extremism in their own ranks, in particular from very major donors?

Baroness Neville-Rolfe (Con): On extremism, as the Prime Minister said in his very important speech two weeks ago, we have seen an unacceptable rise in extremist activity that seeks to divide our society and hijack our democratic institutions. It is our duty to ensure that the Government have all the tools that they need to tackle this ever-evolving threat.

Lord Drayson (Lab): My Lords, part of the role of the Science Minister is to champion the scientific community within government and to protect it from political interference. What action are the Government taking to repair the damage caused by the Secretary of State's highly regrettable actions and the libel case that followed?

Baroness Neville-Rolfe (Con): I do not see it that way. The Secretary of State gave evidence this morning to the Lords Science and Technology Committee. There was a brief discussion of this matter. They then moved on to discuss important points about science, which she and this Government are extremely supportive of and have done so much to make sure that the UK is one of the leaders in the world in science and technology matters.

Lord Clement-Jones (LD): My Lords, is this not another case of the Government marking their own homework? What is the Government's ethics adviser saying about this? Have the Government taken a proper view from the ethics adviser?

Baroness Neville-Rolfe (Con): Advice to the Prime Minister, including from the ethics adviser, is not something that we would comment on.

Lord Anderson of Swansea (Lab): I am sympathetic to the Minister, who is prone to having hospital passes from her colleagues that do not help her at all. Does she really think that her explanation at the Dispatch Box will convince the British public, let alone the *Daily Mail*?

Baroness Neville-Rolfe (Con): The statement the Secretary of State made this morning was full and clear. I have a great deal of respect for the Secretary of State. The action she took in the aftermath of 7 October was very understandable. We have now moved forward and resolved this. We should be caring about how we improve science and technology in this country.

Lord Purvis of Tweed (LD): The Secretary of State told the Select Committee that she is now clear that she should have sent the letter privately. Was she advised by her officials working at that time of night that it would be appropriate to send part of it on X? If she was not then she was acting with her own personal judgment on the issue, so why is the taxpayer having to pay for that error?

Baroness Neville-Rolfe (Con): I have explained the circumstances about why the taxpayer gets involved in legal expenses. I note the noble Lord's point.

Baroness Young of Old Scone (Lab): I was there when the Secretary of State gave her statement to the Science and Technology Committee this morning and was remarkably unconvinced, particularly by the Permanent Secretary's assertion that all the aspects of this case had been discussed with legal and technical advisers before the relevant tweet was made. I simply ask the Minister: does she think that was valid advice? Is this the way the Government think a senior Cabinet Minister should communicate with the body for which she has responsibility?

Baroness Neville-Rolfe (Con): My understanding is that the legal expenditure was approved by the department's accounting officer. That was made clear. I believe that the Permanent Secretary was there with the Secretary of State. I refer noble Lords to her statement, to all that she has done, and to the fact that she apologised to move this matter on.

President of the European Commission

Question

3.30 pm

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

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs when he will next meet the President of the European Commission.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): My Lords, I have no immediate plans to meet the Commission President, but I meet regularly with Josep Borrell, the high representative, and with Maroš Šefčovič, who is the commissioner responsible for the UK-EU relationship. The Prime Minister meets regularly with the Commission President, and they have a very strong relationship.

Lord Young of Cookham (Con): I am grateful for that reply. In last week's debate on financial affairs, a number of noble Lords proposed that Russia's frozen assets should be used to send armaments to Ukraine and to repair its damaged infrastructure. My noble friend replied sympathetically, saying:

"We are aiming for the maximum amount of G7 and EU unity on this".—[*Official Report*, 5/3/24; col. 1545.]

Six months ago, at the end of an EU summit, where there was broad support for that proposition, the President of the Commission said that the next step would be an actual proposal. When my noble friend next meets the President, therefore, will he urge her to make progress with the next proposal, because Ukraine needs every help it can get?

Lord Cameron of Chipping Norton (Con): The noble Lord is completely right that Ukraine needs our help, and needs it urgently. We are continuing to discuss with allies the best legal basis for making progress. We believe that there are a number of options. We could take collective countermeasures, saying that all countries have been affected by Russia's illegal invasion so there is that legal basis. The Americans believe that there is a case for using individual countermeasures, arguing that their individual country has been affected. Nevertheless, what we need to do in the G7 is to get the maximum unity. It may not be possible to get everyone to agree to the same process or the same amount, but we are hoping to make good progress.

Baroness Ritchie of Downpatrick (Lab): My Lords, whenever the Foreign Secretary next meets the EU commissioner, will he take on board the need to resolve the supply of veterinary medicines under the Windsor Framework to Northern Ireland? The recent Command Paper said that technical solutions would be pursued with the European Commission. Can the Foreign Secretary indicate what discussions have taken place, or will take place? Will he give assurances to your Lordships' House that these issues will be resolved to ensure the expeditious supply of veterinary medicines and vaccines to farmers in Northern Ireland?

Lord Cameron of Chipping Norton (Con): I will look closely at the case that the noble Baroness raises. The Windsor Framework was a very good piece of negotiation that has helped to get the institutions back up and running in Northern Ireland, and that is wholly welcome. Of course, there are still issues that we need to resolve, and I will look carefully at the one she raises.

The Earl of Kinnoull (CB): My Lords, a good place to have a meeting would be at the European Political Community. Originally, that meeting was going to take place in the spring of this year. In January, it was suddenly going to be in the first half of this year and no date has yet been set. Can the Minister say why there has been a delay in setting a date and when a date is likely to be set?

Lord Cameron of Chipping Norton (Con): I am confident that a date will be set, that an excellent venue will be provided, and that the meeting will be a great success. We found that in the early part of the year there was a bit of a traffic jam of summitry. So many summits were coming at the same time that finding the right time where the leading people who needed to be there could be there was a challenge. However, we are very close to meeting that challenge, and I will update the House as soon as I can.

Lord Owen (Ind SD): My Lords, on the question of the manufacture of weapons and munitions for Ukraine, is the Foreign Secretary aware that there is great concern that there is a depletion of these weapons in this country? Can he assure us that manufacturing in this country of weapons and munitions for Ukraine will be stepped up considerably over the next few weeks and months?

Lord Cameron of Chipping Norton (Con): I think I can give that undertaking. The Prime Minister announced the package of support for Ukraine, at over £2.7 billion, which will ensure that it has the support it deserves from the United Kingdom. The Government are fully aware that we need to step up production, not just for Ukraine but to make sure that we deal with our depleted stocks. However, at the same time, there is a real task to be done across all the countries that support Ukraine to look at any weapons systems that are close to their expiration date. We will not be able to use them, but it could use them now.

Baroness Smith of Newnham (LD): My Lords, during the current Foreign Secretary's sabbatical from politics, his immediate successor as Prime Minister, Mrs May, was negotiating an EU-UK security treaty. Does he think that now is a good time to reopen such discussions, precisely in light of the situation in Ukraine? That is one area where we could have common cause.

Lord Cameron of Chipping Norton (Con): I do not think we should rule out different ways of working with the EU, but the Ukraine situation shows how the current arrangements can be made to work well. I have always said that, after Brexit, Britain should aim to be the best friend, neighbour and partner of the EU, and I think Ukraine shows that is exactly what we are doing. We have found ways of working together through these various formats, including the Wiesbaden formats and others. I am not sure that it is necessary to form some structured way of working when we have managed to do it on an ad hoc, rapid and effective basis.

Baroness Smith of Basildon (Lab): My Lords, can I come back to the question raised by the noble Lord, Lord Young, about repurposing seized Russian assets for use in Ukraine? The Foreign Secretary will be

aware that at the recent G20 meeting of Finance Ministers different views were expressed. I would be grateful if he could say something more about the position taken by the UK representative at that meeting, and, following on from his comments last time we had questions on this issue, could he say something about the discussions he has had with other nations which have adopted a more cautious approach? Has he been able to find a way forward or more agreement?

Lord Cameron of Chipping Norton (Con): We have taken quite a forward view. We think there is a moral and political case for doing this, and we do not see the supposed economic damage that would be done as a strong argument against it. It is certainly true that some other countries are more cautious. Some EU countries are looking at spending the interest on the capital sum rather than the capital sum itself, but we are still making the argument for the maximum amount that can be done. Our view is simple: one day, Russia will have to pay reparations, and it does not make sense to wait for those reparations. It makes better sense to use the frozen assets and to make that that money available now.

Lord Hamilton of Epsom (Con): My Lords, one of the weapon systems that Ukraine could certainly deal with is the Taurus missile from Germany. The German Parliament has passed this to be sent to Ukraine, but for some reason Chancellor Scholz is holding it up. Can we do anything to encourage the Germans to send the Taurus missile to Ukraine?

Lord Cameron of Chipping Norton (Con): I am grateful for the noble Lord's question. I spent some time in Germany last week making exactly this argument. It is obviously a sovereign decision for Germany, and so, just as we do not like other people telling us how to make sovereign decisions, we should couch our arguments carefully. However, I made the argument that there is no doubt that Storm Shadow has been incredibly effective, and no doubt that it has not been escalatory, because it has been used responsibly and correctly. The other point worth making is that if we want peace, we are more likely to get a just peace through strength and through backing our words with actions. We make these points to our German allies, but ultimately it will be for them to decide.

Baroness Quin (Lab): My Lords, when the Foreign Secretary wound up the debate a short while ago in this House, he said that ad-hockery was often quite a good approach in negotiations with European counterparts. I can understand that in terms of taking advantage of opportunities when they arise. However, given the huge range of difficulties that businesses, particularly small businesses, are having at the moment in trying to surmount the various non-tariff barriers to trade between us and the EU, do we not also need a focused and comprehensive approach to the forthcoming negotiations with the EU?

Lord Cameron of Chipping Norton (Con): I think the noble Baroness is right to put it like that, but that is what the trade and co-operation agreement is about. We have structured co-operation when it comes to that part of our relations, and obviously it is up to us in the time before it is re-examined to make the most of it and look at what other things we could do to help small businesses, such as VAT thresholds and—I have raised it before—electricity trading. These are some of the ideas that we are putting forward that we think could make a difference.

Viscount Waverley (CB): My Lords, can we look forward to an agreement with regard to Gibraltar and, if so, by when and with what conclusions? I am referring to the trilateral negotiations.

Lord Cameron of Chipping Norton (Con): Generally speaking, in negotiations it is not a good idea to have too many artificial deadlines. Obviously, there is something of a deadline coming up as we are heading for a new set of EU elections and so a new set of Spitzenkandidat, which I remember from before my brief—how did the noble Baroness put it: holiday?—sabbatical. I am confident we can reach a good agreement. My honourable friend the Europe Minister was in Gibraltar yesterday, having talks with the Chief Minister. I think there is a good basis for an agreement, and we are working very hard to bring that about.

Low and Middle-income Countries: Debt Restructuring

Question

3.40 pm

Asked by ***Lord Oates***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what consideration he has given to introducing measures to compel private creditors to take part in debt restructuring for low- and middle-income countries facing debt crises.

Lord Oates (LD): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I declare my interests as set out in the register.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): My Lords, I have raised this issue directly with the Chancellor of the Exchequer. I completely understand the concern to ensure that private sector debt is fully part of debt restructuring for low and middle-income countries. There is a range of arguments that we should consider on this issue and we need to be mindful of the impact that legislation could have, including on the cost of and access to finance for partner countries.

Lord Oates (LD): My Lords, I thank the Foreign Secretary for that Answer. He will be aware that lobbyists for private creditors made the same arguments ahead of the Debt Relief (Developing Countries) Act 2010, but when the Liberal Democrat-Conservative coalition reviewed the working of the Act in 2011, it found it to be a successful measure with no evidence of

[Lord Oates]
unintended or adverse effects. Given that the majority of relevant bonds are governed by English law, will the UK take a lead to ensure that private creditors take part in sovereign debt restructuring on the same terms? Will the Foreign Secretary work with the New York state authorities, which are also considering this issue?

Lord Cameron of Chipping Norton (Con): Obviously, I remember fondly when we were working together in passing the Act to which the noble Lord refers. When that Act was passed there was a real problem with vulture funds acting as hold-outs in debt reconstructions. While there are still arguments for the approach he is taking, we have to ask: will it affect the cost of capital for poorer countries to borrow, will it affect the availability of capital and, crucially, now that we have the collective action clauses and the majority voting provisions, is it still necessary to have this sort of legislation? The IMF reviewed this in 2020 and concluded that things were working well, so there is a concern in my mind that the approach he is talking about is perhaps relevant to what was happening in the past rather than relevant to what is happening now. I think we should keep an open mind on it.

Lord Alton of Liverpool (CB): My Lords, with more than $1 trillion owed in debt by 150 countries to China through belt and road, making it the biggest debt collector in the world, what assessment has the Foreign Secretary made of the implications on dependency, including the extension of China's military presence in the world? In this 75th anniversary year of the Commonwealth, is he not particularly concerned about the way in which the CCP has been marching into that void, not least as a result of the cuts we have made to our overseas aid and development programme?

Lord Cameron of Chipping Norton (Con): It is very important that we provide alternatives to finance so that Commonwealth and other countries have a choice. I am very proud of the work I did to set up the Caribbean infrastructure fund, for instance, and we are looking again at whether we can refresh and renew that. We are also trying to get the multilateral development banks to expand their balance sheets and lend more to poorer countries. These are ways in which we can offer countries alternatives to Chinese finance in the way that he suggests.

Lord Naseby (Con): My Lords, should we not look at the recent example of Sri Lanka, which decided that it had to seek the help of the IMF? The IMF responded speedily, but the problem was the private creditors and the time that took. Is there not a case for perhaps the IMF to produce some dimension whereby there is a structure that all private creditors can use, or be advised to use, so that a speedy decision is made for the benefit of the poor people who are suffering?

Lord Cameron of Chipping Norton (Con): If bonds are the form of lending, there are collective action clauses that can prevent private sector hold-outs. With loans, you have these majority voting provisions so that a group of private investors cannot hold up the resolution of those debts. That is the right way forward. On Sri Lanka, we welcome the official creditor group deal that was reached on 29 November 2023; the bondholder committee is currently in negotiations with the Government of Sri Lanka. We do not comment on ongoing restructuring programmes, but we hope that a deal will be arranged soon.

Lord Browne of Ladyton (Lab): My Lords, the 2010 Act was an excellent example of cross-party co-operation because it was passed by the Labour Government and implemented by the coalition. The United Kingdom and New York have a unique power to take leadership of this issue, which is important to a substantial part of the world, because 90% of the private lender contracts that are causing the problem are written under either English or New York law. Does the Foreign Secretary acknowledge and approve the efforts of New York to bring in legislation to make sure that private creditor terms are equivalent to those of other creditors, which they are not? If so, what steps are we taking, if any, to co-ordinate with New York to ensure that similar legislation can be enacted here?

Lord Cameron of Chipping Norton (Con): I thank the noble Lord for his question. It is true that what was teed up by Gordon Brown was nodded into the net by the coalition Government, and rightly so. We do not think that the law in Albany, New York state, is actually likely to get through; it has been sitting around for a long time. It is good in its intentions because it is trying to sort out the issue. But the IMF advice and the Treasury advice is that if we legislate in this way, particularly unilaterally, it would affect the cost and availability of finance to other countries, and it may mean that more of these financial deals are written elsewhere in a less advantageous way than is currently the case.

The Lord Bishop of Leicester: My Lords, as a country we carry a weighty moral debt to many low and middle-income countries, given our history. This moral debt is borne by business as well as government, and indeed by charities and faith institutions. Will the Government revisit the International Development Committee's report on debt relief and the evidence supplied by the Jubilee Debt Campaign and Make Poverty History, to consider again how all sectors may work together to ensure a joined-up approach to supporting these countries?

Lord Cameron of Chipping Norton (Con): The right reverend Prelate is absolutely right that we need to have good arrangements for this. That is why the common framework was put in place. The old arrangements under the Paris Club were fine when most of the debt was being written by France, Germany, Britain and America. The common framework tries to reflect that a lot of the money is now coming from Middle Eastern countries and from China and to make sure that all these countries can be involved in the resolution of these situations. It has been moving too slowly, but I still think it is the right approach to include this wider group of lenders in these resolutions.

Lord Collins of Highbury (Lab): My Lords, I accept what the Minister is saying about legislative routes to bring private creditors into debt negotiations—it is extremely complex—but does he accept that what was included in the international development White Paper is insufficient to deal with the problem of debt? Will he commit to look at what further measures we can undertake to find a solution, including a new definition of debt sustainability, so that we can better understand what could be achieved?

Lord Cameron of Chipping Norton (Con): I absolutely agree with the noble Lord. We must keep this under review and keep looking at it, asking ourselves what more we can do. As we do so, we should be guided in part by the IMF, which has a definition of debt sustainability. Even on its definition, things look very bleak when you look at the number of countries in debt distress or at risk of going into debt distress. But more necessary than a new definition is making the collective action clauses and the majority voting provisions work.

Lord Kamall (Con): My noble friend the Minister mentioned the Commonwealth. He will be aware of its public debt management programme, which supports member countries to effectively manage their debt portfolios. What conversations have my noble friend or colleagues in government had with Commonwealth colleagues about public management of the debts of Commonwealth members and non-members?

Lord Cameron of Chipping Norton (Con): I thank the noble Lord for his question. There is an ongoing conversation with the Commonwealth. This is one of the many good advice services that it gives. This year, the year of CHOGM, we are also spending a particular amount of time talking with Commonwealth countries about how they can access finance, not loans in this case but green finance. A lot of finance has been made available, but many of the smaller countries find it hard to access, and we should help with that.

Lord Bruce of Bennachie (LD): My Lords, poorer countries have increasingly become dependent on growing amounts of private finance and, for some of them, time is getting critical. We need to address the issue and announce reform but have emergency considerations for countries that cannot wait until we resolve it. Does the Prime Minister—I mean the Secretary of State—agree that this needs to be done and that we cannot afford to let these countries default or allow the private sector to get away when the taxpayer is taking the risk?

Lord Cameron of Chipping Norton (Con): I agree with the noble Lord that we do not want what we had in the past, which was vulture funds holding out for a better resolution than other holders of debt were getting. If we have new bonds with collective action clauses and new loans with majority voting provisions, that is much less likely to happen. There are also the other innovations that Britain has brought, such as the climate-resilient debt clauses, so that if there is a sudden problem caused by climate change or other shocks, you stop the repayment. I argue that Britain has a long tradition, on a cross-party basis, of helping with debt sustainability and resolution, and we need to keep that record up.

Gaza: Humanitarian Aid

Question

3.51 pm

Asked by ***Viscount Stansgate***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what steps he is taking to increase the amount of humanitarian aid to Gaza.

Viscount Stansgate (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, because humanitarian aid to the people of Gaza and the release of the hostages are top priorities.

Noble Lords: Order!

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): My Lords, we are doing all we can to increase aid into Gaza. We have been collaborating with Jordan on humanitarian air drops and are now working with partners to operationalise a maritime aid corridor from Cyprus. However, this cannot substitute delivery by land, which remains the best way to get aid in at the scale needed. Israel must open more land routes, including in the north, for longer and with fewer screening requirements. I have been clear: we need an immediate humanitarian pause to increase aid into Gaza and get the hostages out. Israel must remove restrictions on aid and restore electricity, water and telecommunications.

Viscount Stansgate (Lab): My Lords, the House understands that aid from the air is problematic and aid from the sea takes time. Can the Foreign Secretary explain to the House why he has been unable to persuade the Israeli Government to allow the border crossings to be opened to provide the access for the hundreds of trucks needed daily? What are the Government intending to do so that, when the aid reaches Gaza to the people who so desperately need it, it is distributed to the people on the ground by local networks not controlled by Hamas?

Lord Cameron of Chipping Norton (Con): We have repeatedly made points about the need to open crossings and allow more aid in. I can give the latest figures to the House. They are slightly more encouraging. The average number of trucks getting through per day in January was 140. This fell to 97 in February but has gone up to 162 so far in March. So we are making a difference. The opening of Kerem Shalom happened, and that made a difference. With regard to what is happening on the maritime front, which is encouraging, I say that, if Israel really wanted to help, it could open the Ashdod port, which is a fully functioning port in Israel. That could really maximise the delivery of aid from Cyprus straight into Israel and therefore into Gaza.

[Lord Cameron of Chipping Norton]

On the noble Viscount's question about how to make sure that aid gets around Gaza, that is one of the trickiest pieces of the jigsaw. One of the things that Israel needs to do is give out more visas to UN workers who are capable of distributing the aid when it arrives in Gaza.

Lord Polak (Con): My Lords, I am very pleased that Mark Bryson-Richardson met with COGAT today. I would ask the Foreign Secretary to confirm the following: first, there is no backlog at all at the Kerem Shalom crossing from Israel; secondly, there is a backlog at Rafah—there are columns of trucks in sovereign Egypt after they have been inspected and cleared by the Israeli authorities; thirdly, as has just been said, there is also, sadly, a backlog on the Gazan side, where the UN agencies are struggling to distribute the aid at the pace that Israel is facilitating it through.

Lord Cameron of Chipping Norton (Con): I am delighted that Mark Bryson-Richardson, who I appointed as my aid co-ordinator, has met with COGAT; that is very useful. I can say to my noble friend that, yes, of course, getting more aid into Gaza requires the work of more than just Israel taking the relevant steps. But Israel is the country that could make the greatest difference, because some of the blockages, screening problems and all the rest of it are its responsibility. One proof point of that is that 18 trucks were dispatched from Jordan and they were held for 18 days at the Allenby/King Hussein bridge crossing. That seems to me the sort of the thing we need to act on faster to get that aid into Gaza. As I said in answer to the previous question, once it is in Gaza, it needs people to distribute it. That is about visas and capabilities, and deconfliction.

Lord Purvis of Tweed (LD): The Foreign Secretary was very eloquent in describing the unnecessary blockages that have been put in place. He will agree with me that Article 50 of the Geneva Convention, on the requirement on occupying powers for children, is that they will not

"hinder the application of … food, medical care and protection … in favour of children under fifteen years, expectant mothers and mothers of children under seven years".

Does the Foreign Secretary agree that these hindrances and blockages are potentially a war crime under the Geneva Convention and that, if any Ministers in the Israeli Government are actively blocking the inward supply of aid, we should consider sanctioning them?

Lord Cameron of Chipping Norton (Con): It is our legal position, and has been for some time, that Israel is the occupying power in Gaza; that was the case before 7 October. After the evacuation of Gaza in 2005, it was not truly freed up as an independent functioning territory, so it is true that the way that Israel behaves as the occupying power in allowing humanitarian aid into Gaza is a material consideration when it comes to looking at how it is complying with international humanitarian law. As I have said many times at this Dispatch Box already, what matters is whether it has the commitment and the capability, and whether it is complying. That is what we keep under review.

Lord Collins of Highbury (Lab): My Lords, the words that the Foreign Secretary has just used are the ones he used last Tuesday. But today in the Commons, Andrew Mitchell was asked a question by Lisa Nandy on precisely this point, particularly in relation to the BBC investigation into the treatment of medics at the hospital in Gaza. She asked Andrew Mitchell why we were not ensuring that the Israelis comply with the provisional measures of the ICJ. Andrew Mitchell was unable to support Lisa Nandy's call. Why?

Lord Cameron of Chipping Norton (Con): What I would say, as I think Minister Mitchell said in the House of Commons, is that these are very disturbing pictures and reports that have come out from this hospital. We need to get to the bottom of what exactly happened; we need answers from the Israelis. When we have those, it will be easier to comment.

Lord Austin of Dudley (Non-Afl): My Lords, this crisis has been caused by Hamas, which hides terrorists and weapons in densely packed civilian areas and steals food and fuel meant for humanitarian relief. It is absolutely clear that there will be no prospect of peace—let alone the two-state solution that the Government want to see—until Hamas is completely removed from power in Gaza. This is why the Government should be doing all they possibly can to ensure that Israel has all the support it needs to win this war.

Lord Cameron of Chipping Norton (Con): I thank the noble Lord for his question. We completely agree that we will not have a two-state solution if the people responsible for 7 October are still running any part of Gaza. Obviously, what we would like to see is an immediate pause, the hostages released and a series of conditions put in place to make sure that the pause turns into a permanent ceasefire without a return to fighting. One of those conditions would be that the people responsible for 7 October—the leadership of Hamas—would have to leave Gaza and the terrorist infrastructure would have to be dismantled. If that did not happen through a process of negotiation, the noble Lord is no doubt right that there would be a return to fighting. That needs to be understood by people.

Lord Green of Deddington (CB): My Lords—

Baroness Uddin (Non-Afl): My Lords—

Baroness Williams of Trafford (Con): My Lords, can we hear from the Cross Benches and then the Conservative Benches?

Baroness Uddin (Non-Afl): I think also on this side.

Baroness Williams of Trafford (Con): My Lords, can we hear from the Cross Benches and then the Conservative Benches?

Baroness Uddin (Non-Afl): That is your call.

Lord Green of Deddington (CB): My Lords, I thank the Foreign Secretary for his first response, which set out very clearly and practically what the Government are trying to achieve in the Middle East. The problem though is pretty clear; the problem is the Israeli Government, who are not prepared, it seems, to accept the suggestion by the UK and the United States. So will he now make it clear to the Israeli Government that their continuing pressure on Palestinians, especially on their women and children, is absolutely unacceptable and, furthermore, that it risks antagonising millions of Arabs and Muslims for years and years to come? I say that having served for many years myself in the Middle East.

Lord Cameron of Chipping Norton (Con): I am very familiar with the noble Lord's service in a number of our embassies in the Middle East and his long experience in that part of the world. I say to him that we have said repeatedly that Israel must abide by international humanitarian law. As the noble Lord, Lord Austin, said, Israel has a right to self-defence. Hamas fighters started this conflict by their appalling invasion and terrorist pogrom in Israel, which led to the murder of over 1,400 people—and it is worth remembering that they still hold hostages. We are more than 150 days in. If Hamas fighters wanted to end this conflict, they could do so tomorrow—they could do so today—by releasing those hostages, getting their leaders out of Gaza and laying down their weapons. They do not do that. But the noble Lord is absolutely right to make the point that we had this experience fighting terrorist insurgencies in our own country, in our own history. You have to obey the rules and obey the law; if you do not and you lower yourself to the standards of the people you are fighting against, that does not end well.

BBC World Service

Question

4.02 pm

Asked by ***Baroness Smith of Basildon***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what steps he is taking to support the BBC World Service, particularly in relation to (1) its special provision in response to emergency situations, and (2) the challenges posed to it by disinformation campaigns backed by foreign state actors.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): The BBC World Service provides high-quality news to global audiences, especially where free speech is limited. Its emergency services, including a pop-up service in Gaza, and before that in Sudan and Ukraine, provide critical updates to people affected by conflict. Meanwhile, BBC News Ukrainian continues to be vital in countering Russia's narrative around the invasion. The funding from the FCDO, over £100 million a year, helps sustain high-quality broadcasting in 42 languages and the BBC's vital work to counter harmful disinformation.

Baroness Smith of Basildon (Lab): My Lords, it is good to be able to agree with every word the Foreign Secretary said. He is right: the BBC World Service is trusted as an independent voice without state interference. Its integrity and honesty is a lifeline for so many. He mentioned Ukraine. Extraordinary efforts were made to ensure that people in Ukraine could get accurate information despite the efforts from Russia to block it. He will know that reporting, particularly in emergencies and from areas of conflict, brings huge risk to those journalists. In 2019, the then Foreign Secretary, now the Chancellor, committed £3 million from the UK to the Global Conference for Media Freedom. The purpose of that was to encourage a free press everywhere, but also to protect journalists who are trying to deliver it. Given that it is a few years since that money was committed, and the aim was to bring other countries together, is the Foreign Secretary able to give us a progress report on work so far and what we have been able to achieve?

Lord Cameron of Chipping Norton (Con): I do not have the information on how many other countries are involved, but I know that we continue to support the Media Freedom Coalition. I back up what the noble Baroness said: it is essential that we have journalists reporting from these areas. While I do not want to go into any specifics, we have also helped a number of different news organisations with COGAT and others when they have needed to leave. It is very important that we make sure they are supported in this way.

Lord Stirrup (CB): Russian disinformation is rife in the western Balkans and having a malevolent influence there. The Foreign Secretary will recall that the chair of your Lordships' House's International Relations and Defence Committee wrote to him suggesting, among other things, the restoration of the BBC Albanian service, which was scrapped in 2011. Does he agree that it would be foolishly short-sighted not to use one of the most powerful soft-power tools that this country possesses and not to target it against the greatest immediate threat to the peace and security of Europe?

Lord Cameron of Chipping Norton (Con): The noble and gallant Lord is absolutely right that the BBC is an incredibly strong voice in terms of media freedom, our values and the things that we stand for. What has been happening over recent years is a transformation into a more digital service, because more and more people now listen to radio services on their mobile phone or through other internet devices. The 42 language services are still going; they have not been closed, but a number of them have switched to digital. However, I completely agree with him on the need to combat fake narratives in the western Balkans. It is not just about the BBC, good though it is; it is also about making sure that we help countries such as Kosovo and Bosnia in their rebuttal of the false Russian narrative. That is about training, expertise and funding as well as about the BBC.

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I will pick up what the noble and gallant Lord, Lord Stirrup, just mentioned. One of the most wonderful

[Baroness Bonham-Carter of Yarnbury]
things that the BBC World Service has provided is "Dars", aimed at Afghan children aged between 11 and 14 and hosted by a female journalist from the BBC who was evacuated from Afghanistan. It uses BBC Bitesize to supply lessons for those whose education was stopped. The UN called "Dars" "a learning lifeline". Does the Foreign Secretary—I am going to avoid saying, as my noble friend did, "the Prime Minister"—agree that this is reason enough for the FCDO to commit to maintaining the funding of the World Service at an appropriate level so that such life-changing contributions can continue? As he knows, the present agreement ends in March next year.

Lord Cameron of Chipping Norton (Con): The BBC World Service is funded in two ways: there is money from the Foreign Office and money from the licence fee, and that is settled and fixed until the end of this coming financial year. It is basically one-third from the Foreign Office and two-thirds from the licence fee, which is a pretty fair way of doing things. Obviously the funding review of the BBC is under way and the charter review of the BBC is coming up, so this is a good time to have that conversation. To be fair, the Government have put our money where our mouth is: in the integrated review refresh we gave an extra £20 million to the World Service.

Baroness Coussins (CB): My Lords, can the Minister update the House on what further representations HMG have made to the Iranian authorities about the harassment, prosecutions and convictions meted out to journalists working for the BBC Persian service, including the harassment of London-based staff and their families back in Iran?

Lord Cameron of Chipping Norton (Con): Documents published online suggest that 10 BBC Persian staff have been tried in Iran in absentia and convicted of propaganda against the Islamic Republic. That is completely unacceptable behaviour. We raise these issues with our Iranian counterparts. When I last met the Iranian Foreign Minister, I raised the fact that Iran was paying thugs to try to murder Iranian journalists providing free and independent information for Iran TV in Britain. On both counts, in my view, it is guilty.

Lord Pickles (Con): My Lords, I draw attention to my entry in the register. I am heartened by what my noble friend has said in support of the BBC, but what happens when the disinformation is coming from the BBC itself? Was he as disappointed as I was with the reports on the World Service, particularly the Arabic service, which sought to justify the murder of civilians on 7 October and downplayed sexual violence? Does it not undermine the BBC unless we adhere to the very high standards that we display in other parts of the world?

Lord Cameron of Chipping Norton (Con): Obviously it is right that the BBC World Service is operationally and editorially independent, but that does not mean we cannot have views on what it does and says. For instance, on whether Hamas is a terrorist group, I could not be more clear: it is a terrorist group, and the BBC should say so. Editorial independence does not mean that politicians or anyone else are not allowed a view. We are, and those views should be taken into account.

Lord Watson of Invergowrie (Lab): My Lords, the Foreign Secretary mentioned a few moments ago, in response to the question from the noble Baroness, Lady Bonham-Carter, the government review into future BBC funding. What input does he or his department intend to have into the review, given that its scope includes the World Service, which of course gets around a quarter of its funding in grant in aid from the FCDO?

Lord Cameron of Chipping Norton (Con): Obviously, it would be a bit unfair on my government colleagues to announce at the Dispatch Box exactly what view I will take in these internal discussions, but I strongly support the World Service in a world in which we have so much dispute and misinformation—poisonous channels such as Russia Today and those sponsored by China and all the rest of it. We should be proud of the fact that the BBC is the most respected news source. If you add in BBC television and bbc.co.uk, it does not reach 318 million people; it reaches 411 million people, which makes it the most watched service as well, so we should be proud of that. We have something of a jewel in our crown, and we should support and promote it. That said, I am also proud that I was the Prime Minister who put in place quite a tough settlement for the BBC; but it was a six-year settlement, and that proved that if you give people a consistent horizon of how much money they are going to get, but ask them to make some savings, they can improve the service.

Lord Vaizey of Didcot (Con): My Lords, I echo my noble friend the Foreign Secretary's comments about the BBC and declare my interest as a trustee of Tate and a radio broadcaster. One of the things that interests me is that our museums—and indeed our orchestras and theatres—tour the globe, having to raise money from philanthropists and foundations. Is it not time that he brought his considerable experience and expertise to the Foreign Office in developing a cultural policy that builds on the amazing work of the BBC World Service as well as these incredible institutions in the UK that tour the globe?

Lord Cameron of Chipping Norton (Con): I think we have a policy of using culture as a diplomatic weapon. The Foreign Office is very comfortable with that. We should do that, and the suggestions that my noble friend makes are excellent.

Lord Hannay of Chiswick (CB): My Lords, could the Minister say what considerations are being given in his department to the possibility of the funding of the World Service being taken back on to the FCDO budget in entirety? Does he not agree that this is a more effective and more equitable way to deal with a matter that is an essential part of our soft power, rather than piling it all on to the licence payer?

Lord Cameron of Chipping Norton (Con): I always listen carefully to the noble Lord, because he has great experience in this. The fact that some of the money comes from the licence fee is not such a bad thing. It is about 7% of the total. As someone who is a licence-fee payer but spends a lot of time listening to the World Service, I think it is fair that that contribution is there. Having a link-up between the World Service and the rest of the BBC, in terms of the website, which is very important, the news channel and all the rest of it, is not such a bad thing. The key question is whether the BBC World Service is funded appropriately for our ambitions to counter false narratives around the world and spread democratic values.

Haiti

Private Notice Question

4.13 pm

Asked by ***Lord Griffiths of Burry Port***

To ask His Majesty's Government what support they are providing to CARICOM and the people of Haiti following the resignation of Prime Minister Ariel Henry and the reported collapse in law and order in that country.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): The UK is concerned about the worsening violence in Haiti and the impacts on the neighbouring Turks and Caicos Islands. We remain committed to supporting a Haitian-led political solution. We commend the efforts of partners across the Caribbean and beyond to support orderly political transition in Haiti. We urge all parties to move swiftly to bring much-needed security and stability for the people of Haiti and the region. We continue to support Haiti through our contributions to the United Nations agencies and the World Bank, and are committed to help secure the Turks and Caicos Islands, particularly their borders.

Lord Griffiths of Burry Port (Lab): I am most grateful for that reply, particularly the words "Haitian-led solution". That has not been the case in just about every other initiative that has been attempted. Just how low Haiti has sunk can be illustrated by the report I just heard of the putrefying body of a patient in a hospital on a bed, alongside another bed where a patient who was very much alive was awaiting treatment. In just such a hospital, my two boys were born. I cannot bear to think of the kind of suffering that the people of Haiti are undergoing at this time.

I am very glad that there is a regional initiative coming from Caricom. I hope that His Majesty's Government will feel able to contribute in a significant way to the discussions. The diplomatic skills necessary for a good outcome will be considerable. I believe that we have those skills in this country and that the United Kingdom, if it chooses to be involved, will find a great welcome from the Haitian leaders and people.

However, there are lessons to be learned and my question comes from those. I have in my hand an internal document from the United Nations: a cry session after 15 years of failure, in which 2,500 troops were deployed in Haiti to stabilise the country from 2004 to 2019. I will not do much more than read two sentences, if the House will oblige. I can see that I am being asked to wind up; it is the first time I have done this, and noble Lords will just have to be patient:

> "The last 20 years of the international community's presence in Haiti has amounted to one of the worst and clearest failures implemented and executed within the framework of any international cooperation … Instead, this failure has to do with 20 years of erratic political strategy by an international community that was not capable of facilitating the construction of a single institution with the capacity to address the problems facing Haitians. After 20 years, not a single institution is stronger than it was before. It was under this umbrella provided by the international community that the criminal gangs that today lay siege to the country fermented and germinated, even as the process of deinstitutionalization and political crisis that we see today grew and took shape".

Will the noble Lord give me an assurance that His Majesty's Government will learn from the mistakes that have been badly made? We are a country that provides money to the United Nations to do this work. Can he give me that assurance?

Lord Cameron of Chipping Norton (Con): I can certainly give the noble Lord the assurance that we should always try to learn the lessons of history, particularly when we are trying to help with fragile states. This is something I have spent some time trying to think about. I can tell him that we will be making a contribution to the multinational security mission to Haiti. It has principally been established by the United States, which will be providing $300 million. There should be over 1,000 troops, including from Kenya, to try to bring much-needed security. One of the lessons, although it is not the final answer, is that providing basic security will be fundamental.

I will be frank with the noble Lord and the House: Haiti is not where Britain has tried to lead. There are many countries and places that we feel we have either special knowledge of or a special relationship with, or existing partnerships. Haiti has always been somewhere we contribute—I think our contribution is £30 million per year through the international bodies—but it is not somewhere where we have chosen to lead. We have left that to the Canadians, Americans and others who have more expertise. The points the noble Lord makes are very good ones.

Lord Swire (Con): My Lords, the problem is that every time something awful happens in Haiti, we put a sticking plaster over it and the situation deteriorates. It is now completely lawless; there has been a complete breakdown in law and order. My noble friend the Foreign Secretary is absolutely right that this is not within the sphere of British interests, but he should not underestimate—I am sure he does not—the influence and good will we have in the wider Caribbean. Can he commit that, rather than just providing finance through organisations such as the UN, the United Kingdom will be prepared to play a role in a long-term solution for that benighted country?

Lord Cameron of Chipping Norton (Con): I know that my noble friend has considerable experience, having done this job in the Foreign Office for many years.

[Lord Cameron of Chipping Norton]
We will certainly talk with colleagues and friends in Caricom about what they intend to do. Our priority should be to focus on the Turks and Caicos Islands; they are our responsibility as an overseas territory. We are looking to deploy a reconnaissance team there because of concerns about their borders and security. That should be our immediate focus while offering help, assistance and advice, as my noble friend suggests, to the people of Haiti and the Caricom nations that are coming together to try to help.

Lord Alton of Liverpool (CB): My Lords, 4,000 inmates have been freed from the prisons in Haiti by the gangs, with police stations being burned to the ground. Generally, there is complete anarchy. I welcome what the Foreign Secretary said about Secretary of State Blinken's announcement of the $300 million programme to send a security mission. When is that mission likely to be sent? I also welcome what the noble Lord said about the United Nations agreement with Kenya to send 1,000 police offers. When are they likely to be sent to restore order in this urgent situation?

Lord Cameron of Chipping Norton (Con): I am afraid that I cannot give an update on exact timings. As the noble Lord knows, the UN has given backing through a Security Council resolution to the existence of this force, so it is not a UN force but it is UN-backed, which is important. I agree about the general point that it is so important for it to be able to do its work. People who follow these things use what I think is the rather odd phrase that the state has to have a monopoly on violence, but it is true: we cannot possibly have development, progress and success when there are quite so many different armed groups in charge of different parts of that country.

Lord Purvis of Tweed (LD): Kenyan judges have indicated that the deployment of the Kenyan police forces would be illegal under Kenyan law unless there was a reciprocal agreement with the Haitian authorities. That is why the former Prime Minister of Haiti was in Nairobi. Now there is no vehicle by which to have this authorised by the Kenyan Government. What is the Foreign Secretary's assessment about the capability of having those forces deployed, since there will be no functioning Government of Haiti with whom to have a reciprocal agreement? Given that there have been no elections for eight years, no functioning Parliament, no functioning judiciary and the warning signs last week of the violent gangs, Haiti is potentially slipping towards becoming a failed state. What technical support are we providing to those who may provide security assistance?

Lord Cameron of Chipping Norton (Con): The noble Lord is certainly right that the failure to hold elections is one of the contributing factors to the chaos that we now see. After the assassination of the former President, the fact that elections were not held was clearly one of the aggravating factors. The role of the Kenyan forces is a matter for Kenya to decide. I think that, with the United States providing $300 million and the backing of the UN Security Council, it will be possible to put together a mission. As I said, it is not something that Britain will contribute to in terms of personnel, but we are happy to make a small financial contribution.

Lord Collins of Highbury (Lab): My Lords, the dramatic escalation of violence has had a severe impact on the humanitarian situation, particularly the food security of millions of Haitians. Last year, I discussed the dire situation that existed then because of the violence with the World Food Programme's country director for Haiti, Jean-Martin Bauer. What steps will we take to respond to the WFP's warning of a potential hunger catastrophe in Haiti, and are we supporting assistance to ensure unimpeded humanitarian access and the free flow of food commodities into Haiti?

Lord Cameron of Chipping Norton (Con): The reassurance I can give to the noble Lord is that whenever the World Food Programme or any of the other operations in the United Nations come forward with a call for support, the United Kingdom always steps up; we are a funder of their programmes. As I said, although we do not have a bilateral aid programme with Haiti, our annual contribution is some £30 million, when we add up what we do through the various UN bodies. It sounds as if the problem will be not so much the availability of food but the lawlessness and lack of safety, so the security aspect has to come first.

Lord Bellingham (Con): My Lords, this is obviously a horrendous humanitarian crisis. I agree with the shadow Minister's assessment of it and the need for the UK to do what we can to help to abate it. However, as the Foreign Secretary said, our principal responsibility lies with the Turks and Caicos Islands. Will he look back on the lessons to be learned from the 2010 earthquake, which triggered at least 2,500 refugees coming from Haiti to the TCI? Many of them arrived illegally. Although the Foreign Secretary will obviously put an emphasis on trying to help the TCI with security and its borders, some refugees will need help on the ground. Can he tell the House exactly what he will be doing, in working with the Government of the TCI, to help with that problem?

Lord Cameron of Chipping Norton (Con): What I can promise my noble friend is that we will work very closely with the Turks and Caicos Islands Government. As he knows, we are currently funding police officers there and helping with border security. As I said, we will send this reconnaissance mission to help them with their border security. If there are additional burdens and needs, I am sure that we will entertain them. My colleague, Minister Rutley, who has worked very hard at all the Caricom relations, will be leading on this issue.

Lord Cashman (Lab): My Lords—

Baroness Hoey (Non-Afl): My Lords—

The Lord Privy Seal (Lord True) (Con): My Lords, we have not had many questions. If I may say so, the Labour Party has had two questions, one of them one of the longest I have heard in this House, and I think we should hear from the noble Baroness.

Baroness Hoey (Non-Afl): My Lords, does the Foreign Secretary agree that there is sometimes a limit to what His Majesty's Government can do in different countries in turmoil—and there are many such countries all around the world—that actually we have to have priorities, and that other countries should be doing more, such as France? Does he agree that although we give diplomatic support, we should be very careful about tying ourselves up with putting lots and lots of extra money into a country such as Haiti?

Lord Cameron of Chipping Norton (Con): The noble Baroness makes a very good point; as they say, if everything is a priority then nothing is a priority. We should be frank, as I was in my answer to the noble Lord who asked the Question, about our capabilities here. We have a mission, but it is based inside the Canadian mission, and Canada has taken one of the leading roles in helping Haiti over the years. We have two country-based staff who are currently working from home rather than in that mission, because of the dangers in Haiti, and the other staff that we have work out of the Dominican Republic. We should be clear that in some countries we have a scale whereby we are able to act and scale up quite rapidly, but that is not the case in Haiti.

Lord Cashman (Lab): My Lords, it was a pleasure to give way to the noble Baroness. I refer to my entry in the register of interests, in particular as a member of the Haiti APPG. The problems in Haiti have been going on for a number of years. The UN estimates that nearly 400,000 people have been displaced internally since 2021, half of them children. Therefore, does the Foreign Secretary agree that the external imposition of solutions has failed, and that we must use our influence within the region to ensure that the solutions to these problems come from within Haiti and the Caribbean?

Lord Cameron of Chipping Norton (Con): The noble Lord speaks with considerable expertise, as he sits on the APPG. If you look at any of the situations where we have tried to help to stabilise a country, after the first requirement of security, which is clearly the priority now, all the evidence shows that unless you can build a Government who have the support of all the different parts of the country—it may well be a provisional Government to start with—very often you are sunk right from the start. We can look at examples from Afghanistan to Yemen, Libya and elsewhere, where the need for an inclusive political settlement that is designed in that country by the people of that country is absolutely crucial.

Viscount Waverley (CB): My Lords, a country that shares a border with Haiti is the Dominican Republic, which has a record of sending back into Haiti the refugees that came from there. Is the Secretary of State minded not to forget the Dominican Republic, because it is very much in play and not often remembered in this place?

Lord Cameron of Chipping Norton (Con): I am sure that it will have an important role in advising Caricom countries, and the Canadians and Americans who are taking the lead in this operation, about what needs to be done to try to bring some stability and security to this very bad situation.

Safety of Rwanda (Asylum and Immigration) Bill

Third Reading

Relevant documents: 2nd Report from the Joint Committee on Human Rights and 3rd Report from the Constitution Committee

4.30 pm

Motion

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

That the Bill do now pass.

Lord Howard of Lympne (Con): My Lords, I wish to make a point which I hope may be taken into account by honourable Members in another place, though I fear it is unlikely to find favour with most of your Lordships. I cast no aspersions on the motivation which has led to the amendments your Lordships have passed. An undeniable consequence of most of these amendments would be delay in dealing with an issue which is regarded as important and urgent by very many people in our country—an issue to which no alternative remedy has been advanced. I hope that this point may be taken into account by honourable Members in another place, even if not by most of your Lordships.

Lord Dubs (Lab): My Lords, mine is a different point. I am not sympathetic to the point that the noble Lord, Lord Howard, has just made. On Report, I raised the question of representations by the Government of Jersey and our Government's failure to consult before including a provision in the Bill. I do not know whether this also represents the view of Guernsey and the Isle of Man, but the Government of Jersey said that they were not happy about it. I asked the Minister if he could clarify the position at Third Reading. Can he do so?

Baroness Jones of Moulsecoomb (GP): My Lords, the noble Lord, Lord Howard, said that no one else has put forward another idea. In fact, many of us have talked about finding safe and legal routes. This Government seem incredibly reluctant to do this. I do not understand why. This Bill is an absolute stinker. It is the worst of the worst. I have seen terrible Bills come through this House, but this is by far the worst. It is a shame on all of us that we have had to sit through hours and days of debate.

Lord Alton of Liverpool (CB): My Lords, the noble Lord, Lord Howard of Lympne, has made a plea on behalf of Members in another place. Will they have available to them the Government's response to the report of the Joint Committee on Human Rights which I asked for in Committee, on Report and again today? The Minister will recall that, last week, he said

[Lord Alton of Liverpool]
it was imminent. I hope he will be able to tell us that it is now available in the Printed Paper Office and that it will be made available to honourable Members down the Corridor.

I have a great deal of respect for the Minister and like him enormously. All of us agree with the noble Lord, Lord Howard, that there is an issue that has to be addressed. Some 114 million people are displaced in the world today. When will His Majesty's Government bring together people from all sides of the House and the political divide to look at what can be done to tackle this problem at its root cause? Unless we do that, we can pass as many Bills as we like in this and in the other place but, frankly, in the end, it will make very little difference.

Lord Kerr of Kinlochard (CB): When the House voted to delay ratification of the treaty, it did so on the basis that there was unfinished business and on the basis of a list of 10 requirements, most of which were for the Government of Rwanda, which should be fulfilled before Rwanda could be declared safe. Among these was the requirement in Article 10(3) of the treaty

"to agree an effective system for ensuring"

that refoulement does not take place. The risk of refoulement was, of course, central to the Supreme Court's finding that it would be unsafe to deport refugees to Rwanda.

I have asked a couple of times in the Chamber during our 40 hours of debate how we are getting on with that requirement, which binds us, as well as the Government of Rwanda, to agree a system for ensuring that refoulement does not take place. Most recently, I asked on 4 March —*Hansard* col. 1379—whether Rwanda had agreed with us an effective system. The Minister replied that he did not know but would find out and get back to me. I am still waiting. Can he tell the House the answer now? If he cannot, will he undertake that the effective system will be up and running and reported to this House before the treaty is ratified and before any asylum seekers are deported to Rwanda?

I note that the noble and learned Lord, Lord Stewart of Dirleton, who does reply to questions, assured me in a letter dated 4 March that the Rwanda legislation required to implement the treaty

"will be operational prior to relocations beginning".

I think this point is quite relevant to the one made by the noble Lord, Lord Howard, about delay.

Lord Coaker (Lab): My Lords, we will come back to a number of these debates on ping-pong next week and we will argue vociferously about some of the debates, discussions and points that are being made. I say to the noble Lord, Lord Howard, that I hope the Government have taken note of what we asked for, which was for the other place to give proper consideration to the amendments that were made in this place and not just dismiss them out of hand. We wait to see what the Government do about the amendments we have sent to them and we will continue this debate next week, following the other place's discussion of our amendments on Monday of next week and whatever comes back to your Lordships' House next Wednesday.

Let me do some of the normal courtesies and say that, notwithstanding the fact that it has been a difficult and controversial Bill, with many differing opinions, I thank the noble Lord, Lord Sharpe, and the noble and learned Lord, Lord Stewart, for their courtesy and for the way in which their officials have worked with us. We have not always agreed, to be frank, and still do not agree, but it is important to recognise the way in which the Government have made their officials available to us, to try to explain some of the details of the policy. We are very grateful for that, as we are to the noble Lord, Lord Sharpe, and the noble and learned Lord, Lord Stewart, for the way in which they have conducted the business with us. I hope, however, that they take note of the JCHR report—a response to that would be helpful for our deliberations and, as far as I am aware, it is not yet available. It is important that that becomes available.

I thank all noble Lords for their participation, including my noble friend Lord Ponsonby and many other noble friends, but also noble Lords across the House, for the continuing legal education I am receiving as we go through the Bill. Seriously, it has been very in-depth and important debate.

I say to the noble Lord, Lord Howard, that none of us disagree with the proposition that the country faces a real problem that we need to deal with. The debate is how we deal with it, and that is the fundamental discussion.

As well as the Government's officials, I thank the people who have worked with my noble friend Lord Ponsonby and me, particularly Clare Scally in our office, who has given us a lot of support in understanding the Bill to the depth that is necessary to inform mine and others' contributions. It is a mammoth task, and we are very grateful to her and others who have supported us.

I finish by saying that I am very grateful to all Members across the House for the contribution that they have made. We hope the Government properly take account of the amendments that have been passed in your Lordships' House. We look forward to their debate next Monday and to our further deliberations on the Bill next Wednesday. I say to the Minister: depending on what happens with respect to the other place, we will be considering those exchanges in some detail, and, if necessary, we will act robustly at that time as well.

Lord German (LD): My Lords, I add to the thanks that have been given. This has obviously been a very difficult Bill for those on our Benches, and we made our position quite clear at Second Reading. It is clear where we stand on this matter, and I draw the attention of the noble Lord, Lord Howard, to the *Hansard* contribution at that time, which he may have missed, which gave an alternative for the way we should handle this matter.

The Bill—at this point—has left us with a huge number of unanswered questions, though the one answer that I am able to give is that which the noble and learned Lord, Lord Stewart, sent to me in relation to Jersey which arrived this morning. It said that the reason that the Government had not followed the Home Office instruction about the way this matter should have been dealt with was a matter of the speed

of the Bill. Without putting words into the Minister's mouth, he said that it would not happen again, because basically, it must not be a precedent. That was the reason given in answer to that question. I hope the Channel Islands will be satisfied with the response to which I have just referred, especially as members of the Channel Islands are meeting here in this Parliament, celebrating Commonwealth Day.

The Bill has provided us with a tension between principle on the one hand and political expediency on the other. That has worried me right the way through the debates that we have had, though, along with other noble Lords, I think that having such great strength in our legal Lords in this Chamber has meant that a lot of lessons have been learnt about a lot of people I had never heard of who have made our democracy what it is. Understanding that has been helpful.

I hope that when the Government take this matter through to the other Chamber, they will take note of the huge majorities that have been given to the amendments that have been passed in this House during the deliberations on the Bill. That underpins the sensitivity about the principles that lie behind it, to which I have just referred.

No matter what else has happened on the Bill, I continue to pay thanks to many people who have contributed and to Members on all sides. Even though we disagree, we may still—when we want to—hear and understand the arguments that they make. I particularly thank the staff of the Home Office—some of whom are in the Box—who I know from conversations have been working very hard to follow the Government's instructions as they go through the Bill in the rapid way that they have. Along with them, I thank all Members around the House, Ministers—of course—and my colleagues behind me who have also contributed to the Bill. I want to include Elizabeth Plummer and Sarah Pughe from our Whips' office for all the work that they have put in to help us challenge the Bill in the way that we have.

I look forward to the answers that we get to the unanswered questions—next week, presumably, but we might get some today—and to when we continue the debate next week.

4.45 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, as the Bill nears completion of its passage through your Lordships' House, it is obviously timely for me to say a few words. First, I want to say that I heard what the noble Lord, Lord Alton, said. The two responses to the JCHR and the Constitution Committee were cleared this morning and issued this afternoon. I apologise that this has taken a while longer than it should have. They deal with the questions raised by the noble Lord, Lord Kerr. The key point remains, of course, that the Government will ratify the treaty only once we agree with Rwanda that all necessary implementation is in place for both countries to comply with the obligations under the treaty. We have dealt with that at some length over the passage of the Bill.

I think we can all agree that there is common ground in the view that we need to stop the boats. We need to prevent the tragic loss of lives at sea and bring to an end the horrid trade of the criminal gangs who are exploiting people for financial gain. Where there is disagreement is on the means by which we can achieve that and the strength of our desire to carry out the will of the British public—to control our border and tackle this global crisis of illegal migration. I note the point made by the noble Lord, Lord Alton, that it is a global crisis that will inevitably require global solutions.

The Government have made progress towards stopping the boats. Small boat crossings were down by a third in 2023, when our joint work with France prevented more than 26,000 individuals crossing by small boat to the UK. There is, however, more to do. As we have made unequivocally clear, to stop the boats and prevent people taking such perilous journeys across the channel, we need to send out a message that if you arrive in the United Kingdom by such means, you will not be able to stay.

We need to be able to take bold and innovative steps to create a strong deterrent that will stop the loss of lives at sea. Our partnership with Rwanda provides just that. The new, legally binding treaty with the Government of the Republic of Rwanda responds to the Supreme Court's concerns, reflecting the strength of the Government of Rwanda's protections and commitments. Under our new legislation, migrants will not be able to frustrate the decision to remove them to Rwanda by bringing systemic challenges about the general safety of Rwanda. It is imperative that the scheme as provided for in this Bill is robust and sends the unambiguous message that if you enter the UK illegally, you will not be able to build a life here. Instead, you will be detained and swiftly returned either to your home country or to a safe third country.

In light of the non-government amendments agreed by your Lordships' House on Report, it is clear that many noble Lords in this House do not agree on how to end the misuse of our immigration process. However, it is not an option for us to not act: without a plan or an alternative approach, more lives will be tragically lost at sea and the financial burden on the British taxpayer will grow as millions of pounds continue to be spent each day accommodating people in hotels. We have spoken at length about the protections needed for various vulnerable cohorts of people, which we are satisfied this Bill and partnership will provide. However, as I have said repeatedly, the people to whom we refer are those who have already reached a country of safety, where they could and should have claimed asylum.

As the noble Lord, Lord Dubs, noted, there was some debate on Report about consultation with the Crown dependencies. The Government, of course, recognise the concerns raised by some noble Lords and remain committed to consulting the Crown dependencies on any legislation which might affect them, including on the inclusion of a permissive extent clause, but I am grateful to the noble Lord, Lord German, for clarifying.

Although I have no doubt that the amendments passed by this House are well intended, some do indeed—as my noble friend Lord Howard noted—seek to undermine the core purpose of the Bill and would continue to allow relocations to Rwanda to be frustrated. No doubt, our debate on such matters will continue.

[Lord Sharpe of Epsom]

That said, I want to take this opportunity to thank noble Lords for their valued contributions during the passage of the Bill through this House. I want to express my appreciation to the noble Lords, Lord Coaker and Lord Ponsonby, for the courteous manner in which they have engaged with me on the Bill. I thank them also for their warm words. I also wish to extend my thanks to the noble Lord, Lord German, and his Front-Bench colleagues for their clarity of views, albeit ones with which I have not agreed.

I want also to record my gratitude for the invaluable support and assistance of my noble and learned friend Lord Stewart of Dirleton. I must also put on record my thanks to the Bill team, my private office, and all the officials and lawyers in the Home Office and the Ministry of Justice who have provided such thorough support and expertise.

In conclusion, the purpose of this Bill is to deter dangerous and illegal journeys to the United Kingdom, which are putting people's lives at risk, and to disrupt the business model of the people smugglers who are exploiting vulnerable people. This Bill reflects the strength of the Government of Rwanda's protections and commitments given in the internationally binding treaty to people transferred to Rwanda in accordance with the treaty. Alongside the evidence of changes in Rwanda since the summer of 2022, this Bill will enable Parliament to conclude that Rwanda is safe. I have no doubt that we will shortly be debating these matters vigorously again, but, for now, I beg to move.

Bill passed and returned to the Commons with amendments.

Victims and Prisoners Bill

Committee (7th Day)

Relevant documents: 7th Report from the Delegated Powers and Regulatory Reform Committee, 1st Report from the Constitution Committee

4.50 pm

Clause 48: Imprisonment or detention for public protection: termination of licences

Amendment 149

Moved by ***Lord Thomas of Cwmgiedd***

149: Clause 48, page 51, line 10, at end insert—

"(ba) after subsection (3), insert—

"(3A) Where—

(a) the prisoner has been released on licence under this Chapter,

(b) the qualifying period has expired, and

(c) if his case has been considered for termination previously by the Parole Board and a period of at least twelve months has expired since the disposal of that application,

the prisoner may make an application to the Parole Board under this subsection.""

Member's explanatory statement

This amendment, along with two others in my name to Clause 48, would allow a prisoner whose licence has not been terminated by the Parole Board three years after their first release to make an application annually to the Parole Board for termination.

Lord Thomas of Cwmgiedd (CB): My Lords, the subject of IPPs is so well known to you all, and indeed to many outside this House, that it is unnecessary to speak at any length about it, save for one remark and one set of common grounds.

When the Minister said that this Bill was about victims, he was in every sense right. In some senses, those who received the sentence of IPP are in fact victims, as I will endeavour to explain by reference to what I think are four areas of common ground, which I think ought to guide what I wish to say.

The first area of common ground is that the 2003 Act which implemented these was a mistake and should never have been enacted. There is now no dispute about that. I pay tribute to the noble Lord, Lord Blunkett, for the candour, statesmanship and exemplary conduct he has shown—which so few do—in admitting error. He is to be warmly commended for that, and my only regret is that he is not here in person for him to hear what we all feel.

The second point of common ground is that the operation and the effect of the IPP system has been a stain on the administration of justice in England and Wales. Again, I do not think that is disputed.

Thirdly, the outcome of imposing sentences of IPP has been problematic in very many ways, and a particular problem has been the effect on the mental health of those who received this form of sentence, particularly those in the initial period from 2005 to 2008.

The fourth area of common ground is the old phrase, "Something must be done!" The real question is: what should be done? These problems have to be addressed; we cannot leave them unaddressed.

In the groups of amendments to be considered this afternoon, the real issue relates to that fourth point of common ground: what is to be done? One should begin by welcoming the leadership shown by the Lord Chancellor—this Lord Chancellor, I underline—in the Bill. He has accepted that there are problems and that they need to be addressed. We have to recognise that he is in some senses constrained by circumstances and by events which may happen later in the year. However, I very much hope that in the course of this debate we can achieve more under his leadership, which has been outstanding in this respect, and see what we can do to try either to solve the problems now or at least to make certain that the basis is there for their solution in the future.

Having said I would say very little by way of introduction, I may have spoken for too long; I now turn to the amendments in the first group. These are amendments to Clause 48 and there are four sets of them. I am extremely grateful to the noble Lords, Lord Moylan and Lord Blunkett, and the noble Baroness, Lady Burt of Solihull, for their support by co-signing these amendments, which all relate to the provisions for release on licence.

I am not sure how well appreciated it is that the licence period after release from an IPP is one of the most draconian aspects of the sentence. After release, the offender is on licence and subject to licence conditions—and, most importantly, subject to recall if they breach them—for an indefinite period presently,

unless the Parole Board decides to release or reduce the licence period. At present, it cannot do so until 10 years have elapsed. It is that 10-year period which this clause seeks to address. At the moment, all cases are referred to the Parole Board for consideration—but 10 years is a very long time.

One of the things that is clear on the evidence—and it is always important to proceed on the evidence—is that the indeterminate nature of IPP sentences has created many very serious mental health issues and these are exacerbated by the licence period. It is very difficult for someone who has been in custody for such an indeterminate period, not knowing when they are going to released, to maintain his or her mental stability—and then being subject to 10 years on licence is almost impossible.

So we must warmly welcome the basis of this recall in reducing that period from 10 years to three years, because then the Parole Board can look at the licence period and decide whether it should be terminated then and there. If it is not terminated and if the person is successful and remains on licence, out of custody, for two years, there is a sunset or automatic termination. So, before I turn to the amendments, I think it is right to say that this is a huge achievement and, on almost everyone's behalf, I thank the Lord Chancellor and the Secretary of State for doing this.

My amendments make changes to this new regime which are minor but important. I hope they are of a kind about which there will be little dispute—because, if there are disputes about these, I dread to think where we shall get to when we go down the list. Four areas are covered by these amendments. The first of these sets of amendments are Amendments 149, 150 and 151, which try to set out a more flexible and just way of terminating the licence period if it is not terminated at the three-year point.

I do not want to go into the technicalities of this too much, because this is typically awful sentencing legislation—most sentencing legislation is awful, as is shown by the fact that the Sentencing Code is about this thick—and I do not think a debate on the language is a good way for us to spend our time. But, in essence, this provides that, if the Parole Board does not at the three-year period terminate the licence, we have to address whether it is right that the person has to wait to have their licence terminated by spending two years without the risk of having their licence revoked and returning to prison.

The essence of this amendment is accepting the mental health problems that this form of imprisonment has caused and for which ultimately the state is responsible, as a result of the enactment of this legislation. This amendment seeks to restore a right of annual review. This would give the Parole Board the opportunity each year to look at the position of the individual and see whether, in all the circumstances, we can terminate.

5 pm

Amendments 150 and 151, which I will deal with separately as they are slightly different, go to putting right a possible injustice in how the legislation is drafted. As everyone appreciates, the offender can be recalled to prison. Sometimes, there is a mistake in the recall. The Lord Chancellor or the Secretary of State can set that aside and revoke the recall. He does so if there has been a mistake. However, the problem with how the legislation is drafted—this is a highly technical problem—is that if he recalls the person but decides subsequently that it was a mistake, the two-year period is interrupted. That is unjust. Why should you be prejudiced by a mistake? The very simple Amendment 150 deals with human error, so that the offender is not prejudiced.

Amendment 151 deals with a very analogous problem—what happens if a person is recalled by the Parole Board, in the exercise of its judgment in respect of what is known as the Calder jurisdiction? I need not go into this matter in any detail because the point is a simple one. If the Parole Board decides that it was inappropriate to recall him but that he is fit for release, again, the effect of that in the Bill as currently drafted is that it breaks the two-year period and therefore the person has to start all over again. It is a bit like going round the Monopoly board and being sent back to the start again. This is something that we should not have.

Amendment 152 is very simple. The Bill contains a power to change the period of three years. There are two solutions to this. The noble Earl, Lord Attlee, will address the first, which is whether we should remove the power altogether. The second—my preferred solution—is to alter "change" to "reduce". "Change" enables you to increase, and I am sure that no one in Parliament wants to see an increase in the period. So I think it would be better to have a power but to make sure that it can be exercised in only one way. Having said that, I very much hope that this will not be controversial and that the Government can agree to this or to something very similar. I beg to move.

Baroness Chakrabarti (Lab): My Lords, I have the privilege of rising on behalf of my noble friend Lord Blunkett, who is incredibly disappointed not to be here. He has a long-standing and unbreakable prior commitment. I know that he would want me to thank the noble and learned Lord, Lord Thomas of Cwmgiedd, for the kindness that he displayed and for his crystal-clear description of these amendments and of the injustices and technicalities that they address, which any lay person could understand. I am very grateful, as I know my noble friend would be. I share in the tribute to my noble friend. The fact that the former Home Secretary has asked the former director of Liberty to speak on his behalf is perhaps testament to the character of my noble friend.

My noble friend supports all the amendments in this group, most of which belong, at least in initiation, to the noble and learned Lord. He also signed Amendment 156 in the name of the noble Earl, Lord Attlee, because of this concern that no period should be increased by the Secretary of State.

For my own part, speaking for myself at this moment and not for my noble friend, of the two approaches—taking the power to alter entirely or leaving it as one only to reduce—I rather agree with the noble and learned Lord, Lord Thomas of Cwmgiedd. He has done so well in the explanation that I need say little more, other than that I also remember today our friend, his noble and learned friend Lord Brown of Eaton-under-Heywood, for whom righting this wrong,

[Baroness Chakrabarti]
this stain on our justice system, was also incredibly important. Too many people in public life are happy to forget and ignore the mistakes of last week, let alone of two decades ago, but, if this is the House of Elders in our parliamentary system, such as it is, this is exactly the Committee to be embracing the amendments put so brilliantly just now by the noble and learned Lord.

Baroness Burt of Solihull (LD): My Lords, I thank the noble and learned Lord, Lord Thomas, for his comments and endorse everything that he said, particularly about the noble Lord, Lord Blunkett, who we all wish was here today. I will address one or two of the pragmatic issues. The amendments in this group all relate to IPP licences, and I support them all. They are intended to affect the applications of licences to be fairer and speedier, so that we can release or re-release IPPs as fast and as safely as possible into the community.

Clause 48 currently removes the element of annual review in favour of one-off review every three years. However, if the Parole Board decides not to terminate the licence of this point, Amendments 149 and 150 restore the right—removed by the Police, Crime, Sentencing and Courts Act—to an annual review by the Parole Board. The Prison Reform Trust comments that having a sunset clause of a further two years might just constitute a high bar for some prisoners, and that the Parole Board should be able to terminate the licence after one year, otherwise licences could drag on for years, as before.

The circumstances described in Amendment 152 are probably quite rare, but it is worth ensuring that a person would not have to suffer if they had been recalled but the Secretary of State had revoked the recall, presumably because there had been an error of some kind and they should not have been recalled. The prisoner should not be penalised because of an error not of their making.

Amendment 153 continues in a similar vein, but this time gives the Parole Board the ability to maintain the sunset clause. However, in this case, it is slightly more complicated. Firstly, the Secretary of State can recall if they conclude on reasonable grounds that the prisoner has deliberately revoked the terms of their licence and the safety of the public would be at risk. The Parole Board can overturn the Secretary of State's decision to recall a prisoner if on subsequent review, and if it is privy to more information than the Secretary of State, it subsequently concludes that the prisoner is not putting the public at risk.

Amendment 157 ensures that the Government use their wide-ranging powers to change the qualifying period using only secondary legislation and that they can revise it only downwards. If they want to revise it upwards, it will have to be done with primary legislation. This is within the spirit of the Bill today. This amendment ensures that a future Government would not be tempted to use this power to make the situation worse for IPP prisoners, not better.

All in all, this suite of amendments is sensible and, as the noble and learned Lord, Lord Thomas, said, pragmatic. It is offered in a spirit of helpfulness. I sincerely hope that the Minister will see this and maybe feel that it is appropriate to introduce government amendments to this effect.

Baroness Jones of Moulsecoomb (GP): My Lords, I rise possibly as an elder, owing to my advanced age; but perhaps not. I would like to support the noble and learned Lord, Lord Thomas of Cwmgiedd. As he said, there is almost nothing left to say about these prisoners. It is an injustice. I hope that the Government are considering accepting some of these amendments. We cannot say that we have a justice system if we have an innate injustice like this.

I support the tributes to the noble Lord, Lord Blunkett, but also to the noble Lord, Lord Moylan, with whom I have almost nothing in common; we have a very tetchy relationship but, on this, I think he is being superlative in working for the rights of IPP prisoners.

As Greens, we believe that prison is overused as a tool of justice. Far too many people are imprisoned when there are much more effective ways of rehabilitation or stopping reoffending. I can understand the anger of people who say that we should lock up serial rapists and murderers and throw away the key. I do understand that anger; but, in this instance, we have, for example, a 17 year-old who steals a bike, or people who grab other people's mobile phones. This is clearly an injustice; I find it difficult to believe that anybody listening to this would not agree.

The lawyer and campaigner Peter Stefanovic put out an online video about this. It has had 14 million views. A petition to force the Government to debate this again got easily 10,000 signatures. There is massive public support for sorting out this issue. I know that the Government care very much about the will of the British public. The word that came through for me in some of the responses to the video was "cruel". The sentencing and continued imprisonment of IPP prisoners has just been cruel. Please, let us see some progress on this Bill, then we can all take the Ministers out for a cup of tea.

Earl Attlee (Con): My Lords, I am grateful to the noble and learned Lord, Lord Thomas, for moving his amendment. I have tabled Amendment 156; it may be convenient to speak to it now. Before doing so, I have some general points to make about the whole issue of IPP, which I will not repeat in detail later.

I am grateful for all the work that my noble friend Lord Moylan has done along with the Prison Reform Trust and UNGRIPP. In 2017, as a result of a debate initiated by the late noble and learned Lord, Lord Simon Brown of Eaton-under-Heywood—I am grateful for the comments of the noble Baroness, Lady Chakrabarti—I decided to take a very close look at our penal system. I soon found that I needed to widen my interest to the whole of the criminal justice system because there is so much is wrong with it. One obvious example is joint enterprise murder, but that is for another day.

Let no one think that I am some sort of soft, bleeding heart, out-of-touch do-gooder. I am not. I believe in firm discipline, with all that that implies. But—I repeat, but—no more disciplinary sanctions should be applied,

including incarceration, than are needed to have the desired, legitimate effects of protecting the public by incapacitation, and providing retribution, deterrence and rehabilitation. The current IPP regime clearly fails this test on all counts. I will not rehearse the heart-rending histories that we have all heard about. They are not in dispute.

I also accept that some prisoners on an IPP sentence may not be releasable any time soon even under a resentencing scheme. However, keeping prisoners incarcerated unnecessarily costs £44,000 per annum per prisoner and wastes resources. We know we have a terrible prison system because the Chief Inspector of Prisons tell us that is so. In his 2023 report, he said that inspectors have run out of superlatives to describe how poor the purposeful activity component of prison life is, or words to that effect. No wonder IPP prisoners find it so hard to demonstrate any progress with rehabilitation.

5.15 pm

We have undertaken almost no noticeable reform of our prison system since the proposals made by the noble and learned Lord, Lord Woolf, in the early 1990s. My noble friend the Minister may point to some incremental improvements, but they would not be something that even a well-informed member of the public would be aware of.

I support all the IPP amendments that have been tabled to the Bill. We really do have to do something to solve this problem, no matter how difficult that might be. As the noble and learned Lord said, something must be done.

I do understand the difficulty that the Opposition Front Bench finds itself in. However, I think that we have to be clear that the determining factor is a policy set by the shadow Secretary of State in another place. I would happily vote for any of the proposed amendments if supported by the Opposition Front Bench, but I can understand the fear arising from the possibility that a released IPP offender might commit a further offence and it might be a serious one. But the fact is that we are often releasing offenders knowing that there is a high probability of them reoffending. That is why I have made my proposals for dealing with young prolific minor offenders, which I keep bending your Lordships' ears about in private.

I turn to my Amendment 156. Clause 48 deals with the termination of licences for release, as we have heard. My amendment totally removes the power of the Secretary of State to alter the qualifying period by statutory instrument. Of course, I would be content with the proposal to allow the Secretary of State only to reduce, as suggested by the noble and learned Lord, Lord Thomas, in his Amendment 157. It is not clear to me why this provision in Clause 48 is necessary or desirable. Suitable criminal justice Bills come to your Lordships' House with monotonous regularity and any one could be used to effect a change if desired. Can my noble friend the Minister suggest in what circumstances it might be necessary to alter the qualifying period because, presumably, this IPP problem is going to be solved quite quickly—or is it not really?

It is also quite a palaver to secure an affirmative order; it is not that simple and there are a lot of processes to be gone through. Also, it would require a one-hour debate in your Lordships' House. Assuming any change was desirable, it might be simpler to use a suitable Bill to effect any change needed.

Lord Woodley (Lab): My Lords, I support this group of amendments. I support of all the IPP amendments debated now and later this evening. First, I express my sincere regret for being unable to speak at Second Reading, as this is a subject, as colleagues know, that is very dear to me and of great interest to me and I have raised several times in your Lordships' House.

I had the humbling experience of meeting and listening to former IPP prisoners, who had served from five to ten years more than their minimum sentence, and family members of prisoners who have served more than 15 years over tariff. I have to tell the Committee that it was a heart-breaking occasion, knowing that there was no end to their injustice in sight, no hope for the thousands of prisoners and family members who are treated so inhumanely, not enough courses to help them to apply for a review and not enough opportunities within the justice system to even give them a review.

As has been mentioned, IPPs were abolished over a decade ago, so how on earth can it be that so many people—almost 3,000 of them—are still living through this never-ending nightmare? I agree with the Justice Select Committee and the UN special rapporteur on torture that resentencing represents the only way forward for resolving the IPP scandal and for justice at long last to be done.

Importantly, as the noble and learned Lord, Lord Thomas, mentioned, we must not forget the psychological effects of IPPs on prisoners and families alike, as the Justice Committee's report so vividly highlighted and has been further demonstrated by the high number of suicides that we have tragically seen. Likewise, the UN special rapporteur, Dr Alice Jill Edwards, describes IPPs as "psychological torture" and says it is

"tragic that so many mental health challenges appear to have been caused—or at least aggravated—by the uncertainty of indeterminate sentences".

I agree with that. This is a miscarriage of justice on an industrial scale. It may not presently have the profile of the Post Office scandal, but nevertheless it is a cruel injustice that has gone on for far too long.

I understand—as, again, has just been mentioned—that both Front Benches have previously been resistant to resentencing on the grounds of public safety. Of course, in an election year no one wants to look soft on crime. However, to quote Dr Edwards:

"It is the responsibility of the UK government to protect public safety, but citing this as the reason not to review IPP sentences is misleading. The UK, like any society with a strong rule of law, has measures to protect the community after prisoners are released. Locking people up and 'throwing away the keys' is not a legal or moral solution"

to this terrible problem. I agree, but if either Front Bench is still in need of more political cover to do the right thing, I suggest that Amendment 167C in the name of the noble Earl, Lord Attlee, which we will come to soon, fits the bill. That amendment would delay resentencing until the chief inspector was satisfied that the Probation Service could adequately protect the public following any resentencing exercise. The long-overdue release and justice for IPP prisoners should

[LORD WOODLEY]
not be blocked over the excuse that the Probation Service cannot cope, but Amendment 167C might be the compromise needed to unlock that puzzle—a pathway out of this political impasse. I sincerely hope it is.

I urge the Committee to summon the post-war spirit of 1945 and back Amendment 167C from the noble Earl, Lord Attlee, and that of the noble Baroness, Lady Fox. I know that IPP prisoners and their families are watching us here, hoping but also fearing what might be coming round the corner. Our Parliament must strike up the courage to act and correct the injustices that we can all see if we just open our eyes.

Lord Hastings of Scarisbrick (CB): My Lords, I too support this array of amendments on IPP, both the current amendments and the ones that will follow. As the Committee will know, I am a regular visitor—twice a month—to prisons across the UK, and I will visit another one tomorrow morning. On a regular basis—two a month—I meet many incarcerated men and sometimes women, and many who have left prison over the last 10 years, and I have found relentless IPP tragedies around every corner.

I shall refer to one story from a meeting in December, when a man came up to me and said that he had been released from an IPP sentence 14 years ago but was recalled back to prison in September after he forgot to inform his then probation officer that he had gone on holiday with his wife in August for two weeks to Spain. This is just sheer stupidity, let alone the fact that this system is organising to persecute people compared with recognising their renewal. In his case, and not just because I have now met him twice, he does not deserve the taxpayer to spend nearly £50,000 for an extended period to make sure that he is further detained and punished.

I hope the Minister will gather up all his strength and either accept this array of amendments in one gulp or go back to the Lord Chancellor and determine to bring back an effective set of government amendments that will allow us to end this appalling stain of injustice and unfairness. Another man I met eight years ago from a prison in Kent had been recalled three times. From an initial sentence of seven years, he had done over 24. The persecution of this man's mental abilities was blatantly obvious; he was no risk to anyone. I can tell noble Lords that since we campaigned for his release, and he has been released, he is an honourable citizen paying his taxes. That is how we should treat many of these men—they are largely men—to see that they are given the opportunity to prove their new life.

Lord Hodgson of Astley Abbotts (Con): My Lords, I wonder whether I could detain the Committee for one minute on Amendments 156 and 157. The background to this is my time as chairman of the Secondary Legislation Scrutiny Committee, when, with my noble friend Lord Blencathra, we drew attention to the creeping growth in the power of the Executive at the expense of the legislature in our reports *Government by Diktat* and *Democracy Denied?*. Therefore, when amendments present changes to be effected or not effected by secondary legislation, my ears prick up.

First, we have to recognise that there has to be secondary legislation. The SLSC looks at between 600 and 800 regulations per year. To think that those can be put through by primary legislation is fanciful. The Government's system would be completely gummed up, so something has to be done.

Secondly, we all know that the system for scrutinising secondary legislation is weak, to say the least. There is no chance to amend, even if the House were to agree that one particular provision in a regulation was inadequate or wrong; it is all or nothing. There is no room for ping-pong or other things we see in primary legislation. All those things are important. This House has decided to stand in the way of secondary legislation only six times since 1968. The last time, in 2015, led to a full-scale constitutional crisis, the Strathclyde review, et cetera.

With great respect to my noble friend Lord Attlee, it seems that Amendment 156 would lock us into the structure we currently have. He says that a criminal justice Bill will be along in no time at all; maybe, but we would be locked into the structure we have because the Secretary of State has no power at all. By contrast, Amendment 157, in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd, would give the Secretary of State some powers, but only to loosen, not to tighten. It seems to me that, in so far as we are seeking a balance between the Executive and the legislature, between moving too quickly and not moving at all, Amendment 157 is to be preferred, and I hope the Committee would not accept Amendment 156.

Lord Ponsonby of Shulbrede (Lab): My Lords, this has been an interesting and relatively short debate. We have four groups of amendments covering IPP sentences, and this first group is perhaps the easiest and most benign to agree with. I say to the noble Earl, Lord Attlee, that we in the Opposition have no problem with this group. I acknowledge the interesting point that the noble Lord, Lord Hodgson, just made regarding the differences between Amendments 156 and 157. Nevertheless, we have no problem agreeing with the generality of amendments in this group. I thank the noble and learned Lord, Lord Thomas, for his crystal-clear description, quoting my noble friend Lady Chakrabarti, when he introduced the amendments.

We agree with the general thrust of these amendments and, if it comes to it at a later stage, will support any amendments that may be pushed further. I would like to do the Minister's job and say what the problems might be. I acknowledge that, with a reducing cohort of IPP prisoners in prison, you are dealing with very difficult and potentially dangerous people. As this number reduces, the problem gets greater. I think that is a fair point to make. It is a point the Minister usually makes, but I want to make it from this side of the Chamber.

We will come to more ambitious proposals in subsequent groups, but here we are just dealing with various amendments to licence conditions and fairly imaginative ways of reducing them overall. We support them in the generality.

5.30 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I thank all noble Lords who have spoken. I will first briefly

recap some basic points that apply equally to the second and fourth groups of amendments that we will come to.

First, this Government recognise the highly regrettable history of this particular sentence. The Lord Chancellor himself has described IPP sentences as

"a stain on our justice system".—[*Official Report*, Commons, 15/5/23; col. 592.]

As the noble and learned Lord, Lord Thomas of Cwmgiedd, rightly said, the question is what should be done. I will briefly summarise, to encapsulate our debate, what the Government think should be done.

The Government are making some very determined efforts to mitigate the situation of IPP offenders who are still subject to a sentence that was abolished in 2012. To bring noble Lords up to date, there were originally approximately 8,100 people subject to these sentences. Of those people, as of last December 1,227 had never been released, 1,625 had been released and later recalled, and there were still about 3,000 on licence in the community. Currently, as the noble and learned Lord, Lord Thomas, pointed out, an offender cannot apply to the Parole Board to have their licence terminated until 10 years after first release.

Taking the released and then recalled population first, this is a challenge because that population is slowly rising. The major statutory change in Clause 48 will reduce the qualifying period before the offender becomes eligible for licence termination from 10 years to three years from first release, with a presumption of termination after three years and an automatic termination two years thereafter—provided that the offender can pass two years in the community without further recall. That is, as I think the noble and learned Lord, Lord Thomas, said, a huge change and a major achievement for the Government to be proposing. It should substantially mitigate the problem of prisoners being released and then recalled, which we will come to in more detail as this debate continues.

Regarding the second cohort—perhaps the first, depending on your point of view—of those who have never been released, most of these people have come up before the Parole Board, which is responsible for deciding on their release. In many cases, this has happened many times and the Parole Board has decided that it is not safe to release them as the risk to the public is too great. What is the Government's approach to that problem? Spurred on by the 2022 report of the JSC, to which I pay tribute, the Government are developing a robust, coherent and detailed action plan in consultation with relevant stakeholders, including the families, with the aim that each prisoner has a tailored sentence plan, appropriate support and clear objectives to work towards eventual release.

This last cohort is difficult, as the noble Lord, Lord Ponsonby, has just pointed out because, aside from having committed very serious offences, many suffer from trauma, mental health issues, substance issues and so on. However, the Government are determined to see this cohort further reduced and to get rid of the idea that there is no hope. In the Government's view, no one has given up on the IPP prisoners who have never been released. They have to be worked on. That is a hard task, but one that the Government—any Government—should take on.

For example, the number of those released has been reducing over the last two years at roughly 200 per year. There are now 200 of these prisoners in open conditions who are being prepared for further release. It is not as if nothing is going on or as if things are just vegetating and no one cares. The Government are very focused on doing something about this most difficult cohort. That is the overall framework, which I hope your Lordships will view, despite the difficulties of the past, as something of a new beginning for the future.

With that background, I turn to Amendments 149 to 151 in the name of the noble and learned Lord, Lord Thomas. The effect of these would be that, if the Parole Board refused to terminate the licence at the new three-year point, the offender would have the right to apply annually to the Parole Board for a licence determination. As the Government understand it, the offender would be in the community rather than waiting out the two-year period, which results in the automatic termination of the licence. The offender would be able to apply to the Parole Board for termination after one year.

The Government recognise that released offenders in many cases need better support and have accepted all the recommendations to that effect in the recent report of the Chief Inspector of Probation on the recalls of IPP prisoners. However, the Government are not at present persuaded of the need for Amendments 149 to 151, on the following basis. If the offender has applied and the Parole Board, after three years, does not terminate the licence at that point, it does not seem to the Government unreasonable to expect the offender to spend two years in the community with the incentive of the certainty of licence termination at the end of that period. This amendment would enable the offender to make an interim application at the end of year four. That would impose further resource costs on the Probation Service and Parole Board because reports have to be prepared, hearings have to be convened and so forth. It would necessarily take the Parole Board several months to process that application.

We have come back several times in this debate to the pressures on the Parole Board and the time these applications take. It appears to the Government that, even if you could apply after year four rather than waiting until the end of year five, there is probably only a marginal gain for the offender. The Government are not at the moment persuaded on these amendments, although the Government continue to be in listening mode on this part of the Bill, as on every other part of the Bill.

Amendments 152 and 153, also moved by the noble and learned Lord, Lord Thomas, address what one could call in shorthand "questionable recalls". I think there are two sorts of recall that we should be thinking about. The amendments suggest the possibility of the Parole Board disregarding a recall for the purpose of calculating the two-year period. Perhaps I may first clarify what is considered to be the existing position. If a recall is based on a fundamental mistake of fact—for example, the probation officer thinks that the offender has missed an appointment but the offender is in hospital because of a road accident the previous day—the Lord Chancellor considers that he already has the

[Lord Bellamy]
power in such a clear case to treat the recall as a nullity, as never having happened. That is a relatively clear case and I respectfully suggest that Amendment 152 is unnecessary.

The situation envisaged by Amendment 153 is effectively a challenge to the judgment call made by the probation officer about the recall. Technically it is a decision by the Secretary of State, but in practice of course it depends on the report by the probation officer. Amendment 153 would require the validity of that recall—the "appropriateness" of that recall, to use the word in the amendment—to be considered by the Parole Board and treated as a nullity if the board then considers that the recall decision was not appropriate. Although the Government understand the thinking behind the amendment, His Majesty's Inspectorate of Probation found, in both 2020 and much more recently in 2023, that in practice HMPPS recall decisions are very largely appropriate.

At present, the Parole Board does not have any power to adjudicate on the appropriateness of the recall; its task is to decide on the issue of public protection and whether the offender is safe to release. For that purpose, the Parole Board will typically have much wider and more detailed information than was available to the individual probation officer faced with the recall decision. Amendment 153 would, however, turn the Parole Board process into an appeal from the recall decision and require the Parole Board, in effect, to second-guess what it would have done had it been the probation officer with the information then available to the probation officer.

Baroness Chakrabarti (Lab): I am grateful to the noble and learned Lord for giving way. I should like to better understand this part of the argument. When the noble and learned Lord said he is satisfied that in most cases recall is appropriate, did he mean recall in general or recall in IPP cases in particular? Secondly, when he was discussing the difference between decisions on executive recall on the one hand and dangerousness and public protection on the other, did he not think that there was a relationship between the two? When one is considering dangerousness, one might have a rather different view of what is required in relation to public protection if one or more recalls were inappropriate because they were for non-criminal, minor conduct that at no point presented a danger to the public?

Lord Bellamy (Con): I thank the noble Baroness for those questions. As to whether I was speaking of IPP specifically, I cannot off the top of my head recall whether the 2020 work was specifically in relation to IPP, but certainly the 2023 work, which is the most recent and the most valuable and which I highly recommend everyone to read, was specifically in relation to IPP when the Government were considering what to do following the JSC report when concern was expressed that recalls might be being made inappropriately. That inspector's report took a sample of recalls, studied them very carefully; it was thought that a small number were questionable but that the vast majority were appropriate on the basis of the information that the probation officer had at the time.

Up to a point, the circumstances of the recall are part of a general picture of the dangerousness of the offender—I accept that. But the real point is that, when the Parole Board comes to consider public protection, it will have much more information, very often much more up-to-date and fuller, than the information that was before the probation officer at the time, who might well have to take a decision in an emergency on very limited information, but because of the risk, as they see it, to public protection. So it is very difficult, in the Government's view, to give the Parole Board power to go all the way back and say, "This was inappropriate". However, having said that, I would like to come back to the question of recall when we get to Amendments 154 and 168, to be moved by the noble Lord, Lord Carter. It is a question of executive re-release on recall, which might be another way of approaching that problem. So that is the Government's position.

5.45 pm

Before I move on, let me say to the noble Lord, Lord Hastings, that the effect of the Government's changes is that this recall after 14 years could no longer happen. In the press over the weekend there was an example of someone recalled after 12 years in the community, who sadly found that it was too much for them and took their own life. We do not know the full circumstances, but that could not happen if your Lordships and the other place decide to pass this legislation. That is a major change which I hope, combined with the reduction in the licence period, will significantly reduce these recall problems. I have not specifically replied to the noble Baroness, Lady Jones, or the noble Lord, Lord Woodley, and all the others because it is common ground that we need to do something. My task is to explain what we are trying to do and where we are trying to get to.

As far as this group is concerned, that leaves Amendments 156 and 157 on the question of secondary legislation or primary legislation to change the qualifying period. I take the point of my noble friend Lord Hodgson about Amendment 156. The Government are also well aware of the concerns expressed about using delegated legislation to amend primary legislation. These provisions have been included to give a certain degree of flexibility. The Government have no intention whatever of increasing these periods or reversing these changes, but see some advantage in the flexibility that that mechanism gives. None the less, on this point, as on others, the Government will continue to listen to the arguments and come back with a position on Report.

I hope that I have covered the various points. I have not addressed the wider points about the prison system in general; that is for another day and I look forward to a further debate, but I hope that I have replied sufficiently for the moment.

Earl Attlee (Con): My Lords, is my noble friend the Minister telling us that it is inconceivable that the Government would want to increase the licence period?

Lord Bellamy (Con): I do not know that one would use the word "inconceivable". The Government do not see any prospect of that happening at the moment.

Lord Thomas of Cwmgiedd (CB): My Lords, I thank everyone who has participated in this debate. It has proved useful: first, it is very important to set the scene, and I deliberately did not say a great deal. However, it is right to say that we owe a huge debt of gratitude to the Prison Reform Trust, to the noble Lord, Lord Moylan, to the late Lord Brown and the late Lord Judge, who campaigned fiercely on this, and to Lord Lloyd of Berwick, who fortunately is still alive and who has campaigned tirelessly. I just find a sense of deep disappointment—a matter to which I will return at a later stage—at the reluctance to be bold.

We have focused on four little points, and even on reducing the answer was not very strong. It is absurd—and I use that word advisedly—to think any Government would want to take the licence period back up. I very much hope that that amendment can in due course be agreed.

The problem really relates to the way in which the licence period operates. We need to discuss that further to see what the conditions are, and we shall come to that in due course, and to ensure that we bring the licence period to as satisfactory a termination as possible, bearing in mind—as the Minister fails to recognise—that the state has a very substantial degree of responsibility for the mental health problems that have been caused. When you talk of one year or two years, making someone stick to conditions which may not be entirely appropriate for a period of two years is a substantial burden, which can be mitigated by going to one year. But I am glad that the Government have an open mind. We shall see how open it is when we discuss the matter further.

Amendment 149 withdrawn.

Amendments 150 to 153 not moved.

Amendment 154

Moved by ***Lord Carter of Haslemere***

154: Clause 48, page 52, line 21, at end insert—

"(4I) the prisoner's licence will be considered to have remained in force for the purposes of subsection (4H)(c) if—

(a) the prisoner has been recalled within that period,

(b) the Secretary of State has released P again on licence in accordance with his powers under section 32(5B), and

(c) the Secretary of State orders that the licence should be considered to have remained in force during the period of recall."

Member's explanatory statement

This amendment would enable a person whom the Secretary of State has deemed suitable for executive release to benefit from the qualifying period as if the recall had not occurred, but only if Secretary of State considers this appropriate in all the circumstances.

Lord Carter of Haslemere (CB): My Lords, I shall speak to Amendment 154 in my name and to Amendment 168 at the same time, as they sit together in this grouping. I declare an interest as a trustee of the Prison Reform Trust, and I thank it for its significant input and support for these amendments. I also thank the noble Baroness, Lady Chakrabarti, the noble Lord, Lord Blunkett, who, unfortunately, as we have heard, cannot be with us today, and the noble and learned Lord, Lord Garnier, for adding their support to my two amendments by adding their names.

I shall deal first with Amendment 168, since Amendment 154 is consequential on it. Amendment 168 is about executive release—that is to say, release by the Secretary of State following a recall to prison. At present, under the Criminal Justice Act 2003, the Secretary of State has a power to release a determinate sentence prisoner on licence at any time after the prisoner has been returned to prison. He must not do so unless satisfied that it is not necessary for the protection of the public that the prisoner should remain in prison. Amendment 168 addresses a lacuna, which arises in the case of IPP prisoners who are recalled to prison, since the Secretary of State has no executive power to release them, even if it is obviously safe to do so.

Why does this lacuna need correcting? Let us look at the facts. There are, as the Minister has said, 1,625 IPP prisoners who are in prison following a recall. The Justice Committee, in its third report, said that the reasons for recalling IPP prisoners vary, and it was often not because the IPP prisoner had committed any further offence but because of a minor or technical breach of licence conditions. For example, the lack of availability of approved premises, believe it or not, or other suitable accommodation, was sometimes a reason for recall, even though it might, unreasonably in the circumstances, have been a condition of a licence.

Once the IPP prisoner has been recalled, they become subject to the usual parole process to secure their release. This can take months or even years. The Justice Committee found that, between 2015 and 2021, the average number of months spent in prison by an IPP prisoner following recall and prior to re-release was 18 months—the equivalent of three years on a traditional fixed-term sentence. I believe that the average time has now increased, as I think that the Minister said, and that period in prison following a recall has risen to on average 28 months before re-release. That is a wholly disproportionate additional period to serve if the recall was for a minor or technical breach of licence conditions, or if it is apparent that the prisoner is safe to release at an earlier stage.

The Justice Committee recommended the use of executive release for IPP prisoners in such cases, as is possible for determinate sentence prisoners. In their response, the Government stated that they would not accept the recommendation because it

"falls to the Parole Board to determine whether the … release test is met".

But that fails to explain why determinate sentence prisoners can be executively released when they, too, are otherwise subject to a Parole Board review.

Amendment 168 is therefore about ensuring that like cases are treated alike, when there is no good reason for treating them differently. It provides that the Secretary of State should have a power of executive release at any time following the recall of an IPP prisoner, if the Secretary of State considers that it is not necessary for the protection of the public that the prisoner should remain in prison. That will ensure consistency with the position of determinate sentence

[Lord Carter of Haslemere]
prisoners, while ensuring that public safety is not put at risk. There is no logical reason to treat IPP prisoners differently.

Amendment 154 is consequential on Amendment 168 because, if the IPP prisoner is executively released by the Secretary of State following an unnecessary recall, the IPP prisoner should obviously have the period unnecessarily spent in prison disregarded for the purpose of calculating the new sunset clause for IPP licences. However, as a safeguard, the amendment proposes that the Secretary of State should have the power in each case to determine whether this is appropriate. This will depend on an assessment of various factors, such as the degree to which the recall was unnecessary and whether the prisoner is safe to release.

In concluding on the two amendments, I can do no better than to refer to the truly tragic recent case of Matthew Price, who last year took his own life while on licence from an IPP sentence. I am sure that the whole Committee will join me in expressing the deepest condolences to Mr Price's family. The coroner said that:

"Matthew's mental well-being had been adversely affected over a significant period of time by the continuing impact of serving an"

IPP sentence, because of anxiety about the ever-present potential for recall to prison. The shocking thing is that Mr Price had been on licence for nearly 10 years. That demonstrates the devastating mental impact that an IPP sentence has. On 22 February this year, the coroner issued a so-called regulation 28 report to prevent future deaths, in which he stated that there was

"a risk that future deaths will occur unless action is taken"

urgently. My amendments would not be enough to remove that risk completely, but they would help by providing another avenue of release from a recall while, crucially, ensuring the safety of the public. I hope that the Minister will feel able to accept them, and I beg to move.

Baroness Chakrabarti (Lab): My Lords, it is a privilege to rise in support of my old boss, the noble Lord, Lord Carter of Haslemere—one of the finest government lawyers I had the pleasure of working for and learning from in the late 1990s. He served Governments of both persuasions with such distinction that he went on to become the first ever counsel to No. 10, such was his expertise in these and other matters. It is wonderful to see him deploy those skills, including in the devastating way in which he has just argued for his two amendments in this group.

6 pm

As a matter of principle, in the previous group, the Minister made the case for executive recall. The noble Lord, Lord Carter of Haslemere, has made the equal, opposite and logical case for executive release. To err is human. Where there has been an executive recall in the sorts of circumstances to which the noble Lord, Lord Carter of Haslemere, referred—for non-criminal or non-dangerous conduct, or sometimes for conduct that could not even be impugned because it was no fault of the licensee—why should the Secretary of State not have the equivalent, equal and opposite power to release humanely and sensibly, without risking the public? I say not just to the Minister but to my noble friend Lord Ponsonby that no Government need be afraid of having the power to release in circumstances where they had the power to recall in the first place.

I need once again to wear the other hat and the rather tall shoes of my noble friend Lord Blunkett. He asked me to mention in particular his Amendment 158 in this group. Here again, with some considerable commitment and rather forensic precision—aided by our wonderful colleagues in your Lordships' Library—he has picked up on an anomaly that he seeks to address. Clause 48, in whatever final form it passes, ought to be applied not just to IPPs but to the earlier policy of two strikes. Some noble Lords may remember that, even before the IPP sentence, this policy led to similar injustices, under Section 2 of the Crime (Sentences) Act 1997. It was subsequently replaced by IPP.

Unfortunately, the noble Lord, Lord Howard of Lympne, is not in his place. At the time, I was serving him as a government lawyer. It was part of the whole ratchet on law and order between two major parties that began in the late 1990s, I am sorry to say. The idea was that, if someone committed a second offence from a list of prescribed offences in the provision, they got life. They did not collect £500 or pass "Go"; they just went to prison for life. There was no judicial discretion. Let this be a lesson to us all about removing judicial discretion in general and from sentencing in particular.

The nature of that straitjacket on the judiciary led to injustices that are not dissimilar in many cases to the injustices we now see with IPPs, with people detained disproportionately to the offence in the first place and for far longer than is required to protect the public. With his Amendment 158, my noble friend seeks simply to apply whatever Clause 48 regime we end up with to this earlier cohort of prisoners. No doubt, this is a diminishing number, but none the less they should have this level of enlightened humanity and justice as well.

My noble friend also supports the progression action plan proposed in Amendment 159. No doubt, other noble Lords will speak to it. Part of the problem with IPPs is that so many people have been stuck in a system that was supposed to offer them opportunities for rehabilitation and progress which, in practice, never materialised. To this, my noble friend adds the scrutiny panel proposed in Amendment 160. Along with other noble Lords, he seeks to amend the release test to direct that someone be released unless the Parole Board is satisfied that their detention remains necessary and proportionate to protect the public from serious harm. Again, that seems very sensible if we are trying to nudge this correction of historic error on a bit. My noble friend Lord Blunkett further supports my noble friend Lady Blower in her policy for mentors and advocates. As an educator, she is more than qualified to speak to that. He also supports the noble Baroness, Lady Burt, in her highly sensible proposal that there be more aftercare in relation to the DPP sentence. This has the injustice of IPP but is applied to people who were children at the time of sentencing.

These are my thoughts and those of my noble friend Lord Blunkett. Together, we support everything in this group.

Lord Moylan (Con): My Lords, I am grateful to the noble Baroness, Lady Chakrabarti, for mentioning the release test which is the subject of Amendment 161 in

my name. Before I speak to it, I offer a word of sympathy and support to my noble and learned friend the Minister. He probably feels a little under pressure today. I hope that it is not so, because we are all on the same side with this. We recognise the compassion, seriousness and commitment that he has brought to this subject during his time serving in His Majesty's Government.

Amendment 161 is also supported by the noble Lord, Lord Blunkett, the noble Baroness, Lady Chakrabarti, and the noble and learned Lord, Lord Hope of Craighead. It also has the support of the Bar Council, the Independent Advisory Panel on Deaths in Custody and others. Although the amendment is in my name, it is not actually my amendment. It was drafted by the late and much-lamented Lord Brown of Eaton-under-Heywood. As all of us recall, he burned with a passion on this topic and felt it very strongly. We miss him very much in these debates.

Briefly summarised, the effect of the amendment would be to change the burden of proof in the Parole Board's release test specifically for IPP prisoners. The current test is as set out in Section 28 of the Crime (Sentences) Act 1997, as amended. The board must not direct the release of the prisoner unless

"the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined".

In effect, the prisoner has to satisfy the Parole Board that he or she is no longer a threat to the public. This is a high test and a high bar. The amendment would change that to create an assumption that the prisoner will be released unless the Parole Board is satisfied

"that it remains necessary and proportionate for the protection of the public … that they should continue to be confined".

This is a subtle shift.

In fact, one of the objections I have heard to this amendment from advocates for IPPs is that it is not going to change things enough and that, in practice, the Parole Board will continue to apply tests of practical judgment to the question. However, I think it will have an effect, even if it is a small effect—the noble Baroness used the word "nudge"—in nudging the Parole Board in a certain direction, by making it clear what the will of Parliament is in relation to these prisoners, in particular, in the special circumstances that obtain.

I will deal with the question that was also raised about the relevance of the word "proportionate", which the late Lord Brown introduced into the amendment. What does "necessary and proportionate" mean? Does it not include an element of vagueness that might somehow dilute the effect of the amendment? I do not think so. I think the word "proportionate" is meant to convey to the Parole Board that it should look at means of ensuring the safety of the public other than confinement in prison when it comes to consider these cases. That might include enhanced supervision in the community by way of tags or other devices, quite commonly used, that help to ensure that a released prisoner on licence remains broadly safe and not a threat to the public.

Lord Clarke of Nottingham (Con): My recollection is that there is a section in the original 2012 legislation that would shift the burden of proof in the way that he describes. I remember the difficulty I had in persuading my then Prime Minister to enable me to put the abolition of IPPs into the legislation at all: I had to settle with him that we would put this into the legislation but not, for the time being, enact the change in the burden of proof. Could what my noble friend is seeking to achieve be delivered now by the straightforward provision of bringing that long-dormant 2012 section into effect?

Lord Moylan (Con): I am somewhat crushed by the fact that the noble Lord is able to bring before your Lordships' House a point he recalls, after 14 years, simply from memory but which I had to spend a large part of this afternoon looking up so that I could get the wording correct, and which I was about to turn to imminently. Because I was about to say that this amendment is not in any sense radical: it simply builds on a power that the Secretary of State already has, and makes it a duty.

My noble friend is referring—I am sure he recalls this better than I do—to Section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which was, indeed, his legislation. That section gives the Secretary of State the power, by statutory instrument, to amend the Parole Board's release test for IPP prisoners, not excluding the manner in which this amendment would oblige the Secretary of State or the Government to change the current provisions.

Lord Marks of Henley-on-Thames (LD): I heard what the noble Lord, Lord Clarke, had to say and I know that if my noble friend Lord McNally were in his place, he would say that when he, as a junior Minister, and the noble Lord, Lord Clarke, were at the Department of Justice, they were of the view that it would be a matter of a short time only until Section 128 would be implemented. It is a matter of great disappointment to my noble friend that it has taken until now—and indeed not yet—for that section to be implemented reversing the burden of proof.

Lord Moylan (Con): I am very grateful. Again, my speech is being shredded in advance by points that I was about to make. Really, we are making it extremely easy for my noble and learned friend the Minister to agree with us. What we can all agree on, as a matter of fact, is that Section 128 of LASPO has not been implemented, 14 years on. It is for that reason that this amendment is being brought forward, leaving the Government with no choice but to oblige them, in effect, to deal with IPP prisoners in the manner that my noble friend has indicated was always the hope and intention.

In fact, I was going to make reference at this point to a remark made by my noble and learned friend Lord Clarke at an earlier stage when we were discussing IPP prisoners: he said that nobody at the time—in 2012—believed that there would still be IPP prisoners in confinement 14 years later. It is this point that I am trying to address. Very simply, this is a very small shift in a power that already exists for the Government. It is therefore, in effect, a very modest amendment and one that I hope both my noble and learned friend the Minister and the Opposition Front Bench will feel able to support.

6.15 pm

Lord Hope of Craighead (CB): My Lords, I shall speak to Amendments 159 and 160 in this group, which the noble Lord, Lord Blunkett, has asked me to introduce on his behalf, and in support of Amendment 161, which was spoken to so ably by the noble Lord, Lord Moylan, a moment ago. I join others in expressing great regret that the noble Lord, Lord Blunkett, cannot be here to speak to his own amendments. It was very good of him to suggest that I might take his place in the case of these two amendment, but I am conscious of the fact that I cannot match the contribution that he would have made had he been here. Along with others, I have admired the way in which, with commendable candour, as has been said, he has faced up to the enormous and wholly unforeseen problems that the IPP regime has created. He has done his very best to bring his profound understanding of our prison and parole systems to bear in the search for solutions to the problems, and the amendments in his name are the product of that endeavour. His contribution in person will be very much missed.

I come from a quite different background. When I served for seven years as Lord Justice General in Scotland, I visited all the prisons but one in that country and attended several meetings of its Parole Board. I did this because under the regime that was then in force one of my responsibilities was to advise the Secretary of State for Scotland when it would be in the interests of justice for prisoners who were serving a mandatory or discretionary life sentence to be referred to the Parole Board with a view to them being released on licence. In each of these cases, I was presented with files, often very substantial, that recorded the prisoner's progress through various stages in the prison system. I felt that I had to visit the prisons, each of which had its own characteristics, in order to understand what I was dealing with. I also wanted to meet and speak to some of the prisoners who were there, whose names were never released to me, and on one occasion joined them sitting at a table, in their case almost for the first time in many years, to eat lunch with them using a knife and fork.

I admired the way the Parole Board went about its work, equipped, of course, with very substantial files. It was borne in on me how much attention was paid to what was in those files, how crucial it was that the files should be accurate, fair and complete and how much effort had to be put in by those who were reading the files and relying on them in order to understand the picture that they presented. I join the noble and learned Lord the Minister in expressing appreciation of the work done by the Parole Board in these cases, particularly the IPP cases, where the burden on it is so heavy.

We did not have IPP prisoners in Scotland when I was there and never have had, so I can only guess at the scale of the problems that all those who have to administer that system must face. However, there was, in my time, a very well-organised and properly funded training for freedom programme, which all life-sentence prisoners who had reached the appropriate stage would undergo.

Care was taken to see that those prisoners understood the plan and how their sentence was to be progressed; that played its own part in the eventual success of the plan that they were working to. Of course, I am speaking of how things were in Scotland 30 years ago. The pressures on the prison system, both there and here, are very much greater now, while the IPP system is in a class of its own. However, it gives a hint of background to the way the mind of the noble Lord, Lord Blunkett, was going when he proposed these amendments.

One further word of background: I, along with others, look back to the powerful and sustained contributions made on this problem from these Benches over many years by the noble and learned Lords, Lord Lloyd of Berwick and Lord Brown of Eaton-under-Heywood. I think it was the noble and learned Lord, Lord Lloyd, who was very much involved in the measures that eventually led to the changes brought about by LASPO. He went right back to the very beginning. From the very start, when I first came into the House, he was making strong speeches in favour of the need to change the system. We can recall much more recently the contributions by the noble and learned Lord, Lord Brown. I felt I owed it to them to contribute tonight because they are no longer able to be with us.

Amendment 159 seeks to place the Government's existing action plan on a statutory basis and strengthen its effect by giving it a purpose that is set out in the statute. That purpose will be to ensure the effective rehabilitation and progression of persons serving these sentences. The Minister was kind enough to present to us, in his reply on the previous group, the overall framework that has now been developed in order, as I understand it, to improve on the existing plan. I hope that he will forgive me for saying what I am going to say—it is really a criticism of the plan that I think he is departing from—but it may indicate the way that the mind of the noble Lord, Lord Blunkett, is going as to how the existing plan ought to be improved. It may also assist in the development of the plan that is currently being worked on.

Amendment 159 sets out the position in a good deal of detail but the structure of the amendment can be summarised briefly in just a few words. First, in subsection (3) of the proposed new clause, it sets out in five propositions what the revised action plan must seek to do. In subsection (4), it sets out what the plan must include if it is to deliver that purpose. It then goes on to provide how that purpose is to be delivered. The Lord Chancellor must allocate sufficient resources and appoint a board to oversee the delivery of the plan, then the board must provide the Lord Chancellor with a report at the end of each financial year, which will be laid before Parliament.

As the noble Lord, Lord Blunkett, sees it, the present plan, although an improvement on the previous one, suffers from a basic and fundamental weakness: it has no stated purpose. It does not state what the outcomes for those serving these sentences are to be. They have not been given a forward plan that would allow for some hope and enable the sentence to be progressed, nor is it said how the process is to be monitored or evaluated. Although the prisoner's case is to be subject to review every six months, these basic weaknesses remain; that enhances the sense of hopelessness, as has been mentioned in the earlier stages of these debates.

According to the figures I have been given—I will deal with them briefly—the quarterly number of releases has remained static at between 50 and 59 over the past

three years. Re-releases have been declining while the number of IPP recalls has been increasing. The lack of any real progress shows that something must be done, although I accept the point that has been made: the more the number of IPP prisoners remaining in custody decreases, the greater the problems that one must face to consider them suitable for release. I absolutely understand that and am sure that the noble Lord, Lord Blunkett, appreciates it very well.

Of course, there are no easy answers and regard must always be paid to the protection of the public from serious harm, but we owe it to these unfortunate people to do more. There is an urgent need to review their needs and to provide each individual with a forward plan as to how their sentence is to be progressed, and that plan should be updated regularly. A whole range of issues needs to be covered, as referred to in subsections (3)(b) and (4)(b) of the proposed new clause. That really is the key. Their physical and mental health needs to be attended to and they need to be provided with daily and weekly activities including exercise, work and education, designed to develop their suitability for release. Their skills for everyday living in the community need to be developed too—such simple things as eating with a knife and fork at a table. So much more could be done with a stated purpose and a structured plan. That is what this amendment seeks to achieve.

Amendment 160 provides for the setting up of an independent scrutiny panel. The function of the panel would be to ensure that Ministers and officials give priority attention to the IPP prisoners and scrutinise each prisoner's progress through his or her IPP action plan.

Finally, I very much welcome and strongly support Amendment 161 from the noble Lord, Lord Moylan. It deals head on with the unfairness which is such a stain on the justice system. Although those serving life sentences have for the most part been convicted of a more serious crime, it is the IPP prisoners—often initially with a very short period to serve as a tariff—who have to prove their lack of risk to be released. In their case, the burden of proof was reversed, while life sentence prisoners can expect to be released when their tariff has been served, unless the Secretary of State can show that they still present a risk to the public. We have seen what this has led to. It is surely now time for it to be changed, as the noble Lord, Lord Moylan, has been urging. That was what the noble and learned Lord Brown of Eaton-under-Heywood argued for so vigorously whenever he could. He would certainly have done that again this evening, had he been here. I hope that the noble and learned Lord the Minister can see his way to accepting this amendment.

Baroness Burt of Solihull (LD): My Lords, I support every single amendment in this group, particularly the "two strikes" part of the amendment from the noble Lord, Lord Blunkett, so ably introduced by the noble Baroness, Lady Chakrabarti. I am sure we have all had letters from individuals who are languishing in prison under the "two strikes" rule. For the sake of brevity, I will just talk about Amendments 165 and 166 in my name.

Amendment 165 comes from a concern at the lack of fulfilment of aftercare obligations for prisoners who have been transferred to a secure hospital and subsequently returned to prison. It amends Section 117 in Part 8 of the Mental Health Act. We are talking about approximately 400 people who will, arguably, need additional help to cope with their return to prison life and subsequent reintegration into the community. It will help clarify and highlight the existing Section 117 entitlement to aftercare for prisoners who have been transferred from secure hospital to prison and remain either in prison or out on licence in the community. These individuals can be defined as those who are entitled to Section 117 aftercare. Sometimes this does not happen and individuals either in prison or out in the community do not receive the aftercare they need or are entitled to. Clearly, this entitlement is and should be reflected in their release plan and will increase their chances of a successful transition into the community, reducing the risk of recall.

6.30 pm

Amendment 166 addresses and seeks to mitigate some of the damage done in prison to IPP prisoners who are vulnerable to mental ill-health. It would apply to the additional aftercare duty in respect of IPPs who have never been released and are three or more years over their tariff. Approximately a third of IPP prisoners already had mental health issues at the time of their offence. On top of this, research by the British Psychological Society and Probation Institute says that the IPP sentence itself is characterised by a state of perpetual uncertainty and anxiety, fear, hopelessness, despair and a reduced sense of the future, leading to behaviour such as self-imposed isolation, self-harm and disengagement from their sentence progression.

The sentence also creates feelings of deep unfairness, injustice and mistrust of authority, which can also negatively impact their mental health. Prisoners who have been unjustly incarcerated have pretty much the same reactions—as well they might. Poor mental health has now become a prevalent characteristic of IPP prisoners. The British Psychological Society has said that IPP sentences cause acute harm to mental health. This damage is why many of us in this House believe there should be a resentencing exercise before more damage is done.

In any event, there is a very big job to do when these individuals are finally released. We know that the fear and anxiety caused by the possibility of recall not only causes further psychological damage but dissuades many IPPs on licence from seeking help. The noble Lord, Lord Carter of Haslemere, has already raised the case of Matthew Price. He was just a few months from eligibility for discharge from licence. His case is one which many noble Lords might be familiar with, because he entitled his email, which many of us received, "perpetual psychological torture". It is so sad that he suffered in that way for so long. The noble Lord, Lord Moylan, wrote back to Matthew, encouraging him to hold on for just a short while longer, as did I. Matthew wrote that,

"this never-ending sentence … has crushed and broken me … I've now been released from prison for almost 10 years, yet I'm no nearer knowing when or if this nightmare will ever end".

As we have already heard, he committed suicide a short while after he wrote this. My fervent hope is that if he had had proper continuing support and had not

[Baroness Burt of Solihull]
been afraid to seek help because he had had psychological support from the beginning, and if the current measures in this Bill to cut the licence period from 10 years to three had been in force, then Matthew, and many others, would still be with us today. We have damaged these people. Is it not therefore incumbent on us to do all we can to help put them back together again?

Baroness Blower (Lab): My Lords, I apologise that I was unable to be in the Chamber for the entirety of the Second Reading, although I heard most of it. I will speak first to Amendment 164, which is in my name and those of the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Blunkett, who sadly is not in his place this evening.

As we have heard from many noble Lords' contributions, serving and recalled IPP prisoners need practical help and support. The purpose of this new clause would be to give effect to some of that practical help and support, which they clearly need. As we all know and have heard several times from noble Lords, these prisoners are often so over-tariff that they have lost any hope of ever being released. They therefore need to develop internal, as well as external, means of support in the build-up to a parole hearing, as well as on release and in transition into the community.

The IPP mentor and advocate scheme would assist prisoners in formulating a detailed release plan with the help of an independent, suitably qualified individual. At the parole hearing, the mentor would provide practical support to the prisoner to assist them in making a clear and articulate contribution to the proceedings, although the new clause is perfectly clear that they would not provide legal advice or make legal submissions. On release, the formulated release plan would assist former IPP prisoners to make a smoother transition into the community and act as a blueprint for successful reintegration.

The organisations that are willing and able to help offenders with resettlement in the community are often not well-known to IPP prisoners, and localised, relevant resources would be signposted to the prisoner by this scheme. While in prison, the IPP prisoner could, with the help of the IPP mentor and advocate, establish communication with organisations relevant to their risk management profile and assist them with proposed resettlement needs. On release, of course, the IPP mentors and advocates would help them to implement their release plan and provide practical support, making further recommendations relating to their specific needs to strengthen their prospects of a successful reintegration into the community. The cost of such a scheme would be modest. Moreover, it would reduce pressure on the prison population, which is at capacity, and prevent recalls to prison.

As we know, there are many ad hoc mentoring schemes in which prisoners are assigned to a mentor to help them during their prison sentence or when they get out on licence. These can help with particular risk factors and provide general support and guidance. It is very important to recognise that IPP prisoners suffer from all these same issues. Whatever the reasons that took them into prison and got them incarcerated, they still need this help and support. One particular and distinct need relates to the fact that many of them—as has been said—have lost faith in the justice system. It is therefore important to ensure that they are given access, on a voluntary basis, to a mentor and advocate who can support them with the steps needed to ensure they are prepared for life in the community.

The scheme could, of course, be subject to a pilot in the first instance and would recruit suitably qualified individuals. These might be, for example, retired probation officers, members of an independent monitoring board, retired members of the Parole Board, or other suitably qualified individuals who have knowledge of the criminal justice system. Following the successful pilot, the scheme would then build up to, perhaps, 50 mentors and advocates working on a part-time or full-time basis.

While it is anticipated that the scheme will be centrally commissioned, there may be innovative ways to fund it using cross-budget resources. Clearly, the better resourced the scheme, the more effective it will be. It is anticipated—these are not my calculations but those of people who have a much clearer understanding of the situation and the likely costs—that the fully rolled-out scheme, employing up to 50 full-time or part-time mentors, would cost less than £3 million a year for a period of three years.

There are still 1,200 IPP prisoners who have never been released, and more than that on recall. Given that it costs the taxpayer £44,000 or £45,000 per annum—my figure is £44,000, but it may be that others know better and it is £45,000—to keep one prisoner in custody, if the scheme were to free up 67 places in the prison estate each year it would pay for itself. How much better it would be if these IPP prisoners were given this extra support, given the particular injustice that they have endured.

Lord Garnier (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Blower, and I was delighted to be able to co-sign her amendment. It is also a pleasure to witness a debate in the Chamber this evening which has brought us together in unity, both of purpose and of experience. All of us, in our different ways, have had different experiences of the prison system, the courts system and of prisoners, and yet we have all reached the same conclusions, the starkest of which was presented to us by the noble and learned Lord, Lord Thomas, in the first group of amendments, when he observed, entirely correctly, that there is a reluctance to be bold. I would convert his observation—if I can do so while looking at a former Lord Chief Justice—into an injunction: we must no longer be timid, we must be bold.

I have absolutely no doubt that my noble friend the Minister and all his colleagues in the Ministry of Justice, and in particular the estimable current Lord Chancellor, are entirely well motivated in what they wish to see in relation to IPPs and indeed to other pretty appalling aspects of our prison system. However, having a benign intention, walking quietly and saying nice things is really not enough; the reluctance to be bold must be got rid of, because we need action. We need it for the reason that the noble Lord, Lord Carter, and the noble Baroness, Lady Burt, highlighted of the very sad case of the man on licence who took his own life.

I was very pleased indeed that the noble Lord, Lord Carter, was able to lead on the group of amendments we are now discussing, because if ever a speech fulfilled the promise made at a maiden speech, it was his. I am very grateful to him, because we constantly need prodding and reminding that IPP prisoners are not a subject to be spoken of once every six months, with sympathy and wringing hands. They are a living, constant problem, and indeed, as the late Lord Brown, said, what has been done to them is a stain on our justice system. We should all be very grateful, as I think a number of us have already indicated, to the late Lord Brown for the work that he did.

We should also be grateful to the noble Lord, Lord Blunkett, who is absent, for his change in attitude and his admission that he got it so badly wrong when he was Home Secretary in the early part of the Tony Blair Government. It is not difficult to salute him, because you can tell when you talk to him and listen to him that his change of heart is indeed sincere. So, if he can be bold in doing that, please will the Government be bold and get on and do what is right?

Like the noble and learned Lord, Lord Hope, and the noble Lord, Lord Hastings, I have spent quite a considerable time visiting prisons. I have probably said this before, and I can never remember the precise figure, but I think I have been to about 75 prisons, young offender institutions and secure training units in England and Wales—I have not been to a prison in Scotland or in Northern Ireland. It was abundantly clear, whenever I went to an adult male prison in which there were prisoners serving IPPs, from both looking at, talking to and interacting with them but also with the governing staff, that the most impossible group to manage were the IPP prisoners. They were literally hopeless. They had no future—no boundary and no observable, touchable limit to the torture that they were going through. That is why we must be bold, that is why we cannot allow this to go on, and that is why all these amendments, in every group, deserve the support of this House and the support of the Government.

6.45 pm

I know I was in government for a very short time, but I learned while trying to push policy that Whitehall is covered in treacle. It is extremely difficult to walk purposefully and with some degree of speed and expedition across the departmental world which constitutes non-political government. The only thing I was able to achieve in government as a law officer, which is obviously not a policy-driven post, was, with the assistance of my noble friend Lord Clarke and other Ministers within the coalition, from his Prime Minister downwards to the Deputy Prime Minister, was to introduce deferred prosecution agreements. That required hard work, co-operation and determination, and that is what we need now when it comes to sorting out the mess of IPPs.

It seems that there is a pressing need in the last months of this Parliament to settle this issue now. My noble friend Lord Moylan was gracious enough to accept that he had had to spend all afternoon looking up what Lord Clarke already knew. I hesitate to confess that I did not know it, either—and I would probably have had to spend all week looking it up. But there is a mechanism there ready to be implemented, so what is stopping us? What is stopping the Government? It seems that there is also a political will in this House, and I suspect in the other place, to deal with IPPs along the lines of these amendments. It is a falsehood to imagine, as I suspect that my now noble friend Lord Cameron, the then Prime Minister, thought, that it would be electorally disadvantageous—

Lord Clarke of Nottingham (Con): My noble friend is of course talking to an audience in this Chamber which agrees with every word he is most eloquently saying, and it is obvious that the Government should press on. The one thing he has not spoken of is the reason that Prime Ministers and Governments will not, and what it was that drove liberal-minded, sensible people such as Tony Blair and David Cameron to defend this IPP system. It is, straightforwardly, fear of public opinion, fear of the media—in particular of the tabloid press, but the whole of the media. The one thing even the most liberal Prime Minister, and certainly those who surround him in 10 Downing Street, is convinced of is that they must never be seen to be "soft on crime". The only pressure that ever comes from No. 10 in response to some highly publicised crime is for longer sentences to be imposed for whatever criminal offence has currently come into fashion. In an election year, that is even more likely to apply and to be our principal problem today.

Lord Garnier (Con): I am most grateful to my noble friend. I will have to check tomorrow morning the *Hansard* report of where I had got to in my speech; I have a suspicion I was in the middle of a sentence in which I was just about to say exactly what my noble friend said—but I am grateful to him, because he was able to say it so much more eloquently than I would have done.

We are in the position with criminal justice and sentencing that we were in the first decade of the 20th century with Dreadnought building. If the Germans have five, we must have six. If we have six, they must have 10. If they have 10, we must have 15, and so on —and guess what? You get 1914.

Here, we are dealing with adult, mature politicians who take instructions from editors and proprietors. Yet, if they bothered to ask the public—and occasionally the press do ask the public—they would find that the public are not nearly as keen on longer sentences or on IPPs as they might think. Had they been braver and bolder—as the noble and learned Lord, Lord Thomas, would have us be—perhaps we would not have arrived at where we are.

I regret that I have spoken for far too long in Committee, but over the last 25 years this issue has really annoyed me. I am so grateful to the Prison Reform Trust, of which I too am a trustee, for its assistance in trying to restrain my enthusiasm and, at times, my anger about this subject and for providing me with the information and the assistance which I hope have to some extent informed this debate. There is not a single amendment on the Order Paper this evening which does not deserve the gravest consideration of this Committee and the urgent action of this Government.

Baroness Fox of Buckley (Non-Afl): My Lords, it was a real privilege to witness that exchange and I think we are getting to the heart of why we are all

[Baroness Fox of Buckley]
here and are so passionate about this. I have a couple of short clarifications, because at this point by the time I get to my amendment on re-sentencing there really will be nothing else to say; I am rewriting my speech rapidly every time everyone speaks.

When I first heard about the indefinite sentences that were associated with IPPs—when they first came out in that arms race to prove how tough we could be on law on order—I was horrified. I was delighted when the noble Lord, Lord Clarke, abolished them; I thought that was it, because I was not in Parliament and not following. I went into prisons as part of work I was doing with an educational project called Debating Matters Beyond Bars which encouraged prisoners to debate and could not believe it when I discovered that, despite the sentences being abolished, there were still IPP prisoners.

In fact, I told the prisoners in my own characteristic way that they were wrong and that IPPs had been abolished and could not still exist. So I was determined once I got in here to at least discover what on earth had gone wrong. I cannot bear it, now we are tackling the issue, that, even though the sentences have been abolished, they will still exist when we have finished dealing with this Bill. It seems abhorrent.

I wanted particularly to back up the mentoring proposals from the noble Baroness, Lady Blower. If you talk to any families of IPP prisoners, or IPP prisoners themselves, they know that they have been destroyed and damaged by this sentencing regime. They are not gung-ho about it. They do not just say, "Release us, we'll be fine". What they would really gain from is mentoring. It is the kind of creative solution that would help us support the re-sentencing amendments. This is the kind of support that people will need.

It was hard not to shed a tear at the very moving speech from the noble Baroness, Lady Burt, who said that many of the people whose mental health was suffering had been destroyed by IPPs. But we should also note that it could well be that their mental health is not permanently damaged by the ongoing psychological uncertainty, anxiety, torture and so on. We need a combination of the mentoring scheme and a recognition of the fact that the sentencing is, to be crude, literally driving people mad—and the sanest person would go mad. You do not necessarily need medication; you need compassionate, grown-up intervention and support. In that sense, I support all the amendments in this group and all the others, but I really think that, for want of a better phrase, we have to be the grown-ups in the room now and try and sort this out.

Baroness Hamwee (LD): My Lords, I particularly support the amendment from the noble Baroness, Lady Blower, although I support all of them. I also thank the noble and learned Lord, Lord Hope of Craighead, for remembering Lord Lloyd of Berwick in this debate. I recall him very well, indefatigably picking up this baton.

Many of us were alarmed when prisoners were added to victims in this Bill, but this amendment is absolutely with the grain of the first part of the Bill. We talked about ISVAs, IDVAs, child trafficking and guardians, and I recently heard about victim navigators who work as supporters and mentors to victims of modern slavery and human trafficking. We are all accepting the notion that, in slightly different ways, the criminal justice system does not do well by its victims—as has been said, IPP prisoners are victims—and that this needs addressing with a range of support measures. It is very much the direction of travel and I hope that this notion can be pursued.

The Lord Bishop of Leicester: My Lords, I support this group of amendments and it is a pleasure to follow noble Lords and benefit from their considerable wisdom—I am in awe of the learning and wisdom on display this evening. I do not want to repeat a lot of what has been said, so I will keep my speech very short.

I have one or two reflections on Amendments 165 and 166, to which my right reverend friend the Bishop of Gloucester has added her name. She is a regular visitor to prisons across the country and supports the network of chaplains in our prisons who have direct evidence in relation to the mental health of prisoners.

As others have said, we know that many IPP prisoners are stuck in the system and that appropriate psychiatric care in the community is not in place to manage their high-support needs. IPP prisoners suffer greater mental distress and disorders than the wider prison population and, in many cases, it can be said that the sentence itself is the cause of the distress. It disrupts relationships and inspires hopelessness, anxiety, despair and alienation.

I welcome the changes proposed through this Bill, but, for the sake of the prisoners in question and the wider community, we need to ensure that they are getting the appropriate aftercare that they are entitled to and that it is extended in the way proposed in Amendment 166.

Lord Berkeley of Knighton (CB): My Lords, I am not a lawyer but I do have some experience of visiting prisons, thanks to the Koestler Trust, which takes art into prisons. I was quite a close friend of the late, much-lamented and learned Lord Brown, so I feel quite strongly about what I have heard. I have been very moved by this discussion and the toing and froing between quite considerable legal minds.

What I took from my time visiting prisons was that essential ingredient of hope. The arts sometimes gave hope but, of course, there were instances, which we have been hearing about with IPP, where hope had been vanquished. I want to make only one simple point. No greater tribute could be paid to the late Lord Brown than that the Government acknowledge the point he made, and that other noble Lords are making, and come to some arrangement to bring to a close this system, which is not only iniquitous but almost cruel. People need to know at the end of the day that there is some chance of once again leading a normal life.

Earl Attlee (Con): My Lords, on the first group of amendments my noble and learned friend the Minister said that there was a cohort of IPP prisoners who had never been released and he suggested that it was because they did not meet the tests of the Parole Board. My concern is that the prison system has not been able to offer the rehabilitation necessary for these

prisoners to demonstrate that they could safely be released. That is why I strongly support the amendment tabled by my noble friend Lord Moylan.

I also have strong support for the amendment tabled by the noble Lord, Lord Carter, particularly because it refers to prisoners whom the Secretary of State would release if he was able to but cannot. There must be a great cost to keeping those prisoners in prison who are there because the Secretary of State does not have the power to release them.

7 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, this too has been a wide-ranging debate and more wide-ranging than that on the first group. I thank all noble Lords who have spoken because there are a number of amendments in this group, all of which push in the right direction. They are helping the Government to do what they say that they want to do.

The noble Lord, Lord Carter, moved Amendment 154, which is consequential on Amendment 168. That addresses what he called a lacuna and creates a power that mirrors the powers that the Secretary of State has to release prisoners serving a fixed-term licence. This is a very practical way of proceeding, and we support his amendment. My noble friend Lady Chakrabarti, in her characteristic way, asked why, if the Executive have the authority to recall, they cannot be given the authority to release—a very succinct way of summing up the amendment moved by the noble Lord, Lord Carter.

The noble Lord, Lord Moylan, in his Amendment 161, is effectively reversing the burden of proof for IPP prisoners. He described it as a nudge to the Parole Board and discussed how significant that nudge would be, but it is a welcome nudge, none the less. It has the historic credentials of being supported originally by Lord Brown of Eaton-under-Heywood. It is a welcome amendment.

We then had the very interesting intervention by the noble Lord, Lord Clarke, reflecting on the 2012 LASPO Act and that the provision was already in that Act and had just not been enacted by the Government. I remember the 2012 Act and the noble Lord, Lord McNally, taking it through the House as part of the coalition Government. I would be very interested to hear the Minister's response to those points because it would be very difficult not to acknowledge the power of the arguments that have been put forward by noble Lords on Amendment 161.

The noble and learned Lord, Lord Hope, spoke to Amendments 159 and 160. He made interesting points about the independent scrutiny panel and other ways of pushing this in the same direction. We would support those amendments as well.

Perhaps the most moving speech was given by the noble Baroness, Lady Burt, when she read the email from the man who eventually killed himself. That amendment was about aftercare. As she said, we have damaged these people and we owe it to them to give them the extra support.

It was in that spirit that my noble friend Lady Blower, on her Amendment 164, spoke powerfully in favour of independent mentors, a pilot scheme and extra support in various ways. She was very powerfully supported by the noble and learned Lord, Lord Garnier, and the noble Baronesses, Lady Fox and Lady Hamwee. This seems to be a very practical way of supporting people. We have heard that the level of recall is increasing. This should be a mechanism of getting recall down, with people who are coming out of custody less likely to be recalled if they are properly supported.

This has been a wide-ranging debate. There have been a lot of practical suggestions and amendments. We want to encourage all of them, to get out of this Bill a package of measures to protect the public as appropriate and to move away from this sentencing regime, which has been so unfortunate for the last decade.

Lord Bellamy (Con): My Lords, following on from what the noble Lord, Lord Ponsonby, said, the Government agree entirely that our joint objective is to arrive at a package of measures that sufficiently protects the public while dealing with the problems of this existing sentencing regime. That is our overall objective.

My noble and learned friend Lord Garnier invited us to be bold. I suggest that the Government are already being bold in reducing the licence period to three years in circumstances where even the JSC recommended five years. We have already gone further than that very distinguished committee suggested. I do not think that anyone could accuse the present Lord Chancellor of a lack of determination or hard work. To continue the analogy used by my noble and learned friend Lord Garnier of us plodding through treacle, we are really trying to find sensible answers to very difficult questions.

In addition, on the general point of hope and certainty and the very tragic case of Matthew, who committed suicide after he had been in the community for 10 years, as I said earlier these government amendments deal with that point. The "three plus two years" have an automatic determination that gives hope and certainty. That is a very large step forward. It is not a total answer to the problem, but I invite noble Lords to take account of the substantial progress that we are making.

Lord Clarke of Nottingham (Con): I pay tribute to my noble and learned friend and his colleagues in the department, including the present Lord Chancellor and Justice Secretary, who I suspect would privately agree with everyone who has spoken so far on these amendments. As the Government are to be congratulated on the very bold and significant steps that they have taken, as the Minister quite rightly says, and as, to my amazement, we have not had any widespread public reaction to it or even any awareness of it, is there a chance that he could sneak one or two further changes through in the concluding stages of this Bill? I am sorry to talk in such Dog and Duck terms, but that is the political judgment that we all are seeking to make. Everybody wants to get rid of the worst evils of the old IPP sentence.

Lord Bellamy (Con): I thank my noble friend Lord Clarke of Nottingham for inviting us to foregather at the Dog and Duck and consider what more can be done. I venture to suggest—hint is too weak a word—that there are things that we can still do. We may not be able to go as far as some of the amendments; in a

[Lord Bellamy]
moment, I will explain why the Government do not yet feel able—to my great personal regret—to accept the amendment proposed by my noble friend Lord Moylan. I will come to that in a moment. Let us look at what we think might be done and might be achievable.

I will take first Amendments 154 and 168, proposed by the noble Lord, Lord Carter of Haslemere. We have touched on the problem of recalls. We have noted that the Government are trying to reduce the delays in the Parole Board in dealing with recalls, which is one of the major problems. These amendments propose that the Secretary of State should have the power of executive re-release, which applies to fixed, determinate sentences. That is a power which in that context—forgive the jargon—is now referred to as a risk-assessed recall review, which is, in effect, a process for executive re-release. While the Secretary of State must have overriding regard to the need for public protection, the Government can see force in the amendments proposed by the noble Lord.

As I said earlier, those amendments might achieve by a different route the result of the amendments earlier proposed by the noble and learned Lord, Lord Thomas, in order to deal with the problem of inappropriate or other circumstances in which it would be right to exercise an executive power to re-release. If I may say it between ourselves—all this feels within the family, as it were, but of course we are talking to the entire outside world—a particular problem that arises from time to time is where the offender in the community is arrested for a new offence; he is then recalled and the police do not prosecute. What happens then? That is a classic practical problem that the power of an executive re-release might address; I make no promises or commitments, but the Government wish to engage further on this aspect as proposed by the noble Lord, Lord Carter, and supported by other noble Lords, and will give further consideration to it prior to Report. That is that.

Amendment 158, tabled by the noble Lord, Lord Blunkett, and the noble Baroness, Lady Chakrabarti, in relation to prisoners imprisoned under the so-called "two strikes" legislation under the Crime (Sentences) Act 1997, is a bit more complicated. As I understand it, although that legislation was abolished in 2005, similar legislation was reintroduced in 2012 and is now to be found in Section 283 of the Sentencing Act 2020, which provides for a life sentence for a second listed offence, the listed offences in question being set out in Schedule 15 to that Act. In terms of sentences of prisoners who are under some sort of two-strike legislation, we are dealing not just with the old 2005 cohort but with others as well. How we deal with those prisoners and in particular what would justify differential treatment of the various kinds of life prisoners we have seems to the Government an important and large question. The Government's present view is that this problem is somewhat outside the scope of the Bill. That is not to say that we should not continue to consider it. The noble Lord, Lord Blunkett, should be congratulated on raising the issue and putting it further on the radar, and there would be no objection to continuing a dialogue on it, but in the context of the present Bill, it may be too far to go to deal with anything other than IPP. We will have to see, but, at the moment, the Government are not persuaded that that could come within the scope of the Bill.

7.15 pm

We come to Amendments 159 and 160, tabled by the noble Lord, Lord Blunkett, which would put the action plan on a statutory basis and establish an independent scrutiny panel to measure progress against the plan. I can take this point reasonably shortly. The action plan is a real living instrument; it is there to provide further measures to support those serving IPP sentences, both in custody and in the community. There are multidisciplinary progression panels; a senior IPP progression board, chaired at a senior level, which meets quarterly; and an external stakeholder challenge group, which meets prior to those board meetings. There will be operational delivery plans from each of seven HMPPS operation areas for rollout in April, and various other specific measures. The overall purpose, to follow up on the point made by the noble Lord, Lord Berkeley of Knighton, and others, is to restore hope: to restore confidence that something is being done for these prisoners.

The question is whether this should have some statutory backing and teeth—some facility or process for parliamentary scrutiny, for Parliament to be kept informed, for the Secretary of State to report and all the rest of it. The Government obviously do not want to be tied down in detail on the actual content—word for word, sentence for sentence—of a particular plan. However, one could imagine—I speak again indicatively—that there is a good argument to be advanced for a form of statutory backing and having an action plan; for some indication of what should be in that action plan in broad terms; for a process for that plan to be laid before Parliament, and for the Secretary of State to be accountable to Parliament for its contents, so as to reinforce the commitment the Government are making to do their best to sort out this problem. The details would remain to be considered. It is a matter I would greatly welcome a dialogue with other noble Lords on as we move forward, but I think that would reassure everybody, to an extent at least, and reinforce this message of hope we are trying to convey. That is our position on Amendments 159 and 160, for which, in his absence, I warmly thank the noble Lord, Lord Blunkett. I associate myself with all the remarks that have been made about him and his exceptional integrity in the context of this debate.

I turn to Amendment 161, tabled by my noble friend Lord Moylan, which would change the release test applied by the Parole Board. It has echoes of what the noble Lord, Lord Clarke of Nottingham, and others have said about Section 128 of LASPO, which was, it seems, never brought into force. In this context, I associate myself with was said about the late and much lamented noble and learned Lord, Lord Brown of Eaton-under-Heywood, and the noble and learned Lord, Lord Lloyd of Berwick, whom many of us remember very fondly indeed.

At an earlier stage, my noble friend Lord Moylan was kind enough to inquire after my personal well-being. I am fine, but it gives me personal difficulty to have to say to your Lordships that the Government are not

quite persuaded of the need for or desirability of my noble friend's Amendment 161. There are basically five reasons for that. Some are more important than others, and I will identify the most important one.

As your Lordships know, elsewhere in the Bill there is a clear reaffirmation of the release test based on public protection grounds. The first point is that the Government are reluctant to take a different approach to IPP prisoners that would not necessarily be consistent with the general thrust of the Bill and the general public protection test set out in the Bill. We need consistency across the Bill.

Secondly, despite arguments to the contrary, the Government feel that the amendment is based, to an extent, on a misapprehension that there is some burden of proof, even if not a formal one, on the prisoner to justify their release. The Government do not consider that there is such a burden of proof or that there should be such a burden on the Secretary of State, because the question for the Parole Board is an objective one as to whether it is safe to release the prisoner. That question is not, and should not be, subject to any presumption in favour of or against release. The implied suggestion that the cards are always stacked against the prisoner is, in my respectful submission, rebutted by the fact that about 80% of those originally sentenced under this provision have been released at least once—so we are down to a last cohort, if you like.

This is the most important point, which the noble Lord, Lord Ponsonby, very fairly started with. I share his look of regret that we are dealing with this very difficult problem. The purpose of Amendment 161, as the Government understand it, is to make it easier to release the remaining cohort, but by definition this cohort is the most difficult of all to manage: they have been up before the Parole Board many times, some as many as 10 times, and many three, four, five or six times. The Parole Board has never so far been satisfied that they are safe to release, so making it easier to release those—

Baroness Fox of Buckley (Non-Afl): Unlike other prisoners, they may have been up before the Parole Board many times, but this is long after their tariff has ended and the sentence originally given was handed out to them. That is quite a distinction from other prisoners. The suggestion that they are a particularly difficult group to manage because they keep going before the Parole Board slightly misses why they have become a difficult or different group. The main thing is that they would have been released if they were any other group of prisoners, yet they have to go to the Parole Board to say that they are safe and risk-free maybe five or six years after their tariff has ended. That is why people see the burden of proof being in the direction it is in. They also have to fulfil a range of courses and so on, which people are not convinced will even indicate that they are safe anyway, but we will get on to that. To the suggestion that we do not understand why anyone is raising this, it is because the set of circumstances for these prisoners is very different. That is why we are all here talking about it.

Lord Bellamy (Con): My Lords, I entirely understand the point that the noble Baroness is making, which effectively encapsulates the problem that we are up against: how do we protect the safety of the public on the one hand and, on the other, deal with the outstanding problem? I think the Government's point is that to make it easier to release those prisoners who are potentially most likely to cause harm is counterintuitive and unacceptable from the point of view of public safety.

Baroness Fox of Buckley (Non-Afl): I did not suggest that they were more likely to cause harm. The argument is whether we accept that they are deemed dangerous and therefore cannot be let out through the Parole Board, because what deems them dangerous is a set of hoops that they have to go through and that do not necessarily indicate that they are dangerous. That is one of the difficulties with this. It is doublethink and double-talk.

Lord Bellamy (Con): My Lords, as I have tried to say, the whole purpose of the action plan is to create a framework in which this cohort, properly managed, could progress to safe release, with sentence plans, psychological support, support from psychology services and other support towards a safe release. That is a better route than tinkering with the release test. I will not say it is exactly a legal quibble, but it is a bit of a legalism to be fiddling with the release test.

Lord Clarke of Nottingham (Con): The problem is that the Parole Board is made up of real-life men and women with a very heavy responsibility. There is an underlying fear about the consequences of ever releasing somebody who then goes on to commit some terrible crime. The reality is that they contemplate the appalling reaction that they would get in the media, the public inquiry that would condemn them and the destruction of their reputation if they ever moved to let out somebody who did something terrible. Ministers share the same reserve when it comes to undoing this.

The proposal to alter the burden of proof was designed to give a little encouragement, a little more courage and a little help to people in getting over that fear of the recriminations if they ever made a mistake. It would be an explanation that the Parole Board could give if it had let somebody out. Then, it could detain only those where it was satisfied that it could see that there was a risk from the person being released. That would make a great change to the numbers being released. At this stage, in the interests of justice, the risk to the public is one that we should contemplate as not as severe as everybody fears.

Lord Bellamy (Con): I see the force of the points being made by the noble Lord, Lord Clarke. I respectfully suggest that the fear of the media is not the driving force in the case of this Lord Chancellor or, if I may say so, his Parliamentary Under-Secretary of State currently at the Dispatch Box. We are looking at the real question of public safety.

If I may ask it rhetorically, who speaks for Pauline Quinn? Admittedly, that was not an IPP case. Pauline Quinn was aged 73, was disabled and could not protect herself. She was brutally murdered by a convicted killer released on licence. I respectfully suggest

[Lord Bellamy]
that these risks are very difficult for any responsible Government to take, irrespective of what the media might say.

This raises another point. At the moment the Government are not convinced that this would make a significant difference, because the Parole Board, even under the revised test suggested by my noble friend Lord Moylan, would still have to be satisfied on the issue of the protection of the public. It is perfectly likely that one is simply raising false hopes. It does not change the process that the Parole Board has to go through to look at these very difficult individuals, who are very much at risk of harm and very difficult to manage in the community.

If you read the 2023 report from the Chief Inspector of Probation, you see how difficult it is to manage these individuals—those who have already been released, not the unreleased cohort. This is a very difficult area. At the moment the Government are not persuaded rightly or wrongly that it is a correct approach to make it easier to release dangerous people. That is the Government's position, and I have explained it as best I can.

Lord Thomas of Cwmgiedd (CB): I want to ask the noble and learned Lord about the word "proportionate". Is there an objection to that word? It is key, because it enables you, in judging safety, to take into account the responsibility of the state for what we have done to these people.

7.30 pm

Lord Bellamy (Con): The Government's position, frankly, is that the word "proportionate" causes more difficulties than it solves. It suggests that the test should be some sort of balance between the risk that this prisoner may present to the public and some sort of fairness or other consideration of the particular interests of that prisoner. The whole thrust of the Bill—it is not just the clauses that we are dealing with at the moment but Clauses 41 and 42—is to say that the public protection test is a public protection test: that is the only criterion. So the Government do not, I am afraid, accept that "proportionate" is a useful or necessary addition to this clause.

Lord Carter of Haslemere (CB): Should I wind up on this group?

Lord Bellamy (Con): I just need to finish. Noble Lords come at me from all directions, which is perfectly fine, but I need to finish the group.

I turn next to the amendment proposed by the noble Baroness, Lady Blower, with the idea of mentors. I can see the point she is making, the strength of the argument and all those things, but it might be that this amendment overlooks what we have at the moment: the probation officer manager in the prison, who is responsible for that prisoner; the key worker in the prison, who is also responsible for that prisoner; and the community offender manager, who will look after that prisoner in the community. In addition, we already have in the prison all kinds of other support services, including the chaplains mentioned a moment ago by the right reverend Prelate.

The Government are hesitating about the wisdom of introducing yet another person into this already comprehensive structure—or what the Government believe is a comprehensive structure—by way of a statutory provision for mentors. That is not to say that there could not be better organisation of voluntary agencies or, despite what I have said, some other route to consider whether there are ways of strengthening the support of prisoners on some non-statutory basis. However, in view of the present arrangements for the prison offender manager, the key worker and the community offender manager via the Probation Service, the Government are not yet persuaded that mentors would be a proper statutory route to go down. I am sorry I could not get closer to what the noble Baroness is driving at. I very much thank her for her suggestions. I am sure that her intervention puts the question on the radar and advances the debate, but that is the Government's position.

Amendments 165 and 166, tabled by the noble Baroness, Lady Burt of Solihull, are directed at clarifying entitlements to aftercare and related issues. It is perfectly true that Section 117 of the Mental Health Act 1983 provides that those who are entitled to that support should receive it, and the protection of mental health through the action plan is part of the action plan. There are further measures in that regard through the progression panels and the use of the psychology services.

People in prison are entitled to exactly the same range of health service care arrangements as people in the community, and there is a national partnership agreement with health and social care in England. I hope I am not seen as doing less than justice to these amendments, but the bottom line on this is that, through the action plan and other measures, there are wide-ranging efforts to support mental health aftercare and the mental health of prisoners. The Government are not yet persuaded that a statutory amendment to the Mental Health Act is required to advance that cause. On this, as in other contexts on this Bill, the Government are, of course, still in listening mode but, at the moment at least, we are unpersuaded that this is a proper way forward.

I hope that I have dealt, if not necessarily to noble Lords' satisfaction, as best I can with the points made. I invite noble Lords not to press their amendments.

Lord Carter of Haslemere (CB): My Lords, I am grateful to all noble Lords who have contributed to this constructive, powerful and moving debate, on all sides. Some heartfelt comments have been made. I could not begin to summarise them without detracting from their force. I thank all your Lordships for this.

I have written down some positive points, including some phrases shared by the noble Lord, Lord Moylan, and the noble and learned Lord, Lord Garnier, all on the same side. One was "unity of purpose". That is encouraging. I think I even heard the Minister say "within this family", which is a lovely phrase to use in debating something as emotive as this.

We have a unique opportunity. These occasions to make a difference for this cohort of prisoners, who have been treated so unfairly, do not come up very

often. I urge the Minister to keep an open mind on everything that has been said and on these amendments, all of which would improve the position of IPP prisoners. I am very grateful to him, and encouraged by his reaction to my amendments. I urge him to have that same openness of spirit and to be bold for the sake of this group of prisoners, who have been treated so unfairly over the years. That injustice is continuing. With that, I beg leave to withdraw my amendment.

Amendment 154 withdrawn.

House resumed. Committee to begin again not before 8.08 pm.

UK Armed Forces

Commons Urgent Question

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

"It is an honour to set out how our outstanding Armed Forces are doing incredible work around the world, protecting the UK and our allies. That includes operating on every single NATO mission, supporting Ukraine against Putin's aggression, and tackling Houthi attacks on shipping in the Red Sea. We are spending a record amount on defence. That includes an extra £24 billion in cash terms between 2020 and 2025, which is the largest sustained increase since the end of the Cold War. The Government fully recognise the growing security threat, which is why we have set out our longer-term aspiration to invest 2.5% of GDP on defence when fiscal and economic circumstances allow. We are already spending more than 2% of GDP on defence, exceeding our NATO target. We are delivering the capabilities that our forces need, significantly increasing spending on defence equipment to £288.6 billion over the next decade, and introducing a new procurement model to improve acquisition.

For the Royal Navy, that includes Dreadnought, Astute and AUKUS submarines, as well as fleet solid support ships and Type 26 and Type 21 frigates. For the Army, Future Soldier will deliver the largest transformation in more than 20 years, re-equipping and reorganising to be more deployable and lethal. The RAF will become an increasingly digitally empowered force, with the Global Combat Air Programme providing a sixth-generation fighter jet capability, building on that provided by our Typhoons and F35 fifth-generation aircraft today. Our defence Command Paper 2023 set out our plan to deliver a credible war-fighting force, generated and employed to protect the nation and help it prosper now and in the years to come. We will embody a fully integrated approach to deterrence and defence, including across all domains and across government, by exploiting all levers of state power, and with allies and partners".

7.38 pm

Lord Coaker (Lab): My Lords, how will the state of the UK Armed Forces be helped by the cuts to defence spending announced in the Budget? Table 2.1 in the Red Book shows defence resource spending cut from £35 billion in 2023-24 to £32.8 billion in 2024-25, and table 2.2 shows defence capital spending cut from £19.2 billion in 2023-34 to £18.9 billion in 2024-25. How on earth does that defence spending cut help the state of our Armed Forces?

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): My Lords, I will say something about the Armed Forces to start off with. Our Armed Forces are, at all times, ready to protect and defend the UK. We continue to meet all operational commitments, including supporting Ukraine in the face of Putin's illegal and unjust invasion and tackling Houthi aggression in the Red Sea. The Royal Navy contributes 25% of NATO's maritime strength, which has four times as many ships and three times as many submarines as Russia. The RAF has greater lift capacity than at any time since the Second World War. The Army was globally deployed in 67 countries last year, with 14,000 troops deployed on exercises and operations across Europe. We are rightly proud of all their efforts.

On the money side, I have gone into this in quite some detail, and it is the difference between budget and outturn. Budget is a figure struck at the beginning of the financial year, and outturn is what actually gets spent by the end of the financial year. In 2023-24, the budget was £51.4 billion and the outturn was £54.2 billion. This year, the budget is £51.7 billion and the outturn is £55.6 billion—a 1.8% increase of £1.4 billion.

Lord Stirrup (CB): My Lords, yesterday in another place a Conservative Member suggested to the Minister for Defence Procurement that the timing of the 2.5% target should be determined by the level of threat rather than as economic conditions allow. In response to this entirely rational and pretty obvious proposition, the Minister replied:

> "I do not think that we can commit to levels of public expenditure … without being confident that the economy can support them in a prudent fashion".—[*Official Report*, Commons, 11/3/24; col. 25.]

Does the Minister really think that giving fiscal considerations priority over the scale and immediacy of the threat to this nation's security can be characterised as any kind of prudence?

The Earl of Minto (Con): My Lords, as I have said before, and I can do no more than say again, we are faced with a lot of conflicting needs and requirements from all the different departments of Government. Looking at the level of defence spending, we are spending more in financial terms than we have ever spent before—the highest level in history—and it is increasing in real terms. It is not where we would like it to be, and I think the Prime Minister has made clear the direction of travel in which he wishes it to go.

Lord Lee of Trafford (LD): My Lords, to say that defence expenditure will be increased to 2.5% "when economic conditions allow", when Russia and China are massively increasing their defence expenditure and when the world is a tinder-box at the present time, is frankly totally unacceptable and a complete dereliction of national responsibility. How does the Minister react to the recent PAC report that only two of the MoD's 46 equipment programmes are rated highly likely to be delivered on time, on budget and of high-enough

[Lord Lee of Trafford]
quality? How does the MoD justify employing 60,000 civilians—virtually the same number as over the last five years? What do they all do, when the Army itself is only about 70,000?

The Earl of Minto (Con): My Lords, there were a lot of questions there. On the question of the contracts, the DE&S is actually overseeing 2,600 different contracts across 550 different programmes, delivering, believe it or not, 98% of key user requirements. It achieves 90% of the strategic milestones and, contrary to public perception, and indeed to perception within this House, it delivers well to budget.

Lord Robathan (Con): My Lords, my noble friend is making a good fist of defending a frankly indefensible brief. He and I both served together in the Cold War —a long half-century ago—but there is now a hot war in Europe. It is taking place as we speak, hundreds of thousands of people are being killed, and it is against the same opponent. As the noble Lord, Lord Lee, has just said—and I hate to agree with the Liberal Democrats —we cannot say that we will set out our long-term aspiration to increase defence spending "when fiscal and economic circumstances allow". It is now; we must spend money now before the whole of European prosperity and our prosperity are destroyed.

The Earl of Minto (Con): My Lords, I can do no more than take that message back, and take the tone of the House back, to the Secretary of State. He will not be surprised, but I will certainly undertake to do that.

Lord Browne of Ladyton (Lab): My Lords, the Minister will remember that, last year, a senior US general remarked that the British Army was no longer regarded as a top-level fighting force. Some short time thereafter—I cannot remember exactly when it was—at Defence Questions, the then chair of the Defence Select Committee invited the Secretary of State to comment on these remarks as he said they tallied with his committee's own findings that the conflict in Ukraine had exposed serious shortfalls in the war-fighting capability of the British Army. I have no way of judging whether any of that is correct, but what interested me was the Minister's response. The Minister, Mr Heappey, responded that

"underinvestment in the Army … has led to the point where the Army is in urgent need of recapitalisation".

That was the word he used: "recapitalisation". He went on to say:

"The Chancellor and Prime Minister get that, and there is a Budget coming".—[*Official Report*, Commons, 30/1/23; col. 5.]

We have now had two Budgets. There was no recapitalisation in the first. There certainly was no recapitalisation, for the reasons that my noble friend pointed out, in the second. So, when is this recapitalisation going to happen? This, out of the mouths of Ministers, is in direct contrast to the description the Minister gives this House. Why is that?

The Earl of Minto (Con): My Lords, one can look at the recapitalisation—and I understand it is a very strong word—and the environment we find ourselves in at the moment. Let us think about the orders we have placed at the moment. There are 22 ships and submarines either on order or under construction, and I have seen some of them; we have got 1,200 armoured vehicles on order; we support, in this country, over 400,000 jobs across the union. We spend £25 billion with the UK defence industry, including £5.5 billion on shipbuilding and repair, close to £2 billion on aircraft and spacecraft, and over £2 billion on weapons and ammunition. We continue to support the defence industry and our Armed Forces as best we can. On the absolute amount of money, I completely understand the level of concern.

The Earl of Effingham (Con): My Lords, the Army, the Navy and the Air Force offer amazing opportunities, but our Armed Forces' numbers have been shrinking. We saw the largest number of applications to the Royal Navy in eight years during January, but one swallow does not make a summer. We need a proactive, long-term strategy, aside from pay and accommodation, to drive future recruitment. I ask the Minister, what is that strategy?

The Earl of Minto (Con): My Lords, as I have said before, modern war fighting is as much about capability as numbers. Having said that, much is currently being undertaken to improve and retain force numbers. Between, for instance, June 2021 and June 2022, the Army had 53,000 applications. In the same period last year, we had 69,000 applications. So we are moving in the right direction. We are easing the process of joining, and indeed or rejoining. Pay, conditions, accommodation, childcare—all this sort of stuff—are extremely important. It was in my day and I am sure it is now. We are also introducing a new, single, streamlined recruitment programme which is cross-service and which is about to be awarded this year. We hope it will come into operation by the beginning of 2027. So, I take my noble friend's point that joining the forces is a great career opportunity and it should always remain so.

Gibraltar: UK-EU Negotiations

Commons Urgent Question

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

"The Minister for Europe, the Under-Secretary of State for Foreign, Commonwealth and Development Affairs, my honourable friend the Member for Aldershot (Leo Docherty), is currently in Gibraltar, where he is meeting the Chief Minister to continue our joint efforts to conclude a treaty with the European Union. With the Government of Gibraltar, he will also be assessing contingency plans in the case of a non-negotiated outcome. His visit is also an opportunity to reiterate once again the UK's steadfast commitment to Gibraltar.

In December 2020, the UK, with Gibraltar and Spain, agreed a political framework on how a future agreement between the UK and the European Union in respect of Gibraltar would function in the interests of all parties. This represented the first stage of a two-part process whereby the EU would examine a request from Spain in agreement with the UK to

initiate the procedure for the negotiation of a separate UK-EU agreement in respect of Gibraltar. The key objective of the political framework is to safeguard Gibraltar's prosperity by ensuring that people and goods can move easily between Gibraltar and the surrounding communities. This is important for the whole region's economy.

The UK-EU negotiations began in October 2021, and 17 rounds of formal negotiations have taken place in Brussels and London. These have been supported by numerous technical sessions as well as official and ministerial engagements. The Foreign Secretary has met Commission Vice-President Šefčovič and, separately, Spanish Foreign Minister Albares, and underlined the UK's commitment to concluding a UK-EU treaty. The UK is steadfast in our support for Gibraltar and will not agree to anything that compromises sovereignty. While negotiations have been technically and politically complex, significant progress has been made, and both the UK and EU have presented texts throughout the negotiations.

Agreement can be achieved only by respecting the balance of the political framework. Throughout this process the UK Government have worked side by side with the Government of Gibraltar. Throughout our negotiations with the EU, the Government of Gibraltar have formed part of our negotiating team. Alongside our joint efforts to conclude negotiations, the Foreign Secretary and the Chief Minister agreed that it remained prudent to continue working together to ensure that robust plans were in place for all scenarios, including a non-negotiated outcome. Alongside the UK-EU negotiations, the UK, with Gibraltar, has maintained a regular dialogue with Spain. It is in everyone's interest to conclude a UK-EU treaty to help secure future prosperity for Gibraltar and the surrounding region. This can be done without prejudice to our respective positions on sovereignty and jurisdiction.

As I mentioned, the Minister for Europe is in Gibraltar today meeting the Chief Minister and Deputy Chief Minister of Gibraltar. This is a continuation of the close working relationship between our two Governments, in our efforts both to conclude an agreement and to ensure that robust contingency plans are in place. We are unable to provide a running commentary on the negotiations, but I can assure the whole House that the UK's position remains as it has been throughout: we will not agree to anything that compromises sovereignty. The UK stands steadfast in our support for Gibraltar and in ensuring that its sovereignty is safeguarded".

7.50 pm

Lord Collins of Highbury (Lab): My Lords, as Stephen Doughty made clear yesterday, the sovereignty and self-determination of Gibraltar are not up for debate. It is critical that the Government now work hard to get a deal across the line for business, people and communities on both sides of the border. On the Europe Minister's visit to Gibraltar yesterday, David Rutley said the purpose was

"to see what support they might need in any scenario that might arise, but we are working in good faith towards a deal".—[*Official Report*, Commons, 11/3/24; col. 38.]

Does the Minister accept that it would be helpful if the Europe Minister made a Statement that could be repeated in this House so that we could get the details of that scenario planning?

What assessment has the Minister made of the ongoing impact of uncertainty on the economy of the Rock? I hope the Europe Minister was able to speak not only to the Chief Minister, other Ministers within his Government and Gibraltar parliamentarians but to businesses, particularly the trade unions. I must declare an interest: I was a trade union officer for 20 years representing workers in Gibraltar, so I know of their deep concern about the future.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I suppose I should declare an interest: Gibraltar in Arabic is actually Gibr al-Tariq, so I suppose I have a personal claim over the territory under discussion.

I agree with the noble Lord and I thank His Majesty's Official Opposition, because it is essential at this time of negotiation that we speak with a single voice. The noble Lord rightly points out that negotiations have continued on the framework that was decided on in 2020. There have been about 17 rounds of negotiations and good progress is being made, but I am sure he will agree with me and my colleague the Minister for Europe that we must ensure that planning and support are given for all negotiations. Of course, we want progress to be made, and it is, but it is right to have contingency planning. In that regard, the Europe Minister met the Chief Minister, while the Attorney-General of Gibraltar is also very much a part of the negotiating team.

I hear what the noble Lord says about a possible update. Negotiations continue, and the Foreign Secretary himself is engaged on that, but I will certainly discuss with the Minister for Europe how we can further update the other place and your Lordships' House.

Baroness Northover (LD): My Lords, the old conflicts over Gibraltar were settled when both Spain and the UK were in the EU, and of course 96% of Gibraltarians voted to stay in the union, but now the EU must take into account what its member state Spain wishes. Fortunately, it seems to be clearly in everyone's interest to conclude a treaty that helps to secure the future prosperity of Gibraltar and the region around. Any solution must be in the interests of the people of Gibraltar as determined by them and not by other factors, but can the Minister confirm that the UK will fully support Gibraltar should it prove impossible to secure a deal?

Lord Ahmad of Wimbledon (Con): I assure the noble Baroness and your Lordships' House that the United Kingdom's support for Gibraltar is steadfast, and we will not agree anything that compromises Gibraltar's sovereignty. I also agree with the noble Baroness about the importance of ensuring that an agreement is reached in the interests of all. Let us not forget workers, which the noble Lord, Lord Collins, mentioned, with whom we are engaging directly. About

[Lord Ahmad of Wimbledon]
15,000 workers cross from Spain into Gibraltar, which is about 50% of the workforce. That demonstrates the importance of getting a deal that works for all.

Baroness Butler-Sloss (CB): My Lords, I am a member of the All-Party Parliamentary Group on Gibraltar, so I visit it regularly. I have been to see the airport, particularly the side that has been built for Spain. What is expected for someone like me arriving by air at Gibraltar Airport and going through both Spanish and British immigration? I am wondering how that is going to work.

Lord Ahmad of Wimbledon (Con): I am sure that when they see the noble and learned Baroness, there will be a nod through at both ends.

There will be two processes; there will be checks by both Gibraltar and Spain. We are negotiating a mobility agreement that will allow for that free passage. At the moment, as the noble and learned Baroness will know, a double check is done for anyone visiting Gibraltar and Spain. Negotiations are in a good place, and once they reach a more defined status, we will update the House. With regard to the Schengen agreement, we are not going to be asking, nor will Gibraltar be joining, but there will be a mobility agreement in that respect.

Lord Bellingham (Con): My Lords, does the Minister agree that one of the overwhelming conclusions of these negotiations has been the critical need to listen to the people of Gibraltar and respect their views? Will the Minister agree to take away and look again at the idea of the Gibraltarians having their own MP in Westminster? After all, they had an MEP—the MEP for the south-west region also represented Gibraltar—and it goes without saying that if it were a French territory, and thank goodness it is not, it would have a député in the Assemblée Nationale. Will the Minister take this idea away? It would be a significant improvement in the extent to which their views were heard in Westminster.

Lord Ahmad of Wimbledon (Con): My noble friend puts forward a practical suggestion that I will certainly take back. However, he will be aware that the Foreign, Commonwealth and Development Office engages regularly with Gibraltar not just on a bilateral basis but as one of our British Overseas Territories through the Joint Ministerial Council. That allows us to understand both collective and specific issues. I will certainly update my noble friend in that regard. I agree with him that it is important that Gibraltar, as I have stated—for both country reasons and a personal reason—stays part and parcel of what we define as global Britain.

Lord Hannay of Chiswick (CB): My Lords, I should declare an interest because I was personally and deeply involved in the negotiations that led to the ending of the closure of the border between Gibraltar and Spain in the early 1980s. I assure noble Lords, as a frequent visitor at the time, that that closed border did not help either Gibraltarians or Spain. We should not think that there is a soft option in no deal; it would be a hard option. Can the Minister confirm that His Majesty's Government will not flinch one bit from the strong support they have given hitherto to the Chief Minister, who has negotiated with great skill, ingenuity and determination? May that continue, and may it succeed.

Lord Ahmad of Wimbledon (Con): The noble Lord speaks with great insight. I can give him a cast-iron assurance that I agree with every word he has said. We work closely with the Chief Minister and his team. I believe he will also be visiting London this month and meeting various committees in that respect. As I said to the noble Baroness, Lady Northover, the UK is steadfast, and it will not agree anything that compromises Gibraltar's sovereignty.

Baroness Bennett of Manor Castle (GP): My Lords, one of the many areas that cause conflict between Spain and the UK over the issue of Gibraltar is tobacco smuggling. Gibraltar does not apply sales tax or other levies, while Spain says that smuggling costs it €400 million a year in lost import duties. This and a number of other dubious business practices associated with Gibraltar have an impact both on the EU and on the UK. Are the Government looking at how some of these issues might be addressed to help to progress the negotiations?

Lord Ahmad of Wimbledon (Con): As the noble Baroness will know, there are provisions within the political framework for a level playing field. That will allow for mutual standards on matters covering labour, the environment and taxation, and it will cover all sectors.

7.59 pm

Sitting suspended.

Victims and Prisoners Bill

Committee (7th Day) (Continued)

8.08 pm

Amendment 155

Moved by ***Baroness Chakrabarti***

155: Clause 48, page 52, line 23, after ""three";" insert "and

(ii) at end insert "in the case of a person serving a sentence of imprisonment for public protection and one and a half years beginning with the date of his release in the case of a person serving a sentence of detention for public protection.";"

Member's explanatory statement

This amendment would halve the qualifying period for men and women who were sentenced as children in line with other statutory provisions, such as when convictions become "spent", to reflect the principle that children change in a shorter period than adults.

Baroness Chakrabarti (Lab): My Lords, once more, I rise to move the lead amendment in the group in place of my noble friend Lord Blunkett. I think we can take this group with some speed, which will not diminish the power of his arguments or these amendments. These amendments concern men and women who

were sentenced to indeterminate detention when they were children. Their sentence is called "detention for public protection". All the arguments we have been airing in earlier groups are, to my mind, turbocharged in the context of these people—all the injustices are so much worse given that they were children when these appalling sentences were placed upon them.

The amendments seek to recognise our contemporary understanding of child development and to legislate with the according enlightenment and humanity. Amendment 155 halves the qualifying period before release eligibility to one and a half years. Amendment 162 ensures quarterly, instead of annual, progression planning reviews to avoid this cohort becoming stuck in the system and to recognise that, when one is younger, one develops at a different rate. One develops for longer than we used to think and at a swifter rate, including positively, we hope than would be expected of fully mature adults who have committed crimes. Amendment 163 requires the Secretary of State to refer these prisoners—because that is effectively what they are—to the Parole Board annually for enhanced scrutiny.

All of this prioritises this cohort and adds extra pressure on scrutiny and nudging things along to make sure that, if at all possible, they might be released. Not a single one of these amendments would change the basis for release. Regarding the difficulties that the Minister was reaching for in earlier groups, not a single one of these amendments would put a single person on the street. But, given the age at which they were sentenced and the increased injustice of that sentence, it would give closer and more regular scrutiny to their progression through the system—hopefully, towards release.

Finally, I declare an interest in that, for most of the last three years, I have had the privilege of serving under the noble Baroness, Lady Hamwee, who was the founding chair of your Lordships' Justice and Home Affairs Committee. I have recently rotated off that committee in favour, I am glad to say, of my noble friend Lord Bach, who will no doubt be a wonderful addition to that committee. The last report from that committee when I served on it, again under the chairmanship of the noble Baroness, Lady Hamwee, was about community sentencing versus incarceration. In their lengthy response, in paragraph 90 regarding young people, the Government said:

"All offenders are legally treated as adults from the age of 18, however there is powerful evidence which shows that young adults continue their psychosocial maturity development well into their mid-twenties. Recognising this evidence, the Ministry of Justice and HMPPS is committed to developing approaches and support to meet young adults' distinctive maturity and developmental needs while ensuring public protection".

That was the Government's position very recently—as of weeks ago. It is my suggestion to the Committee that that ethos fuels these amendments.

Therefore, the Government should have no difficulty, given the age of these people when sentenced, in accepting these amendments or some version of them. As I said, not a single person will walk the streets as a result of these amendments, but they will get extra support and scrutiny which is appropriate for people who were sentenced to indeterminate sentence when they were children.

8.15 pm

Baroness Burt of Solihull (LD): My Lords, I have added my name to all the amendments in this group, initiated by the noble Lord, Lord Blunkett, and so well presented by the noble Baroness, Lady Chakrabarti.

While I have made my feelings clear on many occasions on just how egregious the treatment of all IPP prisoners has been, the situation for individuals sentenced as children has been arguably even more cruel and wrong. As I understand it, there are 85 people currently serving an IPP sentence that was handed down when they were children and some were of a very young age.

The teen years are such a formative time, and of the 85 remaining—who are now all adults—they have arguably had the worst start in life; 36 of them have never been released. What chance have they got of adjusting back into whatever might pass as a normal life? The only upside of this is that, because there are not that many of them, more time and attention can therefore be focused on fitting them for release.

According to the Prison Reform Trust, there is a window in which people typically develop the support and inner resources to desist from crime. As the noble Baroness, Lady Chakrabarti, has said, this unfortunate cohort is rapidly passing that window, which means that giving them the maximum possible support as quickly as possible is vital.

Amendment 155 would halve the qualifying period in which other statutory provisions for children become spent. Amendment 162 would give heavier support to DPPs who are unsuccessful in staying on parole or getting released at all. My worry about changing sentence planning reviews from annually to quarterly, however, is that if nothing has happened it might devalue the relevance of the review and dishearten the prisoner.

Amendment 163 would halve the time between referrals for consideration by the Parole Board to one year, which I heartily commend. The issue for me is the cost in financial and human resources, to which the Minister might want to refer. The only upside of this concentrated help is the fact that there are not many DPPs in terms of the overall cost that is being expended on IPP prisoners.

If these young people are to have a real chance, they need the help now, while their mind and their development can still be receptive to another way of living their life.

Lord Hope of Craighead (CB): My Lords, I would like to add a few words to what has already been said about Amendments 162 and 163 devised by the noble Lord, Lord Blunkett. The really important part of Amendment 162 is in proposed new subsection (2), which would set out in statute the aim of the convenor of these planning meetings. It states that they are taking place

"with a view to ensuring that all possible steps are taken to enable their safe release at the earliest possible time".

Those words emphasise the purpose of the reviews and therefore enhance the care that would be taken to conduct them by the Secretary of State.

As far as Amendment 163 is concerned, the first part of it is already the existing law. It says that for

"a person serving a sentence of detention for public protection, the Secretary of State must refer his case to the Parole Board … after he has served the relevant part of his sentence".

[Lord Hope of Craighead]
That is a tariff and is already standing practice. What is new is the proposal that the Secretary of State must refer a person's case to the Parole Board,

"where there has been a previous reference of his case to the Board, no later than the period of one year beginning with the disposal of that reference".

The emphasis in both these amendments is on the regularity of reviews. When I was Lord Justice General, I saw this working well in my visits to the Parole Board. As I mentioned earlier, there are files prepared that have to be examined in detail, but the Parole Board appointed a particular member to take on a particular case, so that each time it came up for review, the member could reinforce what was in the files by explaining his or her own view of what was taking place and, as time went on, reinforce it by previous discussions. In that way, continuity was provided to the whole process.

Each board will have its own method of dealing with it, but the structure of what is provided by these two amendments provides a basis on which the Parole Board can exercise its views with a view to achieving what is set out in proposed new subsection (2) in Amendment 162, ensuring that all possible steps are taken to ensure safe release at the earliest possible time.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have added my name to Amendment 155 in this group. The principles behind and the purposes of the amendments we have been discussing have already been well forked over, so I will cut straight to the chase.

I have intervened in Committee only on one other group of amendments, a few weeks ago on restorative justice. I link the two because they offer the opportunity to break cycles of offending and to give the individuals involved a chance of hope, to avoid the hopelessness that my noble and learned friend the Minister said was so pernicious when he was summing up the first group of amendments; the noble Lord, Lord Berkeley of Knighton, also said it when contributing to a later group. Nowhere can this be more important than when dealing with young offenders. As the noble Baroness, Lady Chakrabarti, said, the individuals who make up the group covered by these amendments are unlikely, at the time of their initial sentence, to have a great deal of emotional maturity or self-discipline. They are children, as she pointed out. This is unsurprising, given the likelihood of their background and their life chances prior to their sentence. One hopes that the framework provided by the prison regime for young offenders will accelerate that emotional and other development, paving the way for a return to society.

I endorse the remarks of my noble friend Lord Attlee and the noble Baroness that this is not seen as a soft option. We have to make sure that the public are properly protected—otherwise, respect for and confidence in our judicial and penal system are undermined.

This group is going to undergo a further shock. At a meeting of the All-Party Group on prisons, we had evidence from young people—25 year-olds, really—about what it was like to move from a young offender institution to full prison life. The evidence was pretty startling. The guy said that life in a young offender institution was no bed of roses, but when you got into prison it was a whole different world—quite shocking. Clearly, he was very shocked by it. Indeed, Recommendation 24 of the Justice and Home Affairs Committee report addresses the issue of how you transition and what it means to the people who are so caught up in it. He went on to say that, for some people, it hardened them into a life where they would be persistent offenders but, for some others, it was a wake-up call. They saw that it was a chance, if they managed to get their act together, and were encouraged, to be able to break out—and part of that was seeing some light at the end of the tunnel. This is one of the issues that is very important in these amendments: it is about light at the end of the tunnel, and people being able to see that something can happen to them.

I shall end with a different example that is completely outside the matters that we have been discussing but which might give a sense of what it feels like to be given an IPP sentence. My father's best friend was captured at Dunkirk in June 1940. He was 24 years old, and he was in a prisoner of war camp until May 1945, when the war came to an end—first in Germany, then in Poland. He went in at 24 and came out at nearly 30. He did not talk about it much, but I remember when I was about 20 him being prepared to talk about what the experience was like. So much of it was like having an IPP sentence.

It began with a sense of shame: had you done enough? Should you have gone on to the bitter end and had you, by surrendering, let your country down? But that died away. Then it was about hardship, which was quite great in the first winter of the war, 1940-41, until Red Cross parcels and parcels from home began to arrive. But my father's friend said that none of that in any way matched up to the appalling sense of hopelessness—that month after month and year after year ticked by, and you could feel your life running through your fingers.

My father's friend could articulate that, but I suspect that that is what quite a lot of the IPP individuals are feeling, to some extent, even if they are not able to put it clearly into words. They are the ones for whom I hope we can find ways to help, so that they get that sense of hope. In the prisoner of war camp—they put it rather more roughly in those days—a lot of people behaved rather oddly. What they were saying, of course, was that they were under extreme mental stress. There were no drugs, of course, because they were not available in those days, but the stress of persistent confinement in very crowded conditions undoubtedly had a huge effect on a number of people in a prisoner of war camp.

That is why we need opportunities for reviews of individual cases to take place as often as is consonant with public safety. That is why I support this group of amendments and why I put my name to Amendment 155 in particular.

Baroness Thornton (Lab): My Lords, I am very struck by the words of the noble Lord, Lord Hodgson, about light at the end of the tunnel. That is what this suite of amendments is about for a cohort of young people who, at the moment, will not be seeing a light at the end of that tunnel. I thank my noble friend Lady Chakrabarti for speaking with such clarity about what these amendments are about, and other noble

Lords who have described what this must feel like for a young person and pointed, as the noble and learned Lord, Lord Hope, did, to some of the remedies that these three amendments offer to the Minister and the Government. I hope that they take them up and carry them through.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I again thank noble Lords for all the points made on this part of the Bill. I shall take it first in the general and then the particular. In the general, these amendments quite rightly put on the radar, the horizon and public consciousness the importance of dealing with prisoners who received their sentence when they were still under the age of 18. This is already a very important function that these amendments have performed. As for the question of the light at the end of the tunnel, I share the thoughts of the noble Baroness, Lady Thornton, that the remarks of the noble Lord, Lord Hodgson, were very pertinent as to what it feels like to be incarcerated in the dramatic circumstances that he related.

It is the Government's view that these prisoners, among others, need to have light at the end of the tunnel. This is the whole purpose and thrust of the Government's approach. In practical terms, as I understand it we have 32 prisoners in this position who have not been released, another 48 who have been recalled, and a hundred or so out in the community. These figures may not be exactly right; they are not quite the same as those given by the noble Baroness, Lady Burt, although they are approximately the same. For the recalled cohort and for those in the community, the reduction in the licence period from 10 years to three will be significant and very much benefit those serving this DPP sentence. Against this background, the Government are not quite persuaded that these amendments would achieve our joint objective of providing this light at the end of the tunnel.

8.30 pm

I turn to the proposals in Amendments 155 and 163. The first would reduce the qualifying period from three years to 18 months. Eighteen months is quite a short period. The Government are not persuaded that one and a half years is sufficient time for an offender to demonstrate their ability to reintegrate successfully into the community, so we are hesitant about this. This particular, very sensitive cohort needs careful management in the community. To reduce the time to 18 months risks setting them up to fail.

We feel similarly about an annual referral to the Parole Board. Getting into this kind of rhythm automatically without regard to the progress of a particular prisoner and the various factors in play could also risk setting people up to fail. The Government are not persuaded that this automaticity is a good idea. In any event, there is already a two-year referral period and people are often referred earlier. It is right to point out that the recently revised Parole Board guidance gives express priority to DPP prisoners, so I suggest that they are being properly served by the Parole Board and by the frequency of reviews. The Government are not persuaded on the detail of these amendments, although we accept the general thrust of the argument.

Basically the same applies to Amendment 162, which would require quarterly sentence planning reviews to be held to set out what is expected. I take the point made by the noble and learned Lord, Lord Hope, that the aim is to make sure that close attention is paid to future progress, that things are not allowed to slip back and that there are regular phases in the prisoner's progress. The Government are not convinced that quarterly sentence planning reviews are, of themselves, necessarily the right way to go, but the IPP action plan requires that each prisoner has a robust and effective sentence plan, tailored to their individual needs and supporting those released into the community. Quarterly reviews would not necessarily allow sufficient time between them to ensure sufficient progress. Again, the Government are concerned about the details of the amendments, rather than the overall objective of dealing properly with these DPP offenders.

That aside, the Government very much recognise the need to support these offenders. There will be additional psychological support, in particular through the psychology services of HMPPS, and there will be operational delivery plans across England and Wales which are envisaged to include a priority focus for DPP prisoners.

When I spoke earlier of the possibility, between now and Report, of putting the action plan, or the need to have an action plan, on some kind of statutory basis, and possibly setting out in the statute, in broad terms, what the action plan should cover, it seems, to me at least, that there would be an important argument for providing that the action plan has to have a section on DPP offenders and has to demonstrate that these offenders are given priority and that there is an appropriate regime for them. A combination of that kind of provision in the action plan plus the existing priority given to DPP offenders by the Parole Board would go a very long way to achieving the joint objectives that noble Lords are envisaging. That is broadly the Government's position.

Lord Hope of Craighead (CB): Before the noble and learned Lord sits down, will he comment on the point I was making about the aim of having these reviews written into the statute? Subsection (2) in the new clause set out in Amendment 162 says that they are taking place

"with a view to ensuring that all possible steps are taken to enable their safe release at the earliest possible time".

That flags up, at the outset, exactly what these reviews are dealing with. I do not know whether it is already in the action plan that the Minister has been referring to, but is there some way of getting that purpose clearly identified, and of course communicating that purpose to the DPP prisoners themselves who are subject to the system, so that they know that that is the purpose for which these reviews are being conducted?

Lord Bellamy (Con): I thank the noble and learned Lord, Lord Hope of Craighead, for that point. It is certainly something I will take away when we come to consider the Government's position.

Lord Garnier (Con): I apologise, because I know my noble and learned friend wants to complete his speech, but I ask this question simply because I failed to hear.

[Lord Garnier]
The action plan has been spoken of a lot during the course of this evening. Is that an existing document, and is it published?

Lord Bellamy (Con): Yes, and yes.

On the basis that I accept, on behalf of the Government, the importance of this topic, I invite the noble Baroness to withdraw her amendment.

Baroness Chakrabarti (Lab): I am grateful to all noble Lords in the Committee. I thank the noble Baroness, Lady Burt, not least for giving us an opportunity to thank, once more, the Prison Reform Trust, and I would add the Howard League for Penal Reform and UNGRIPP, in particular, who are the family members of these desperate people in many cases. I thank her for pointing out this issue of the window of opportunity for rehabilitation and seeing another possible way of life.

Hope springs eternal, and therefore we are particularly lucky to have "hope" in the form of the noble and learned Lord, Lord Hope of Craighead, who is so active in this Committee. Every point he made was quite hard, if I may say so, to resist. But my man of the match, I am afraid, was, none the less the noble Lord, Lord Hodgson of Astley Abbots, because I feel that one of the reasons that we have not had a serious penal reform campaign in this country, possibly since the Victorian period, is because we have lost empathy for the prisoner. We have locked them away—out of sight, out of mind. They do not vote, et cetera: all these things that will set the alarm bells ringing at the *Daily Mail*, if anybody is up there. We have lost empathy for these people. They are not human anymore; they are prisoners; but in this group of amendments at least, we are talking about people who were children when they were given this sentence, and the fact that the noble Lord, Lord Hodgson of Astley Abbots, had sufficient empathy to compare "criminals" with his late father's friend and a war hero is the kind of empathy that I rarely hear about any demonised group in our society, whether it is convicted people, refugees and asylum seekers or anyone else who is, for the moment, in a demonised category. I am grateful to the noble Lord for what he said.

I am grateful, of course, to my noble friend Lady Thornton for the support of the Labour Front Bench. She of course was an Equality Minister in the not-too-distant past, and I hope that she will be one in the not-too-distant future, shortly, or in due course, or whatever these other phrases are that are occasionally—

Baroness Thornton (Lab): We are not complacent.

Baroness Chakrabarti (Lab): We are never complacent, but always with hope.

Finally, in that regard, I noted that the noble and learned Lord the Minister said, "not quite persuaded". In that "quite", in that little space, I will keep hope. I was here to keep my noble friend's hope alive in his absence, because these amendments were particularly important to him.

Lord Bellamy (Con): I do not wish her noble friend to place overreliance on the word "quite" in terms of statutory amendments. Statutory amendments are rather different from a proper approach in the action plan and putting that on a statutory basis.

Baroness Chakrabarti (Lab): I am grateful, but my hope is not dashed, not least because my noble friend is a force of nature, as he has demonstrated throughout his career with the integrity that others have referred to in the way that he has conducted himself over this particular issue in recent times. I need to put on the record for the Committee that he feels particularly strongly about the injustice faced by this cohort. I repeat: every argument we have aired earlier this evening becomes turbocharged in relation to these people, who were children when they were placed under this sentence. But for the moment, at least, I beg leave to withdraw.

Amendment 155 withdrawn.

Amendments 156 to 158 not moved.

Clause 48 agreed.

Amendments 159 to 166 not moved.

Amendment 167

Moved by ***Baroness Fox of Buckley***

167: After Clause 48, insert the following new Clause—

"Re-sentencing those serving a sentence of imprisonment for public protection

(1) The Lord Chancellor must make arrangements for, and relating to, the re-sentencing of all prisoners serving IPP sentences within 18 months beginning on the day on which this Act is passed.

(2) Those arrangements must include arrangements relating to the establishment of a committee to provide advice regarding the discharge of the Lord Chancellor's duty under subsection (1).

(3) The committee established by virtue of subsection (2) must include a judge nominated by the Lord Chief Justice.

(4) A court that imposed an IPP sentence has the power to re-sentence the prisoner in relation to the original offence.

(5) But the court may not impose a sentence that is a heavier penalty than the sentence that was imposed for the original offence.

(6) In relation to the exercise of the power in subsection (4)—

(a) that power is to be treated as a power to re-sentence under the Sentencing Code (see section 402(1) of the Sentencing Act 2020);

(b) the Code applies for the purposes of this section (and, accordingly, it does not matter that a person serving an IPP sentence was convicted of an offence before 1 December 2020).

(7) In this section—

"IPP sentence" means a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 or a sentence of detention for public protection under section 226 of that Act (including such a sentence of imprisonment or

detention passed as a result of section 219 or 221 of the Armed Forces Act 2006);

"original offence" means the offence in relation to which the IPP sentence was imposed.

(8) This section comes into force at the end of the period of two months beginning with the day on which this Act is passed."

Member's explanatory statement

This new clause would implement the recommendation of the Justice Committee's 2022 Report that there should be a resentencing exercise in relation to all IPP sentenced individuals, and to establish a time-limited expert committee, including a member of the judiciary, to advise on the practical implementation of such an exercise.

Baroness Fox of Buckley (Non-Afl): I rise to move Amendment 167 on resentencing those serving a sentence of imprisonment for public protection. I thank the noble Lords, Lord Moylan, Lord Blunkett and Lord Woodley, and the noble Earl, Lord Attlee: what a formidable cross-party, cross-Committee group of people that is.

We have talked a lot about hopelessness, and I am aware that moving this amendment probably fits under that category, but I am going to do it anyway. Along with other noble Lords, I warmly welcome the Government's incremental reforms in relation to IPP sentences contained as part of the Bill. It is brilliant that they restore some sense of fairness for IPPs, especially on licence, by creating a realistic prospect that the sentence could be brought to a definite end in the foreseeable future.

However, these moves will do little for the 1,227 people who, as we have discussed already tonight, have never been released, even though 98% of them have already served beyond their tariff, the majority of which were tariffs for less than four years. Yet 58% have been locked up for an additional 10 years on top of that original tariff.

8.45 pm

The proposed reforms also will not help the further 1,625 individuals in prison because they have been recalled, largely—as we have discussed—due to minor licence breaches rather than committing further crimes. That is therefore nearly 3,000 people languishing in jail, effectively indefinitely, all due to this abolished and discredited sentence. They are not helped enough by the Bill. This resentencing amendment—Amendment 167—which is based on the Justice Committee's recommendation, would resolve this iniquity. That is why it is backed by all serious commentators, professionals and campaigners on the issue.

However, I already know that the Government plan to reject the proposal. I was very disappointed and saddened that the Official Opposition also seemed to back the Government on this when it was discussed in the other place. I hope to persuade all noble Lords to move a little.

I will go through all the arguments shortly, but first I want to acknowledge something important. The fact that this amendment is unlikely to succeed will be bitterly disappointing for people serving IPPs, their families and all those working so hard on their behalf. Inspired by them and their resilience, however, it is important that these issues continue to be aired—that we continue pressing. As Sir Bob Neill, who chairs the Justice Committee in the other place, and can be described as something of a hero parliamentarian for tenaciously taking on this judicial aberration, said, until we get resentencing in some form, there is unfinished business.

I am also conscious that the noble and learned Lord, Lord Bellamy, warned at Second Reading that,

"the basic problem with the re-sentencing exercise is that you"—

people like me—

"are raising expectations that people will be released."—[*Official Report*, 18/12/23, col. 2134.]

I do not want to falsely raise expectations, and I am more than aware of that responsibility here tonight. Ringing in my ears I have the words of Shirley Debono from the IPP Committee in Action campaign. The last time that resentencing was rejected, she described the awful consequences of snatching away

"the last chance, the last hope."

I am more than conscious of where this hopelessness can lead, and we have discussed the 86 people serving IPPs who have taken their own lives while in prison, with nine self-inflicted deaths in 2023 alone—the highest number in a single year since the IPP was introduced.

Also ringing in my ears are the words of the current Justice Secretary, Alex Chalk. He wrote in 2017 about the toxic legacy of IPP:

"Society should not have a bleeding heart about its prisoners. But it shouldn't have blood on its hands either".

That "blood on its hands" cri de coeur is powerful; indeed, it is daunting and humbling for all of us here today in terms of our responsibilities. However, I also want to focus on Mr Chalk's point that opposition to IPPs is not a bleeding-heart approach. It is disingenuous to caricature this resentencing amendment as being all for the sake of the prisoners, and that those of us putting it forward have a naive indifference to public safety. We should remember that we got into this mess precisely because imprisonment for public protection was originally sold to the public by New Labour under the banner of public safety. Actually, the public were sold a pup and it failed abysmally.

Of course, the public want to be protected and, in the context of 2024, too many citizens feel that the criminal justice system is not serving public safety well enough. For example, the public look on at early release schemes that seem to involve, for example, men who have physically and sexually abused women and children leaving prison potentially prematurely—in comparison with IPP prisoners who are guilty of far less serious non-violent crimes but remain locked up.

If you consider what the public are feeling at the moment about the crisis in policing, with various police forces being put into special measures—most recently Nottinghamshire, for safeguarding concerns—some victims' safety seems to get ignored. Look at those young women who suffered at the hands of the grooming gangs in the north of England while the police looked the other way. Then there is a general sense of insecurity, as street crime is sidelined and public disorder and intimidation on our streets seem to be given a free pass—or at least the police are confused.

However, rather than prioritising resolving those kinds of thorny issues, instead we are told that it is

[Baroness Fox of Buckley]

these few thousand IPP prisoners who are a danger to the public, and it just feels like a distraction. In the other place, the Justice Secretary claimed:

"The fact remains that there are around 3,000 people in custody … where the expert Parole Board has decided that this person is dangerous".

My reply is: the fact remains that the criteria for labelling these specific prisoners as so dangerous that they need to be held indefinitely are dodgy. Where is the evidence, for example, that IPPs are a distinct group of offenders more dangerous than, for example, others sentenced post the abolition of IPPs who are subject to sentences with an eventual end date? How can the facts justify an IPP-er being in the same prison, and even sharing the same cell, as someone who has committed the very same crime or worse, on any objective measure of dangerousness? It is just based on an accident of timing: that is, they were unlucky enough to be sentenced during the time when IPPs were applied.

The reason they are not released is not to do with any crime they have committed but what they might do in the future, based on speculation, not facts. Indeed, Alex Chalk talks of people who

"could go on to commit appalling crimes".

Yes, they could, but that is purely hypothetical. I therefore have to ask: is this a new policy of preventive pre-crime justice—locking people up in case something happens in the future? In the UK we have a system of justice that every day lets all sorts of people leave prison—rightly, because "they did the crime but they've done their time"—and, of course, they may reoffend and create future victims. However, unless we have decided to dispense with all sentences just in case, as a civilised democratic society we aim to manage that risk. Why are IPPs any different?

The noble and learned Lord, Lord Bellamy, warned at Second Reading that

"the people we are dealing with have been found not to be safe to be released".—[*Official Report*, 18/12/23; col. 2134.]

and called them "highly dangerous people". However, how are these prisoners assessed as dangerous? It is certainly not based on their original crime and relies largely on two methods: the Parole Board's assessment and the fact that they have been recalled back into prison. On the Parole Board, we have already heard about the especially stringent criteria demanded of prisoners: the onus on them to prove they are not a risk, and so on—which is almost impossible as the presumption is against parole.

However, the most galling of the hoops the prisoners are asked to jump through to prove they are safe is attendance on designated courses even though programmes are often postponed, cancelled or not available in my experience. Meanwhile, a lack of transparent evaluation of these courses in effect means that we hear that the Minister, let alone the Parole Board, cannot possibly guarantee these programmes' reliable, evidence-based determination of dangerousness or otherwise.

If, against all the odds, the prisoners manage to get out over the hurdles, the fact that they are released on such ludicrously strict licence conditions means that they risk again being labelled as unsafe and returning to prison for infractions as petty as missed probation appointments that we have already heard about. However, a startling 73% of recalls do not involve further proven offences and are often based on hearsay or accusations.

Ishuba Salmon was released after spending three times his original four-year tariff in jail. After 18 months, he was recalled and accused of GBH, but at Birmingham Crown Court the prosecution offered no evidence and Ishuba was found not guilty. However, it was too late because he was back inside. Surely this makes a mockery of exoneration by a court of law.

The recall system for IPPs also makes a mockery of rehabilitation. Last week I met Ms Mandy Slade, the mother of David Parker, an IPP prisoner. He was recalled to prison with only six months left on his 10-year IPP licence. He is currently held in HMP Bristol, not on a charge, just in custody on recall. For that nearly 10 years that he was released, David led a trouble-free life. He turned his life around; he owns a roofing business that employed three people, he was a homeowner and he financially supported his three children. Sadly, he and his partner had problems and his ex left the family home with the children, making allegations against him, having previously threatened to use the IPP to send him back to prison. The allegations were false. We know that because the court heard David's case and all charges were dropped, but it was too late. IPP rules mean that 10 years of David's rehabilitation were all for nothing: he is back in prison and now, as we are discussing, because he is in prison he is dubbed "dangerous".

Such iniquities are now being tackled in terms of recall, as we heard in the first group, but I raise it because, when we are told that this resentencing amendment threatens to let out dangerous prisoners—a point reiterated by a range of noble Lords including the noble Lord, Lord Ponsonby, at the end of the first group and the Minister—that includes mislabelling David Parker and others like him. The Minister says the recall population is rising, but some of them should not be brought back to prison at all and are there only because of the specifics of IPP, this discredited sentence.

David's mother Mandy, who I met, suggested to me that her son could have been curfewed in the community or tagged in his own home. Her common-sense approach to managing risk is just the sort of spirit behind this resentencing amendment. It is not extreme or unreasonable. Indeed, it is designed to provide sensible solutions that should allay any fears that a resentencing exercise might be a chaotic mass release, as has been suggested in the past.

There is plenty of oversight built in and the amendment simply calls for a new sentence to be passed, but—and this is key—it does not require when or how it takes effect. This leaves room for an expert committee to examine and recommend any number of models that could minimise anticipated problems. For example, there could be a staggered resentencing exercise with a priority queue, beginning with those furthest on in their tariff or who received the shortest tariff.

The new sentences could be issued in limited blocks of a certain number per quarter to avoid mass release. According to the Prison Reform Trust, issuing 475 new sentences per quarter would address the entire imprisoned

IPP cohort within 18 months, and then it would be done; we would have finished. Alternatively, the entire resentencing exercise could be completed within a stated period with a staggered system of release based on a priority queue and, where necessary, authorising referrals to mental health tribunals or reserving fresh judicial examination for any complex cases.

You could even look at delaying the formal passing of a sentence for a fixed-term preparation period of maybe six months. There is an element of this approach in the interesting, probing amendment to my amendment from the noble Lord, Lord Attlee, which suggests a delay until the Government are satisfied that the Probation Service has the capacity and resources to cope.

I am eager to see whether this can assuage the Labour Front Bench's concern about a lack of infrastructure if resentencing is implemented immediately. If the Opposition supported this, I would be happy to accept this as a step forward to getting resentencing on the statute book even if there is a delay.

Obviously, there is a worry that this might kick the decision into the long grass, but at this stage I emphasise that, whether it is this Government or a forthcoming Labour Government, the issue of IPP prisoners needs to be fixed. It will be fixed, and this amendment gives a range of structured fixes, because any of the models could be developed and adapted, all with the help of an expert panel doing the necessary modelling and analysis to assess the cost-benefit analysis of options.

Regardless of the detail, what is needed here is imagination, creativity and innovation—an approach that I have been delighted to see from this very Government who embraced such a sense of innovation in resolving the Post Office injustices. It was an exceptional set of circumstances that the postmasters found themselves in. Well, the plight of IPP prisoners is also exceptional. After all, this Parliament abolished the sentence, deemed it no longer fit to remain on the statute book and now, more than a decade later, these 3,000 prisoners are the last part of putting that wrong right.

Finally, I want to refer to the noble Lord, Lord Clarke, and the Spat—or discussion—he had with the noble and learned Lord, Lord Garnier, earlier. It is important not to make assumptions about public opinion here. This is my final point. When confronted with the facts, the British public are always repulsed by miscarriages of justice. They believe in fair play. Whenever I have got people to read the campaign group UNGRIPP's important comprehensive archive of articles, or Faith Spear's *Criminal Justice Blog*, or to listen to the brilliant podcast series "Trapped", they are horrified. They are absolutely disgusted that this is the way people have been treated.

By the way, I include in that journalists too—even *Daily Mail* journalists because, despite the way they are discussed here as though they were a different breed, they are after all our fellow citizens. We should be ensuring that every member of the British public knows about this scandal and not keeping it in-house. Peter Stefanovic's video on the topic, mentioned by the noble Baroness, Lady Jones, in the first group, has chalked up 14 million views in a matter of months. The reaction is unanimously one of shock, outrage and disbelief. As one respondent noted, "Let's not wait for an ITV drama to do the right thing". Hear, hear. I beg to move.

9 pm

Amendment 167A (to Amendment 167)

Moved by ***Earl Attlee***

167A: In subsection (1), at end insert "subject to subsections (9) to (12)".

Member's explanatory statement

This amendment, along with others in the name of Earl Attlee to this amendment, would delay the resentencing exercise until the Secretary of State, in consultation with the Chief Inspector of Probation, is satisfied that probation services have the capacity and resources to manage additional supervision as a result of resentencing.

Earl Attlee (Con): My Lords, I rise to move my Amendment 167A and speak to my Amendments 167B and 167C, all amendments to Amendment 167, which was so ably moved by the noble Baroness, Lady Fox. On a procedural point, technically we are debating my amendment, but of course all noble Lords can speak to all amendments within the group.

I agree with nearly everything the noble Baroness said about the desirability of her amendment, which I strongly support. She mentioned that this approach was the one taken by the cross-party Justice Committee in another place. I am bound to say that this is quite a good pedigree. The noble Baroness has dealt with all the most obvious points. However, there is a real concern that some agencies might not be able to cope with a large and sudden increase in demand arising from numerous IPP releases from custody—although the noble Baroness did talk about a phased process so that you would not get a huge number of resentencings at the same time. Nevertheless, we must make sure that we do not overrun the Probation Service, because that is the most obvious example.

My amendments seek to improve the original amendment by ensuring that the requisite Probation Service capacity is available before any resentencing exercise starts. It may be that, when he comes to respond to this amendment, my noble and learned friend the Minister will identify other areas where there is a similar capacity shortfall. If that is the case, a similar approach can be taken.

My Amendment 167C is a substantive one, and proposed new subsection (9) prevents the new section coming into force unless the Secretary of State is satisfied

"that the Probation Service has the capacity and resources"

to meet any additional demand resulting from the resentencing exercise. Proposed new subsection (10) requires the Secretary of State to

"commission a thematic review by the Chief Inspector of Probation that considers"

the capacity and resources of the Probation Service in order to make an informed decision. Finally, proposed new subsection (12) requires the Secretary of State to annually review his decision if he is not satisfied that the capacity is in place. I beg to move.

Lord Moylan (Con): My Lords, I congratulate the noble Baroness, Lady Fox of Buckley, and my noble friend Lord Attlee on a very elegant double act. While the amendment that was moved by the noble Baroness is at the more ambitious end of change in this Bill, the amendments moved by my noble friend give the House a suite of options for how we might choose to implement it. Those who are concerned that there might be practical problems with implementing it can pick one of the options put forward by my noble friend or, before we reach Report, some other combination that would allow it to be delivered in a way that was acceptable and could be managed by the Probation Service, the ministry and the courts.

It was not for that purpose that I have principally risen to speak, but rather to pick up a point made by the noble Baroness about the family and prisoner reaction to our debate today, and in particular the issue of self-harm. The noble Lord, Lord Carter of Haslemere, and the noble Baroness, Lady Burt of Solihull, earlier this evening spoke about the case of Matthew Price. It is true that I got an email from Matthew Price: a perfectly literate and coherent email in which he said that he was only a few months away from his 10-year limit, but that the mental stress on him was such that he could not guarantee he was not going to take his own life.

I know that other noble Lords probably received the same email; certainly, the noble Baroness, Lady Burt of Solihull, did. I do not know how many replied. I did, and I tried to encourage him to cling on. I told him that, not that long ago, we had passed an amendment to the Police, Crime, Sentencing and Courts Bill, as it then was, which meant that at the end of the 10-year period, the Ministry of Justice would automatically submit an application for the discharge of his sentence to the Parole Board. He himself did not have to take any action; it would happen automatically under the new regime. What I had to say to him, in honesty, was that that did not mean that the sentence would then be discharged. He could still be refused even at the end of the 10-year period. The ministry would then submit an annual application for his sentence to be discharged, but there was no guarantee as to when it would end. I did not put it as fully as that, but I did feel that I had to make that point.

I do not know what effect it had, but a few weeks later I had a short email from a friend of his simply saying that he had taken his life. The effect of that stays with me, and I know, from discussion with her, that it has stayed with the noble Baroness, Lady Burt of Solihull. It seemed such a terrible waste.

It is not a debating point, but this comes back to what was said by my noble and learned friend the Minister at an earlier stage when he was discussing the difference: "Well, it is one year or two years? Does it really matter if the offender has to wait two years as opposed to having an opportunity to make an application at the end of one year?" That was in relation to an amendment put by the noble and learned Lord, Lord Thomas of Cwmgiedd. Months can matter in cases like this. It also illustrates that, while we talk confidently about 10 years as the licence period, because that is what is set in statute, in fact it was never 10 years. It was 10 years as a minimum; it could be 11 or 12 years —nobody actually knows until they apply and get that decision.

In relation to self-harm, I have also had an email today—again, it is possible that other Members have—explicitly supporting my Amendment 161, which we debated earlier. That email comes from the Independent Advisory Panel on Deaths in Custody; this is a non-departmental public body, which writes from the Ministry of Justice—that is its address. It says:

> "IPP prisoners are a particularly vulnerable group due to the close link between hopelessness, self-harm, and suicide. IPP prisoners' vulnerability is further exacerbated as the period for which they are held beyond their tariff increases. Last year there were nine self-inflicted deaths among IPP prisoners – the highest number since the sentence was introduced … – with a similar number of deaths in the previous year".

In that context, I want to make a practical and immediate point—not a sensationalist point. Many prisoners and their families are listening to this debate and are looking to us for what outcome they might expect from the consideration we are giving to this Bill, both now and no doubt on Report. Specifically, they have put their hope, in many cases, in resentencing, because it was so strongly backed by the Justice Select Committee in another place.

On the assumption that my noble and learned friend the Minister will reject this—he has made clear in the past that he is likely to—I think that it is incumbent on the Ministry of Justice and His Majesty's Prison Service to be particularly vigilant in the coming period in supervising and supporting IPP prisoners as they react to what they might hear.

Finally, I second what the noble Baroness, Lady Fox of Buckley, said about the many NGOs that have backed reform. Obviously, one wants to refer particularly to the Prison Reform Trust for what it has done, as well as the Campaign for Social Justice. As she says, the video it produced has reportedly achieved 14 million views. I suggest that the public is more sympathetic to IPP prisoners than Ministers might imagine. I hope that they will reflect on that and find it in their hearts to move somewhat further on the amendments that we have been debating this afternoon than my noble and learned friend has felt able to do so far.

Lord Thomas of Cwmgiedd (CB): My Lords, I add a few sentences to support what has been said so ably by the noble Baroness, Lady Fox, the noble Earl, Lord Attlee, and the noble Lord, Lord Moylan. The case for resentencing is compellingly set out in the Justice Select Committee report. I cannot improve on that, certainly not at this late hour, but there are two points I wish to make.

First, there is no doubt that the sentence was imposed for a huge variety of cases. Some people were sentenced to IPP who would have received a discretionary life sentence, and we do not seem to recognise that. The second thing we do not recognise is what Parliament and the Government have done to contribute to this. I recall looking at a number of cases where people were sentenced when the regime was at its most severe. They had characteristics that were alien to British justice. First, there was an assumption of dangerousness unless the judge disapplied it. Secondly, the judge had

no discretion if the person was dangerous to send him to prison. Thirdly, it applied to offences that would be characterised, for offences in the Crown Court, as at a low level—two years. The particular cohort that was most unjustly dealt with were those sentenced between 2005 and 2008, when the law was slightly ameliorated.

Secondly, I recall going to Leeds prison in 2005 where I saw that the state had made no proper provision for what was about to overwhelm the state: that is, a large number of people who, by the terms of the sentence, were given the sentence. Over the ensuing years, there were a vast number of cases where people complained that there were not sufficient resources. Again, this was a failure of the state.

Then, as the noble Lord, Lord Clarke of Nottingham, has made very clear, there was another failure: a failure to deal with this problem by changing the law shortly after 2012. It is very important in looking at this matter to bear in mind our responsibility. It is all Parliament's responsibility—and the Government's responsibility for carrying it out. As I said earlier today, it is an enormous tribute to the noble Lord, Lord Blunkett, that he has accepted his responsibility for the failure. We ought to do the same.

I understand why, at this particular time, with an election pending, there is no realistic prospect of people being bold. I hope very much that the steps that the Lord Chancellor has taken may work—it has taken him a great deal of courage to go that far in reducing the tariff period. I hope that we can persuade the Minister that he will make further changes to ameliorate the injustice, but I am not very optimistic. If none of this works, we have at least laid the groundwork for the incoming Government to face up to this problem and remove what everyone accepts is a stain on the character of British justice.

9.15 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, as the noble Baroness, Lady Fox, rightly said, the Opposition do not support resentencing. I reflected on the reason for that during this debate and the debates that we had earlier. I think the reason is actually simple: the IPP prisoners will have been assessed, many of them on multiple occasions, by the Parole Board, which is made up of lawyers, lay people, experts, psychologists and psychiatrists. They will have made this assessment and they will have decided that, on that occasion, that particular prisoner would not be released. If one went down the resentencing route, it would put any judge who made that resentencing assessment in an invidious and difficult situation where they would have effectively, or potentially, to go against these multiple assessments made by the Parole Board. So it is for quite a simple reason that the Opposition do not support this approach.

We have had a number of calls to be bold. I support being bold. I think the boldness is in group 2, to which we spoke earlier. There are a number of ideas that we have backed and which we may well want to pursue at a later stage of this Bill. So we support boldness, but the single solution of resentencing that has been put forward by the noble Baroness, Lady Fox, is not appropriate for the reason that I just set out.

Lord Bellamy (Con): My Lords, I compliment the noble Baroness, Lady Fox of Buckley, for the force and sincerity with which she put forward her views, as indeed have other noble Lords who have supported Amendment 167, which would go down the road of the resentencing exercise that we have been discussing.

In setting out the Government's position, I find it hard to improve on the remarks that the noble Lord, Lord Ponsonby, just made. This is a situation where we are dealing with the potential release of IPP offenders, who have committed mostly very serious sexual or violent offences. One would be overriding the decisions that the Parole Board has already taken, in most cases on multiple occasions, and would be putting the judge in the most difficult position.

Indeed, it is not a resentencing exercise in any normal sense of the word because, in most cases, the tariff has already expired. It is essentially a question of trying to do something different, dressed up as a resentencing exercise, to release persons who have already been held, on many occasions, to be unsafe to release. It is very difficult for the Government to go down that road. Again, there is a real risk, if one does go on that road, of wrongly raising the hopes of those who have put their faith in what is, in the Government's view, not an appropriate way forward.

I want to add just one or two points. First, as the Committee is aware, I have on previous occasions—and I will do so on future occasions—emphasised the pressures we have at the moment on the prison population. The Government would be only too pleased to create further space in the prison population, or to relieve those pressures by releasing certain prisoners, but we have to consider the interests of public protection. It is not a question of being frightened of the media or of cowering in fear of the *Daily Mail*; it is a question of the protection of the public.

Any responsible Government would have to think very hard before a process that would allow the release, or that was envisaged to achieve the release—perhaps even unlicensed, without supervision—of large numbers of people in this position. I fully accept that the situation is regrettable. I accept the comments made by the noble and learned Lord, Lord Thomas, that it is very regrettable that the whole thing arose in the first place. Terrible things may well have been happening back in 2005, but we are where we are. I do not know whether the noble and learned Lord wants to intervene.

Lord Thomas of Cwmgiedd (CB): I have made my point; I will not reprise it again. The fallacy in both the Minister's arguments is that he says they are dangerous, but actually the state has helped make them dangerous, if they are dangerous, by acting in the way in which it has. Normally, someone who has made a mistake accepts it and bears the consequences. I am not going to say any more because I will not persuade the Minister otherwise.

Lord Bellamy (Con): My Lords, from the point of view of the Government, I am not in a position to accept the premise advanced by the noble and learned Lord. I hear what he says. I do not accept, as I think the noble Baroness, Lady Fox, implied at one stage, that there is anything wrong with the Parole Board processes. I think I heard the word "dodgy" at one point, but I

[LORD BELLAMY]
may have misheard. The Parole Board is a body that the Government have complete confidence in in this respect. This exercise should remain with the Parole Board.

I will say again: can we please distinguish between the problem of the released cohort and the problem of the never released cohort? We seem to drift from one to the other a lot of the time. Cases such as those of Matthew Price and, I think, the case of David Parker, which was mentioned by the noble Baroness, Lady Fox, are cases where people have been recalled after having been in the community for many years. That will no longer happen. The question of the recall is very largely dealt with, or very substantially improved, by the Government's amendments in this Bill. What we are dealing with primarily is the never—not yet—released cohort.

I say again, in the light of my noble friend Lord Moylan's remarks about the expected possible reaction of those who are still in prison and how to be particularly vigilant in supporting IPP prisoners in the light of these debates and related points, that the action plan is intended to give people hope. It is focused on their future to prepare them progressively with a sentence plan, the psychology services support, and a multidisciplinary progression panel towards eventual release. I think he would accept, even now, that the action plan has made a difference already; I see him nodding. We will take that forward and, as I say, it may well be the case the Government will be in a position to propose to your Lordships that the idea of an action plan should have a statutory basis, that the broad terms of its content should be set out and that the Secretary of State should report to Parliament so that—whatever Government comes into power—we can continue on the process that we have already started. The resentencing exercise is not, in the Government's view, the way to go.

On that basis, the amendments proposed by my noble friend Lord Attlee would not arise because we are not going down that road. I do not think I need to say anything further about them, save to remark that what is being proposed would impose a very significant burden on our existing probation services. For that reason as well, one would have to reflect very seriously before going down that route. I invite the noble Baroness to withdraw her amendment on this point.

Earl Attlee (Con): My Lords, my amendment was a very fine amendment, but my noble and learned friend the Minister has addressed it. I beg leave to withdraw my amendment, and we will hear what the noble Baroness has to say.

Amendment 167A withdrawn.

Amendments 167B and 167C not moved.

Baroness Fox of Buckley (Non-Afl): I want to make some clarifications. I will deal with them all together, using my right of reply. I was not suggesting that the parole boards were dodgy, although I was suggesting that the evidence that they were using could be. In that instance, I was referring to some of the requirements where people had done courses that were not evaluated and there is some dispute as to their effectiveness. The noble Lord, Lord Ponsonby, and the Minister are assuming that the Parole Board's assessment of dangerousness is some sort of objective assessment of dangerousness that we would recognise, whereas we have just spent a number of hours talking about, for example, the fact that you might well be assessed as dangerous because of deteriorating mental health. The difficulty there is that, as a rule, we remove and section people only when they have serious mental health problems. We think very long and hard about putting someone away, but this is keeping people in prison on an indefinite sentence because they have a mental health problem that could make them unsafe to be released.

I do not understand why the Minister does not understand that we are not just talking about the people who have never been released. I argue that there are all sorts of reasons why they might never have been released that go beyond dangerousness. They have gone well beyond the tariff that they originally received, and we at least have to take some responsibility for that. However, those people who are recalled into prison then become prisoners. The Minister keeps saying, "It's all right because we're going to sort that lot out", but they are in prison now. They have gone back into that system and they therefore need to be sorted out through a resentencing regime.

The point that I want to stress is that the resentencing amendment was not written on the back of an envelope by people who do not understand the system, as the noble and learnt Lord, Lord Thomas of—sorry, I am from Wales but not from the bit that can pronounce Welsh. The point is that this is the most comprehensive and well-researched amendment with all sorts of strategies, options and flexibility built into it. If only the noble Lord, Lord Ponsonby, or the Minister would say, "We've looked at one section of it. We like that bit, and we could adapt it". It is the principle of resentencing that we would like to see, but I am worried that it is just being dismissed as though it is too damaging to do.

I am not cynical about the Government's motivation. I feel as if I cannot bring myself to believe that this is just because we have an election around the corner, because I do not believe that is the case. However, you can be overly risk-averse about letting prisoners out. If we adopted the precautionary principle and risk aversion then we would never let anyone leave prison, but we do so all the time. We have sentenced an awful lot of people for exactly the same "dangerous behaviour" since IPPs were abolished. What is happening to them? They have determinate sentences and are then let out. So I am not convinced that we are not creating the worst kind of bogey-man in our minds. Anyway, the amendment would allow for complex cases to be dealt with, and it considers all those aspects.

A story that had me amused, because this is the Victims and Prisoners Bill, was that of one IPP prisoner—the Minister says they have never been released—who was one of the "never been released" until, after 18 years, he was; he might have been in for 10 years originally but eventually he got through the Parole Board, and then had a reconciliation with the victim of the original crime for which he was put in prison. The victim could not believe that he had been in

prison for 18 years. She said, "I thought you were out years ago!" We talk about protecting the public and victims and so on, but that victim was horrified that a crime that had been committed against her had led to someone being incarcerated for such a long period.

We do not want to caricature any side in this. As I have pointed out, public protection should not mean great injustice at the expense of people's rights, and I do not think the public would thank us for that either. I beg leave to withdraw the amendment.

Amendment 167 withdrawn.

Amendment 168 not moved.

9.30 pm

Clause 49: Section 3 of the Human Rights Act 1998: life prisoners

Debate on whether Clause 49 should stand part of the Bill.

Lord German (LD): My Lords, I rise with the leave of the House and at the request of my noble friend Lord Marks to oppose the Question that Clause 49 stand part and speak to the stand part notices for Clauses 50, 51 and 52.

Clause 49 would disapply Section 3 of the Human Rights Act in respect of any decision made under Chapter 2 of Part 2 of the Crime (Sentences) Act 1997. That chapter of the 1997 Act sets out a range of provisions concerning life sentences and sentences of detention during His Majesty's pleasure, including minimum-term review for under-18s. For life prisoners, the provisions concern release on licence, termination of licences for public protection, recall for breach of licence conditions, the duration of licences, release at the direction of the Parole Board and removal of life prisoners from the United Kingdom.

The chapter is specifically extended by this Bill, in particular by Clause 41, to provide, in respect of public protection decisions, those considerations that the decision-maker is to be bound to take into account relating to such things as the risk of reoffending and the risk of breach of licence conditions. The clause includes, ominously, the provision under Clause 41(9):

"This section does not limit the matters which the decision-maker must or may take into account when making a public protection decision".

Clause 44 provides for the Secretary of State to have the power to direct the referral of a prisoner's case to a court—currently the High Court or the Upper Tribunal—as discussed on 26 February. Clause 48 makes further provision about the termination of the licences for life prisoners for public protection. For all these provisions, Clause 49 would disapply Section 3 of the Human Rights Act 1998.

Section 3 lies at the heart of the human rights protection afforded by the Human Rights Act. It governs the interpretation of legislation by courts and also, importantly, by public authorities, and so effectively by all relevant public decision-makers. It provides:

"So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights".

Section 3 gives legislative teeth to the convention, requiring legislation to be compatible where possible. Clause 49 would disapply that crucial protection in relation to this chapter of the 1997 Act and any subordinate legislation made under it.

The Explanatory Notes, in paragraph 353, claim that this disapplication

"will apply the section as it is intended to be applied, and not use section 3 to alter the interpretation".

In other words, the clause is intended to operate in a way that enables convention rights to be ignored or overridden; otherwise there would be no point in the disapplication. This represents a real and important threat to human rights and should be removed from the Bill.

Clause 50 would operate in exactly the same way in respect of the provisions of Chapter 6 of Part 12 of the Criminal Justice Act 2003 relating to the licences, release, supervision and recall of fixed-term prisoners. These provisions are to be amended by Clauses 42, 45 and 47 of the Bill. At present, this chapter of the Criminal Justice Act 2003 is subject to the protection of the interpretive requirement of Section 3 of the Human Rights Act. Clause 50 would remove that provision, and not just in relation to the new provisions in the chapter introduced in this Bill. As with the 1997 Act dealt with in Clause 49, it would remove it in respect of the whole chapter of the 2003 Act dealing with fixed-term prisoners.

Similarly, Clause 51 would disapply Section 3 in respect of the amended Section 128 of the LASPO Act. This amends the power to change the release test for release on licence in cases involving public protection.

Clause 52 deals with a similar issue. It is not approaching the interpretation of legislation in the light of the convention, but the different question of whether a person's convention rights have been breached in connection with a prisoner release decision under the two chapters I have previously mentioned in the 1997 and 2003 Acts.

Paragraph 354 of the Explanatory Notes sets out how to govern any challenge on human rights challenge under the convention to a prisoner release decision. Where Clause 52 is offensive is in subsection (3), which requires:

"The court must give the greatest possible weight to the importance of reducing the risk to the public from persons who have committed offences in respect of which custodial sentences have been imposed".

That provision would apply regardless of the length of the custodial sentence imposed, regardless of what harm was being risked to the public and regardless of the injustice to the offender or the offender's circumstances or the risk to the offender's health, family or prospects of rehabilitation. What is the "greatest possible weight"? That, effectively, means exclusive weight—the only factor the judge is to consider.

When the Explanatory Notes say:

"Requiring the courts to give the greatest possible weight to this factor reinforces the precautionary approach and means that public protection will be given appropriate consideration in any balancing exercise",

they are disingenuous. The provision does not call for a balancing exercise. It requires courts not to consider questions of balance or appropriate considerations,

[Lord German]
but instead to prefer one factor over all others. That is pernicious and ought to go. Judges are perfectly capable of performing balancing exercises. They can and do give appropriate weight to public protection when they do so. They should not have their judicial function curtailed in this way. The clause should go.

Baroness Lister of Burtersett (Lab): My Lords, here we go again. First, they came for the asylum seekers and then for the prisoners. Which unpopular and demonised group—to quote my noble friend Lady Chakrabarti—will be next to be deprived of some of the rights contained in the Human Rights Act?

As some of us have been arguing during the passage of the Safety of Rwanda (Asylum and Immigration) Bill, to deprive marginalised groups of their human rights in this way undermines the principle of universality at the heart of human rights. The noble and learned Lord, Lord Stewart of Dirleton, quoted back at us that it is

"a fundamental tenet of modern human rights that they are universal and indivisible".—[*Official Report*, 14/2/24; col. 342.]

He then went on to try to justify the very opposite.

In answer to some general Oral Questions on our human rights legislation in June, the Lord Chancellor and Secretary of State for Justice emphasised the Government's commitment to

"a human rights framework that … works for the British people".—[*Official Report*, Commons, 27/6/23; col. 145.]

He later talked about our legislation delivering on the interests of the British people. Leaving aside whether universal human rights can be confined to the British people, it raises the question of whether prisoners no longer count as British people.

As it is, some of the briefings we have received, including from the Howard League for Penal Reform and the Prison Reform Trust, make the point that in the words of the latter,

"it is precisely in custodial institutions like prison … that human rights protections are most vital, because individuals are under the control of the state".

The NAYJ, a member organisation which campaigns for the rights of and justice for children in trouble with the law, is particularly anxious about the implications for children in prison. The Law Society, the EHRC and the then chair of the JCHR have all expressed their deep concern about the diminution of human rights protection represented by these clauses. The EHRC, in particular, warns that there may be an impact on the UK's international legal obligations.

The Constitution Committee sets out the government justification for these clauses in the human rights memorandum on the Bill, but invites us to seek further explanation from the Government as to what effect they intend to achieve with the disapplication of Section 3 of the Human Rights Act. According to the memorandum, the intention is to ensure that the HRA does not get in the way of the policy intentions of the release regime. In other words, it seems to be saying that human rights should not trump government policy. No evidence is provided to justify the need for this diminution of human rights, and of course the clauses were not subject to pre-legislative scrutiny.

In his response to the Second Reading debate, the Minister seemed to say that all the organisations expressing concern are making a mountain out of a molehill because Section 3 of the HRA is "a procedural provision only". He argued that it gives the courts an

"unusual power to reinterpret what Parliament has said in a manner that may not have been and probably was not Parliament's original intention so as to render a particular provision compatible with the convention".—[*Official Report,* 23/12/23; col. 2135.]

This, he suggested, was a "neutral" description of the function of Section 3.

I am grateful to Amnesty for its help in making sense of what the Minister said, although it would be the first to emphasise that its analysis is in line with that of the independent Human Rights Act review, established by the Government. It questioned whether this was a "neutral" interpretation of the role of Section 3. The reference to reinterpreting legislation seemed to suggest that there is one legitimate act of interpretation, which is then challenged by a second questionable one under Section 3. But this interpretation is itself highly questionable. I am advised that Parliament intended for Section 3 to be used in the way that it is. There is no reason to think that Section 3 interpretations lead to interpretations that are "probably not" in line with Parliament's original intention, as confirmed by the Human Rights Act review, even if that was not the view of one member of the commission cited by the Minister.

More practically, and I think for the first time in this context, the Minister suggested that it has been a difficult section to apply, with the case law having "gone all over the place" and the introduction of uncertainty where the Government want certainty. I am advised that while this may have been true of when Section 3 was first brought into force—although "all over the place" is a misleading description—that period has long passed and the legal issues around it have not substantively changed for the past decade or so. As the Minister acknowledged, it has "settled down more recently". So having been in effect for 20 years, it is not at all clear why its continued function would create the kind of complexity and uncertainty the Minister fears.

If the Minister cannot come up with a more convincing case for the disapplication of Section 3 from a group of citizens for whom the protection of the Human Rights Act is especially important, given their relationship to the state, I certainly think that these clauses should not stand part of the Bill. I have yet to hear any argument that justifies this further breach of the principle of the universality of human rights.

The Lord Bishop of St Edmundsbury and Ipswich: My Lords, my right reverend friend the Bishop of Manchester regrets that he cannot be here today to speak to the amendments to which he has put his name.

The basis of our opposition to Clauses 49 to 51, to echo points made by the noble Lord, Lord German, and the noble Baroness, Lady Lister, is that human rights need to be applied universally, even when disapplication might seem expedient. We know that, when people are marginalised, it is then that human rights protections are most necessary and, as such, the disapplication of rights to prisoners, who rely on independent courts and the justice system to guarantee

basic minimum standards of fairness and respect, is particularly egregious. The Law Society has warned that these clauses

"significantly weaken the system of human rights protections in the UK".

My right reverend friend and I add our voices to these concerns.

9.45 pm

On Clause 52, again echoing the point made by the noble Lord, Lord German, this clause says:

"The court must give the greatest possible weight to the importance of reducing the risk to the public from persons who have committed offences".

However, it is not clear what "greatest possible weight" means—of course, it can be interpreted as the only consideration to be made. That leaves the clause open to a range of interpretations, even if one believes that this is the area which should be given most weight rather than weighing up all the competing factors that are to go into a parole decision, should the language not be clarified.

Lord Ponsonby of Shulbrede (Lab): My Lords, I agree with all the speakers so far. My concern is that Clauses 49 to 51 may be another way for the former Justice Secretary, Dominic Raab, to dilute the human rights framework through the back door.

Section 3 of the Human Rights Act requires courts to interpret legislation compatibly with rights under the convention on human rights as far as is possible. The clauses would disapply Section 3 to prisoners as a group when it comes to legislation about their release. Several groups have rightly raised concerns about that.

I, too, cite the Prison Reform Trust, which said:

"The introduction of specific carve-outs from human rights for people given custodial sentences contradicts one of the fundamental principles underlying human rights—their universality and application to each and every person on the simple basis of their being human. Moreover, it is precisely in custodial institutions like prisons that human rights protections are most vital, because individuals are under the control of the state".

In written evidence to the JSC, the Bar Council stated:

"There is no evidence of any systemic impairment due to the HRA of the Parole Board's ability to make high-quality, safe, decisions about prisoners—no statistical analysis of recidivism/public safety concerns from prisoners released due to interpretation of legislation in line with Convention principles".

In his speech at Second Reading in the other place, the chair of the Justice Committee, Sir Bob Neill, said:

"Whatever one's view of the Human Rights Act, there is no evidence that this is a problem in such cases. In fact, the evidence we heard from practitioners, from both sides, is that it can be helpful to have to have regard to section 3 in these hearings. These clauses seem to be trying to solve a problem that does not exist, and I wonder whether we really need them. It is perfectly possible to have a robust system that still complies with section 3. This is a needless distraction that sends the wrong signal about a certain desire to pick unnecessary fights, which I know is not the current Secretary of State's approach".—[*Official Report*, Commons, 15/5/23; col. 604.]

I really could not have put it any better, and I look forward to the Minister's response.

Lord Bellamy (Con): My Lords, as your Lordships know, this group is a stand part challenge to Clauses 49 to 52 of the Bill, which, in essence, disapply Section 3 of the Human Rights Act to prisoner release legislation. The issue before us is, as much as anything, to do with the constitutional balance between Parliament and the courts. It is not about disapplying the Human Rights Act; it is about who does what. What do the courts do and what does Parliament do? That is the issue.

The provisions with which we are concerned include the new release test for releasing prisoners on licence—namely, the public protection test set out in Clauses 41 and 42, which make it abundantly clear that the protection of the public is the overriding factor. The Human Rights Act is also disapplied in relation to the referral mechanism, referring the most serious release decisions by the Parole Board to a court—currently the Upper Tribunal—and to other prison release decisions. As far as I am aware, no amendment has been tabled in this House objecting to the principle of the new public protection test, nor to the proposed referral mechanism—though there is an argument about which court it should go to—nor to the principle of our IPP reforms, except that it is argued that we should go further. Parliament has plainly indicated what it is trying to achieve.

Against this background, where exactly does Section 3 of the Human Rights Act fit in? Lest any misunderstanding persist—which it seems to do—my first point is that nothing in these clauses removes or limits any convention rights enjoyed by any prisoners, or anyone else for that matter, by virtue of Section 1 of the Human Rights Act or under the convention. A breach of human rights may still be pleaded before any domestic court or in Strasbourg in the usual way, whether it be the right to liberty, family life or any other right protected by the convention. Clauses 49 to 51 do not alter or detract from those rights in any way.

Even if—which I do not for one moment believe—anything in the legislation from which Section 3 has been disapplied were held by a higher court to be incompatible with the convention rights, in such a hypothetical case it would be for the court to make a declaration of incompatibility. Then, in accordance with the principle of parliamentary sovereignty, it would be for Parliament to decide what to do—whether to amend the legislation and, if so, in what way. In other words, it is the job of Parliament to make challenged legislation compatible with the convention. It is Parliament's legislation; it is for Parliament to fix it, and it is the constitutional responsibility of everyone in either House to find a legislative solution.

The problem with Section 3 is that it gives finding the legislative solution to somebody else altogether—namely the court. This is Parliament's legislation and not the courts'. That was why I said at Second Reading that Section 3 of the HRA is, in essence, a procedural and interpretive provision that requires legislation to be given effect to in a way which is compatible with convention rights. Those words "given effect" have led, in certain circumstances, to the court reading in or reading down words into the legislation that Parliament has passed. In other words, the court is empowered under Section 3 to add to or subtract from what Parliament originally intended. This has been a difficult section to apply. It has required courts to depart from Parliament's intention and, if I may say so, to stray into the legislative realm.

[Lord Bellamy]

These amendments directly raise the proper balance between the courts and Parliament when it comes to legislative matters. That issue was highlighted in the 2021 Independent Human Rights Act Review. It was discussed over 80 pages, toing and froing on all sorts of points and suggesting numerous recommendations and amendments, with the majority of the panel finally recommending a series of reforms to Sections 2 and 3.

On the Government's position that Section 3 is a most unusual power in this respect, I can do no better than refer your Lordships to the trenchant criticism of Section 3 of the Human Rights Act on constitutional grounds by the noble Lord, Lord Pannick, King's Counsel, present in this Chamber, in his evidence to that 2021 review. His basic point was that it is not the function of the courts to legislate; it is the function of Parliament. Against that background, in the present context, the Government's position is that, on an issue of importance, such as public protection and prisoner release, it is for Parliament to determine what the test should be.

In the unlikely event of any of those provisions being disapplied, and a declaration being made under Section 4, again, it is for this House and the other place to put it right and not to delegate, abdicate or push away that responsibility on to the courts. That is the Government's position and it is essentially a question of the constitutional balance between what we do and what somebody else does—in other words, the courts. That is essentially the background to these amendments.

Clause 52 sets out the approach a court should take if there is a challenge on human rights grounds regarding the release of a prisoner. I do not accept the characterisation by the noble Lord, Lord German, that the wording of Clause 52 is effectively saying that public protection is an exclusive requirement; it simply says that that is a requirement to which weight should be given. No doubt, the courts are perfectly capable of arriving at a sensible interpretation of the provision, but the Government's view is that the importance of public protection is a matter that Parliament can rightly draw to the court's attention as something to which weight should be given. I will just add that that requirement does not apply to the so-called non-derogable rights under the convention, which are: Article 2, the right to life; Article 3, the prohibition of torture; Article 4, the prohibition of slavery, and Article 7, no punishment without law.

The courts already consider risk to the public. The Bill simply ensures that weight is properly given to that consideration. The essential point is that on these matters, in this context, it is not for someone else to be reading in or reading down what your Lordships decide; it is for your Lordships and for Members of the other House to put matters right.

Lord German (LD): My Lords, having heard that explanation, on the first part I suspect that this will have to come back when we have an array of former judges of all sorts in this House to test the position the Government have placed on this matter. To a lay person, it seems to be on a trail of chipping away Section 3 of the Human Rights Act, in particular. Therefore, I think this can wait for another day to have that legal learning that I think we will all need to take it on board.

In respect of the Minister's second point, about weight, it would not be so bad if it were simply "weight"; it would not be quite so bad if it were "great weight"; but it is "the greatest possible weight" and the greatest possible weight to me means virtually everything you can possibly put into it. I will take a simple Welsh analogy. You have a scrum. You put the weight of everybody into it with the objective of pushing the other side off the ball so that you can take it yourselves. That is where you would apply "the greatest possible weight". There might be a bit of pulling of hair and ears, and whatever else goes on inside a scrum—but I am not going to talk about that any more.

If you think about it, though, the words "the greatest possible weight" are pretty conclusive that what you must do is virtually everything that is in sight. So, I take on board the Minister's view that the word "weight" is important, but I do not take on board the words "the greatest possible weight". However, on the basis of the future legal discussion we are likely to have in this House, I beg leave to withdraw my objection to Clause 49 standing part.

Clause 49 agreed.

10 pm

Clauses 50 to 52 agreed.

Clause 53: Parole Board rules

Amendment 169

Moved by ***Lord Thomas of Cwmgiedd***

169: Clause 53, page 54, leave out lines 35 and 36

Member's explanatory statement

This amendment seeks to ensure that the decision as to the composition of the Board is an independent judicial decision made by the Parole Board.

Lord Thomas of Cwmgiedd (CB): This is the first of three very short amendments to deal with the independence of the Parole Board. I think—and I hope—it is not disputed that the Parole Board is a judicial body and independent. If that is contested, we shall we be here for much longer today—so I hope it is not. I assume it is not going to be.

The second issue is that, if a body is judicial and independent, that independence must be recognised. There are three ways in which Clauses 53, 54 and 55 breach the independence position. First, in Amendment 169, the intention is to remove the power of the Secretary of State to predetermine the membership of the board. We have been very successful with judicial bodies in this country in allowing the judicial body itself, or its president, to determine who sits on panels. I can think of no good reason to change that—unless, of course, the previous Lord Chancellor had other plans for the kind of body he wanted.

The second is the business of sacking the chair. I use the word "sack" as I think it is a good, earthy word for what the previous Lord Chancellor wanted to do. We are the nation that established the idea that Kings could not sack judges, at the end of the Stuart period. We led the way forward, and virtually every

proper democracy has that principle. It would be absolutely astonishing if we regressed from that, away from the rule of law. This is a pointer to it: it is quite wrong and should be removed.

The third aspect is quite disingenuous: the desire to remove the provision in the Bill that the chairman of the board should not deal with individual parole cases. It is absolutely unintelligible. Why would you want to make the chairman of a judicial body incapable of dealing with cases? The reason for this was that it could then be claimed that, if the chair of the board was not dealing with cases, the chair did not have a judicial function, and that could therefore justify the sacking. This is both disingenuous and very bad in principle. The chair is turned, effectively, into a pay, rations and hiring functionary rather than a leader.

Secondly, if you are chairing a board dealing with parole, you want to lead it, to know what is going on in the cases, and you want views. You have to sit and do the cases. From my own experience, it is quite clear that, if you have a judicial leader who does not actually understand the business of the courts, the fellow members of the judiciary—in this case, the Parole Board—will have no respect whatever for them.

These are three short points; there is no more I can really say about them. They are all bad points in the Bill. This seeks simply to remove them.

Lord Garnier (Con): My Lords, I am grateful to my former neighbour, the noble Lord, Lord Bach, for permitting me to jump the queue. I want to make some equally brief points to the points made by the noble and learned Lord just now. I will start with Amendment 171. This makes as much sense as requiring the Lord Chief Justice, as head of the judiciary, not to be able to sit in individual cases, either at first instance or at appeal; to deny the Master of the Rolls, who I believe is the head of the civil appellate system, the ability to sit on cases; to deny the chancellor of the Chancery Division the ability to sit on cases; and to deny the president of the Family Division the ability to sit on cases.

These are judicial functions which may have an administrative function as well. If we were really to go down a road whereby the shadow of Dominic Raab is to spring forward into the enlightened era of Alex Chalk, I think we would be making a mistake. That is enough about that.

None of the judicial officers to which I have just referred is removable on the say-so of the Secretary of State. Equally, the constitution should not suffer the embarrassment of having the head of the Parole Board, who is a judicial officer, being removed on the say-so of the Secretary of State. I have a suspicion that if Alex Chalk had written this Bill it would not have contained these clauses.

Amendment 169

"seeks to ensure that the decision as to the composition of the Board is an independent judicial decision made by the Parole Board".

Again, to go back to my references to the senior judiciary, it is the Lord Chief Justice who deploys the judges within the court system, it is the Master of the Rolls who decides which judges in the appellate court should sit on which particular case, it is the Chancellor of the Chancery Division who decides which of the Chancery Division judges should do what, and it is the President of the Family Division who does the same in relation to Family Division cases. It strikes me as being a perfectly normal and respectable constitutional arrangement. It would be a pity for Mr Raab, who has now moved on, to be able to continue to control the system. He is gone; these should go as well.

Lord Bach (Lab): My Lords, it is a pleasure to support all three of these amendments. They were tabled by the penultimate Lord Chief Justice, and are supported by the most recent Lord Chief Justice and a distinguished recent Solicitor-General, who spoke just now. I am afraid I can only claim to have been shadow Attorney-General in what was, to use a cliché, a bad year, for a shortish time to make up the numbers. I cannot add to the arguments that have been so persuasively put.

It is wonderful to see the noble Earl the Minister in his place; I did not expect him to take this particular group. I invite him to talk to his noble friend from the Ministry of Justice, who I suspect—I hope the noble Earl does as well—privately has a lot of sympathy for these amendments, because they are commonsensical. I ask the noble Earl to ask the noble and learned Lord, Lord Bellamy, to speak to the Justice Secretary patiently and persuasively about these matters.

I start from the position that the Executive should interfere in individual sentencing as little as possible—preferably not at all. Under our constitutional arrangements, it is not the Executive's responsibility, nor part of their functions. That is why the independence of the Parole Board is so important, as the noble and learned Lord just said. It is hard not to believe, I am afraid, that these proposals would actually have the effect of reducing that independence.

I have down on the amendment paper that I will oppose Clauses 53 and 54 standing part of the Bill. I will not press that at all tonight, but in this short speech I will talk about why I gave that notice; it may save a bit of time later on. It is really because I have two questions for the noble Earl. I asked the noble and learned Lord, Lord Bellamy, at Second Reading, but quite understandably he was so overwhelmed with the matters that he had to reply to in the minutes that he was allowed that he was unable to answer them at the time. I absolutely appreciate that.

The first question is to ask why, under the Bill, the Justice Secretary will send some cases where he has found the Parole Board has got it wrong to whichever body it is that he eventually sends them to, but not others. It was argued in this House in Committee, I think last week or the week before, that that should be not the Upper Tribunal but another body altogether. If he sends some cases where he thinks the Parole Board has got it wrong but not others, that will not make any sense at all. Surely he must send all of the case that he finds to be wrong to this judicial body or none of them. If he sends some then surely the position is not satisfactory. There may one day be a Lord Chancellor—certainly not the current one—who is less generous and would not send any that he felt was wrong to a court. If that position may develop, why on earth is this part of the Bill being proposed?

[Lord Bach]

My second question is this, and the Committee deserves an answer to it: will the Justice Secretary himself make these decisions, or will they be passed down to junior Ministers or to senior civil servants? I have no objection at all to senior civil servants taking important decisions but it is not appropriate that they—or, in fact, junior Ministers in the department—should take these decisions. What is the answer: will they or will they not? If they will, the problems associated with the Executive interfering in sentencing become much more acute. Does the Minister agree? I would be grateful for an answer to both those questions.

Lord Pannick (CB): My Lords, I agree with all three of the amendments in this group, and I do so for the reasons that have been powerfully explained by the other speakers. It seems that the issue here is very simple indeed. These clauses are designed to reduce the independence and authority of the Parole Board. New sub-paragraph (2C), in Clause 54(5), refers to the necessity of maintaining public confidence in the Parole Board. In my view, public confidence in the criminal justice system depends vitally on the independence and the authority of the Parole Board. I much regret that the Government should apparently think otherwise.

Baroness Prashar (CB): My Lords, I too support the amendments in this group, in particular the points made by the noble and learned Lord, Lord Thomas. As a former chairman of the Parole Board, albeit some years ago, I will underline a couple of practical issues, because I think this is a point of principle about its independence. The job of the chairman of the Parole Board is a very sensitive one, and they need protection, not a kind of sword hanging over their head that they can be dismissed. That is one point.

The second point is that it will be disastrous and have a very detrimental impact on the work of the Parole Board if its chair is not allowed to be involved in cases. As the noble and learned Lord, Lord Thomas, said, involvement means you begin to understand how it is done because the core work of the Parole Board is risk assessment. I know how engaged I was in dealing with the cases, talking to prisoners and getting involved. To me, that was very important when it came to risk assessment. The practical impact of these provisions will be negative, apart from looking at the independence of the Parole Board.

10.15 pm

Lord German (LD): My Lords, I too echo the words that have been spoken. Rather than repeating all this or speaking to this in the next group, I will talk about those issues in this group because they are very relevant to these amendments.

I have a series of practical questions. For example, stating which Parole Board members should be involved in a particular case is definitely an interference in the independence of the board. If the reply to that is, "Well we need to make sure that the right people are hearing the right cases", surely all you have to do is to make sure you appoint to the panels more people who have those experiences available to them. The Government, of course, have gone on the issue of those with enforcement experience. You simply recruit more enforcement-experienced people to the panels.

I agree with what has just been said. These parts of the clauses are analogous to the Government deciding who will be the judge in a particular case. Whether the chair should be involved in individual cases is a matter for the board; it should not be the subject of statutory prescription, as is before us now.

There is concern about the broad powers given to the Secretary of State to remove the chair on the grounds of public confidence. The outgoing chair of the Parole Board, Caroline Corby, said in her evidence to the Justice Committee that the power to remove the chair could see them dismissed if the board made an "unpopular decision". Unpopular with whom? With the Secretary of State, perhaps. As the noble Baroness, Lady Prashar, just said, she argued that

"the chair of the Parole Board needs more protection than pretty much any other chair of any arm's length body".

There is already a termination clause which means that the chair of the Parole Board, or any other member, can be removed. It is therefore not clear why a statutory power is needed. Perhaps the Minister can explain to us why he needs a statutory power rather than relying on the contractual power he already has.

Who is going to judge that public confidence has been breached and when? What is the need for this confidence test? Does the existing contract not provide for appropriate removal? What is going to be the threshold for the new test of breached public confidence? Will it be an opinion poll? Will it be an assessment of the latest newspaper cuttings? What will be the criteria? How will that threshold be applied? As many of us suspect, will it rest merely with the subjective view of the Secretary of State, which is the reason why it appears in the Bill at this point?

Public opinion should not form the basis for ministerial interference in an independent body making quasi-judicial decisions. I say "quasi-judicial" because that is what the Government say they are called. Most people would just call them "judicial". Last year the High Court noted that:

"It is … well established that, when exercising powers in relation to the Board, the Secretary of State must not to do anything that undermines or would be perceived as undermining the independence of the Board or that encroaches upon or interferes with the exercise by the Board of its judicial responsibilities".

There is no explanation anywhere why engagement in individual applications is needed. Currently, the chair holds these quasi-judicial judgments in his or her hands. Paragraph 14B of the board's current rules, which were put before this House in 2022, states that:

"The Board chair may determine an appeal by—(a) upholding the decision made by the panel chair or duty member … or (b) substituting their own decision, which may contain any direction that the panel chair or duty member could have made under paragraph (5)"

of the rules.

Pages 67 and 68 of the root and branch review made no such recommendation to neuter the chair. Instead, the review supported a strategic oversight group and a rules committee to recommend procedural changes to the Secretary of State. The impact assessment

for this Bill states that the chair will be appointed for a three-year term, renewable. However, the job pack, a copy of which I have with me, issued by the Ministry of Justice with a closure date of just last month, states that the appointment is to be made for five years. So applications closed in February and people have applied for a job where the tenure of the job—whether it is three or five years—is not known. I hope that the Minister can tell us how that circle is to be squared.

Can the Minister confirm the delegated authority that the Secretary of State has given to Ministers for appointment of the role of board chair? Does it remain as it was when Liz Truss was the Secretary of State, because, on delegation to Ministers, the review said that Ministers

"should be involved at every stage of a competition, including: agreeing the advertising and the advisory assessment panel membership; suggesting potential candidates; being consulted on closing a competition; being invited to give views on candidates; being provided with a choice of appointable … candidates; and having the opportunity to meet candidates".

If that is still the case, Ministers have an incredible influence over the person to be appointed, and one might reasonably wonder why they might want to sack them.

So those are a lot of practical questions, some of which are contained within the Bill and within the job pack for the new person taking over the role, which need to be clarified. I hope that the Minister in replying will be able to answer them.

Baroness Hamwee (LD): My Lords, I apologise to the Committee for missing the opening part of this debate. I was with representatives of the Bar Council discussing these very issues.

Having chaired a committee that questioned Dominic Raab about his ambitions for the Executive to take over functions which I do not think that any of us regarded as appropriate for takeover, this seems to me to be Members of the House of Lords doing what we do so well. We are trying to help find a way through and answer the questions. We should just be rubbing the whole thing out because of that Executive takeover, which is anathema to probably everybody who is sitting in the Chamber at the moment.

Lord Ponsonby of Shulbrede (Lab): My Lords, this group is actually more limited than the debate that we have had. It was very succinctly set out by the noble and learned Lord, Lord Thomas, when he gave his three short points in introducing his amendments. Very amusingly, the noble and learned Lord, Lord Garnier, said that the shadow of Dominic Raab should not remain across this Bill. A good way of removing the shadow is with these three amendments here.

The debate has strayed into the next group, but I will not address any comments on that group. As far as the specific proposals in the amendments tabled by the noble and learned Lord, Lord Thomas, of course we agree with them on this side of the Chamber. I noted the point that the noble and learned Lord made about the reason why the chair of the Parole Board would not have a judicial function. It would mean that he or she could be sacked.

I also noted the point made by the noble and learned Lord, Lord Garnier, and other noble Lords, that it is absolutely normal and to be expected that in any number of judicial and quasi-judicial roles, the heads of those particular functions also sit as judges. That is standard practice and it adds confidence to the various institutions that the people who head them are also practising and sitting tribunal chairs or judges.

I look forward to the Minister's response, but there is a very strong array of speakers against the Government's proposals, including the noble Baroness, Lady Prashar, who is a former chair of the Parole Board. We have two former Lord Chief Justices, a former Solicitor-General and my noble friend, a former shadow Attorney-General. It sounds like a pretty convincing line-up against the Minister.

Earl Howe (Con): My Lords, I am very grateful to the noble and learned Lord, Lord Thomas of Cwmgiedd, for speaking to his amendments with his customary clarity. I hope I can be helpful to him and the Committee in my response.

I have heard unmistakeably the reservations expressed across the Committee about these proposals. Before saying anything else, I undertake to represent to my noble and learned friend the Minister the strength of those reservations. I do so without commitment at this stage but in good faith. It may be helpful to the Committee if I explain where the Government are currently coming from in making these proposals so that noble Lords can understand the issues as we perceive them.

Amendment 169 seeks to remove lines 35 and 36 of Clause 53, which would have the same effect as removing the clause in its entirety. Clause 53 amends Section 239(5) of the Criminal Justice Act 2003, which allows the Secretary of State to make rules with respect to the proceedings of the Parole Board. At the moment, the provision permits rules to be made about how many members deal with particular cases, or that specified cases be dealt with at specified times. This clause adds that the Secretary of State may also require cases to be dealt with by

"members of a prescribed description".

Amendment 169 seeks to remove that addition.

I will explain briefly why we want to ensure that the Secretary of State can make rules about who sits on parole cases. In the *Root and Branch Review of the Parole System*, the Government committed to increasing

"the number of Parole Board members from a law enforcement background"

and ensuring that every parole panel considering a case involving the most serious offenders has a law enforcement member on it. We are talking here about murder, rape, terrorist offences and the like.

The Government of course recognise that each and every type of Parole Board member brings with them different experience and skills. That range and diversity contributes to generally effective risk assessments and sound decision-making. However, members with law enforcement experience, such as former police officers, have particular first-hand knowledge of the impact and seriousness of offending. Many will also have direct experience of the probation system, including, for example, licence conditions and the likelihood of an offender's compliance with such conditions.

[Earl Howe]

Clause 53 enables the Secretary of State to make the secondary legislation needed to prescribe that certain Parole Board panels include members with a law enforcement background. We will, naturally, continue to consider operational readiness before we lay any secondary legislation. I hope that explanation is of help.

Lord Garnier (Con): Am I to draw the inference from what my noble friend has just said that, under the current arrangements, inappropriate members of the board have been inappropriately appointed to particular cases?

Earl Howe (Con): No, not at all, but we think that certain Parole Boards can be strengthened usefully by having additional members with the experience that I have described. I have not implied or, I hope, made any criticisms of Parole Boards that have sat in the past or their decisions.

Baroness Prashar (CB): My Lords, I think that the explanation means that there is no confidence in the judgment of the chairman of the Parole Board to constitute the panels that they think are needed. Why is there a need for direction from the Secretary of State? That is what I fail to understand.

10.30 pm

Earl Howe (Con): My Lords, I have heard the arguments. I hope that the noble Baroness will allow that I have already given an undertaking to take those arguments back with me, and I will do so.

Turning, if I may, to Amendments 170 and 171, the first of these seeks to remove the power currently in the Bill which would allow the Secretary of State to dismiss the Parole Board chair on public confidence grounds and would remove the prohibition on the chair's involvement in individual parole cases. Amendment 171 seeks to ensure that the chair would continue to be permitted to attend and participate in individual parole cases alongside the more strategic role defined by other amendments to the chair's functions.

Let me begin by confirming that Clause 54(10) means that any changes in respect of the chair of the Parole Board do not impact on the appointment or functions of the current chair, Caroline Corby. Caroline has led the board well since her initial appointment in 2018, and the Government are very grateful to her for her leadership. However, there might be an exceptional occasion in the future when requiring a change of chair before the end of their appointment period is the best or only option. For that reason, new sub-paragraph (2C) within Clause 54(5) gives the Secretary of State the power to remove a chair from office if it becomes necessary on the grounds of public confidence.

Lord German (LD): What is the term of office? There is a difference between the impact assessment, which says three years, and the pack against which people have applied, which says five years. Which is true? I am happy if the Minister wants to reply in writing.

Earl Howe (Con): I will reply in writing, if the noble Lord will let me.

Lord Garnier (Con): I am sorry that it is very late and I am being tiresome. My noble friend the Minister said that there may come a time or there may be circumstances in which it would be necessary to remove the chairman or chairwoman of the Parole Board. I wonder whether my noble friend could perhaps give me one or two examples of the sets of circumstances in which that might apply.

Earl Howe (Con): A mechanism already exists for the Secretary of State to ask an independent panel to consider dismissing the chair if there are concerns about the postholder's performance or ability to do the job effectively. That route remains our preferred approach in the unlikely event that a dismissal is required. However, as the board is a high-profile public body, making important decisions on public protection every day, it is right, in the Government's submission, that the Justice Secretary should have the levers to change the leadership if a situation arose where it was necessary to do so in order to maintain public confidence in the work of the board. It is not a power that any Secretary of State would ever use lightly, and ideally there will never be a cause to use it at all. We are talking here about situations where, for example, there might be conflicts of interest, security issues or confidentiality issues. At the moment, my understanding is that there is no mechanism to dismiss a chair should any issue of that kind arise. The grounds at the moment are quite restrictive.

Lord Garnier (Con): Just to be clear, the Government are proposing that they will need to sack somebody who could be responsible for a breach of confidence, a breach of security, or some other grievous breach; but they will already have appointed this person to that job. Surely the vetting procedure leading up to the appointment would weed out the sort of eccentric people who would leak, or breach confidence, or misconduct themselves.

Earl Howe (Con): That is exactly why I said that it is not a power that it is likely any Secretary of State would use often, if at all.

Lord German (LD): To add to that point, I read out the list of delegations to Ministers about the appointment of the Parole Board chair. I am sure that Members of the House will have realised that it is a pretty extensive power over who gets a job. I wonder whether those delegations have altered. Once again, if the Minister does not know, perhaps he could write to me before we get to Report.

Earl Howe (Con): I should be happy to do so.

Alongside this new power, we are setting out for the first time in statute the functions of the Parole Board's chair. The intention is both to define the chair's role as a strategic leadership role and to make it clear that the postholder does not play any part in the board's decision-making when it comes to considering individual parole cases. The package of measures here, I am advised, ensures that the provisions that we are putting in place are consistent with the European convention.

The noble Lord, Lord Bach, asked me why the Justice Secretary will send only some cases to the Upper Tribunal, and whether he will delegate the power to

officials. In line with other significant powers that the Secretary of State operates, such as the power to detain under Section 244ZB of the Criminal Justice Act 2003, which allows the SSJ to override a prisoner's automatic release date and refer the case to the board, the operation of the power will be restricted to cases where it is considered necessary to take the not insignificant step of referral of a case via an operational policy.

It will be up to the Secretary of State to decide which of those cases they would like to refer to an independent court for a second check. We will develop criteria to ensure that this power is used only in those few cases where it is in the interests of protecting the public and maintaining public confidence. It will also be up to the Secretary of State, if he or she wishes, to delegate the power to senior officials, but we will ensure that there is a robust process in place.

I am of the view that retaining this clause—having a safeguard in case removal is ever necessary and being clear about what the role of the chair is—is vital. However, as I said at the start, I have listened carefully to what the noble and learned Lord and other noble Lords have said. I understand the concerns expressed. Without commitment at this stage, I undertake to consider the issues very carefully, in conjunction with my noble and learned friend, between now and Report.

Lord Thomas of Cwmgiedd (CB): I thank the noble Earl for agreeing to take all these points to the Minister. There are two points I really want to make. First, it is suggested that these decisions are somehow quasi-judicial. I had assumed that two of our most basic rights are not to be locked up and not to have our freedoms curtailed by restrictions. Deciding on those points is judicial; there is nothing "quasi" about it. Therefore, how "quasi" has got into this is, to my mind, a complete misapprehension. I hope it can be corrected, because the protection of your liberty and your freedom to do what you do as an ordinary person is essentially something that a judge must decide and no one else.

Secondly, I hope the Minister—not the noble Earl—will think back to his own experience when he sat as chairman of various judicial bodies. I do not know who the Government have in mind, but it is utterly absurd to think that they could maybe appoint someone who has run a large department store—there may be one of those becoming vacant in a moment—someone who has been head of a particular branch of the Civil Service, a retired physician, or a person who has run a hospital trust. These are the kind of people who know absolutely nothing about the difficulties of making a decision. The chairman of the Parole Board has to do the business, and if that person does not do the business, no one—not the public and certainly not the members of the Parole Board—will have any confidence in them.

I have put the message quite strongly; I think it has been understood. I am sorry to have gone on a little bit longer on these points at this late hour. I must particularly thank the noble Earl for the very courteous and clear way that he dealt with this. I look forward to seeing him be a much better advocate than me in persuading the Minister to make a decision that removes all three of these clauses. I beg leave to withdraw the amendment.

Amendment 169 withdrawn.

House resumed.

House adjourned at 10.41 pm.

Grand Committee

Tuesday 12 March 2024

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Baroness Kennedy of Cradley) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Gender Recognition (Approved Countries and Territories and Saving Provision) Order 2023

Considered in Grand Committee

4.15 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Gender Recognition (Approved Countries and Territories and Saving Provision) Order 2023.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, this statutory instrument updates the list of countries and territories from which citizens are eligible to use the fast-track recognition process to obtain a gender recognition certificate. We laid the statutory instrument before the House on 6 December 2023. Subject to parliamentary approval, this will be the first time that the approved overseas countries and territories list has been updated since July 2011.

The Statement given by my right honourable friend the Minister for Women and Equalities on 6 December in the House of Commons generated a wide debate. The Commons Committee debate touched on the importance of communicating these changes clearly. It is important that everyone understands why we are updating this international gender recognition process, and that includes our colleagues internationally. Importantly, this debate is focused on the details of the SI and our need to make this update.

We are making these changes because the Government believe that it should not be possible for a person who would not satisfy the criteria to obtain legal gender recognition through the standard route under UK legislation to use the overseas recognition route to obtain a UK GRC. This would damage the integrity and credibility of the process of the GRA. There have been many changes in the international approach to gender recognition since the list was last updated in 2011. We have provided details of overseas countries and territories to be removed and added to the list laid on 6 December, which is available to view on legislation.gov.uk.

We have undertaken thorough checks, in collaboration with the Foreign, Commonwealth and Development Office, to verify our understanding of each overseas system in question and have measured them against the UK's standard route to obtain gender recognition. My right honourable friend the Minister for Women and Equalities and the Minister for Equalities have both engaged extensively with posts, including those in the USA, Canada and Australia. I am confident that the international community understands the extent of the changes and their impacts on their citizens.

The overseas route to obtaining a gender recognition certificate sees low volumes of applicants. Of the 370 total applications in the last quarter, only 4% used the overseas route. Of the 7,043 applications received since 2009-10, 94% were standard applications and 5% were overseas applications. The impact on transgender people in this country and abroad will be minimal and this update brings the overseas route back in line with the standard route, allowing for more equality in application requirements.

Finally, it is extremely important to ensure parity with those who have taken the UK standard route to obtaining a gender recognition certificate. It would not be fair for the overseas route to be based on less rigorous requirements and consequently for the certificate to be acquired more easily. I beg to move.

Lord Henley (Con): Before the Front-Benchers intervene, I wondered if I could ask my noble friend a question.

Baroness Thornton (Lab): This is not the end of the debate; it is just that I have chosen to speak at the beginning.

Lord Henley (Con): I give way to the noble Baroness. I will come in later.

Baroness Thornton (Lab): As the noble Lord is aware, it is perfectly all right to speak now, but I always think when doing statutory instruments that, if you have a lot of questions, as I have, it is only fair to put them in first, so the Minister and the team can think about them.

I thank the Minister for her explanation. I would like to make one little prod or poke, as it were, to the Government over this matter because it was the subject of the first Statement that the Secretary of State for Women and Equalities chose to make in her job. She did not choose to talk about why more black mothers and babies die in the maternity units in our hospitals or why we have huge misogyny in our uniformed services. She did not choose to talk about the increase in violence that our LGBT+ communities are experiencing or the problems that disabled people have with our train service and in getting jobs. She chose not to speak about those things and the fact that she chose to speak about this issue says something. Reading that debate, I think that it probably achieved the exact political purpose she wanted.

However, we can agree, I think, that it is important that this list of approved countries is kept up to date, as the Labour Government provided for when we passed the GRA in 2003. I was there and involved in the discussions around the then Bill; I helped to put it

[Baroness Thornton]
on the statute book. The list was last updated in 2011. The Government at the time said that they expected to update it within five years, but that was 13 years ago, so it is timely that we should be doing this now. My first question is: have the Government stated when they expect this order to be updated next? What is the intended timescale as we move forward? The reason why we wanted to do this in 2003 is that we knew that the world was changing constantly in this area.

With the limited information on the criteria that have been adopted by the Government in making these decisions—there is a headline list included in the Explanatory Memorandum but no further detail—can the Minister give the Committee more detail on what criteria will be applied and an assurance that they will be consistent across each case? For absolute clarity, will the changes made by this instrument have an impact on those in the UK who already hold a GRC via the overseas route? What about the applications that are currently outstanding but were initiated before this order comes into force? Can the Minister give details on how the countries affected by this instrument were both consulted ahead of the change and notified that the change was being made?

Will the changes in this instrument have any impact on the mutual recognition of UK GRCs in other countries? Further, what discussions have Ministers had about mutual recognition in other areas including equal marriage, adoption and pensions, and whether they may be impacted? Can the Minister assure the Committee that those rights are safeguarded and that discussions have been had with the relevant countries on those issues? The Explanatory Memorandum confirms that the Northern Ireland Executive and the Scottish Government were consulted; I would like to know what the outcome of that consultation was.

Finally, my colleagues in the Commons asked about Germany. There seems to be some confusion as to whether it is being removed from the list. Can the Minister give us an update for clarity? What changes are being made to the German system and when will those changes come into effect? Will there be further changes to this list in the near future to respond to those changes?

Those are my questions. If the Minister cannot give us all those details in her answer, I would be quite happy for her to write to us and put her answer in the Library.

Lord Henley (Con): My Lords, I apologise to the noble Baroness, Lady Thornton, for trying to get in to speak before her. I want to make only a brief intervention in this debate, merely because I am intrigued to know about the list of approved countries and territories and what is included. We have in the Explanatory Note a list of the countries that were included in 2011. It includes quite a lot of Australian states and territories, some of which have, I think, been added to this list. It then goes on to include others, including—as one would expect—countries of a progressive sort, such as Sweden.

What I find particularly peculiar is that it then includes countries such as Iran. What is the Iranian legislation on this matter? Are we allowed to see it? Is it appropriate? Is Iranian legislation really fit for purpose on a matter of this sort? I appreciate that, as my noble friend put it, only 4% of applicants are using the overseas route, so we are talking about tiny numbers, but the inclusion of countries such as Iran and one or two others—I shall not mention them, but Iran is probably the most obvious—requires some proper explanation from the Government about why they are there and what is the Iranian legislation behind it.

Baroness Barker (LD): My Lords, I thank the Minister for her introduction of this SI. As she said, last December the Minister for Women and Equalities, Kemi Badenoch MP, announced that she was planning to update the approved list of countries and territories and remove countries that do not require a medical diagnosis in order to gain legal gender recognition. Her statement was based on a belief that checks and balances and a medical diagnosis are required. There is no evidence of higher crime rates or higher risks to women in those jurisdictions which use self-declaration of gender, so Minister Badenoch's belief is unsupported by the evidence.

According to the Government's statistics, fewer than 50 gender recognition certifications were granted through the overseas path in 2022-23 and the average number granted each year in the period from 2009 to 2020 was approximately 17. There is no breakdown of the countries where the original legal gender recognition was granted and there is no data about whether any of the individuals who gained legal gender recognition in the UK using this route have been prosecuted or convicted of any criminal offence. The actual impact of removing various countries is minimal according to the number of GRCs issued, but it may have important repercussions for those who are currently eligible but will not be under this proposed order, and there is no evidence that these individuals should have their current right removed. There is no reason to do so.

The impact of these proposals is unknown, due to the lack of statistics around the countries of origin and crime, but we should not assume that it is negligible. The Council of Europe's Resolution 2048, which was passed in 2015, says that states should

"develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek to use them, irrespective of age, medical status, financial situation or police record".

The UK remains a member of the Council of Europe, which is not the same organisation as the European Union.

As the noble Baroness, Lady Thornton, said, Germany remains on the list of approved countries despite introducing legal gender recognition by self-declaration in August 2023. Ireland is not on the current list, and it is not on the proposed list. It is proposed to remove recognition by parts of Australia, the entirety of New Zealand, certain states in the USA and lots of European Union countries. India and China have been added. India allows hijra to be recognised as a third gender, as well as allowing transition between male and female. It places surgical requirements for recognition as male or female, but the recognition is granted by a district

magistrate. However, very few people are able to access the law due to difficulties in getting appropriate healthcare and fighting discrimination. In short, there is no consistency in the application process for the proposed countries.

However, there is one thing in common: they do not follow either the UN's or the Council of Europe's recommendations—that is the only thing. We are getting to the real reason why this Government, and Minister Badenoch in particular, chose to do this. This is the Government who could not find time to ban conversion therapy and the harm that that does to our community, and this is the Government who are seeking to remove a lot of protections from the LGBT community. Yet they found time to do this, which is likely to affect 20 people at most—people for whom there is absolutely no evidence that they pose any threat to anybody at all.

This is part of this Government's ongoing war on human rights and the protections that human rights afford to minorities. It is part of their ongoing campaign to destroy human rights and the organisations set up to protect the rights of people who are, and should continue to be, protected under equalities legislation. The message from this legislation to the LGBT community is clear: you are no longer safe while this Government are in office. It is high time that they should go.

4.30 pm

Baroness Barran (Con): My Lords, I thank all noble Lords for participating in this short debate. I accept that the views expressed by the noble Baroness, Lady Barker, come from her own perspective, but her description of this Government's records on human rights is not something that I recognise personally. I hope that, in my opening remarks, I was able to provide the Grand Committee with some clarity on the purpose and effects of this legislation.

I will try to take some of the questions from the noble Baroness, Lady Thornton, in turn. She asked about our international engagement and how other countries would be aware of these changes. Diplomatic posts have been notified of the changes. We provided them with comprehensive question and answer documents that address potential misconceptions about what this statutory instrument does. We have worked very closely at ministerial and official levels with the Foreign, Commonwealth and Development Office throughout the process, and we are monitoring the international reaction to the legislation.

The noble Baroness remarked on the delay in this work. I can only agree with her that it is overdue. We have delivered on other commitments, such as the reduction in the fee. There is no firm date for the next update of the list; we have said that we will review it frequently.

The noble Baroness also asked about how we are applying the criteria. As outlined in the Explanatory Notes to Section 2(4) of the Gender Recognition Act 2004, we have determined the phrasing "at least as rigorous" to mean, in this instance, that the criteria must match the UK legal gender recognition process. This has been applied consistently across every country and territory. Where there have been equivalences that are compliant with the UK system, we have acknowledged those, too. The full list of criteria used for this update can be found in the Explanatory Memorandum to the draft order on the legislation section of GOV.UK.

My noble friend Lord Henley asked specifically about Iran. The detail that we have on the Iranian legislation is that it goes beyond our criteria. He asked whether we had reviewed that; my assumption is yes, but if there is anything different from that, I will write to him to clarify.

The noble Baroness, Lady Thornton, asked about the impact on outstanding applications that are in process. This is not retrospective so, if people have started the process and were eligible formerly, they would still be granted a certificate.

The noble Baroness asked about the feedback from Northern Ireland and Scotland. Obviously, we had to consult with them ahead of laying the instrument. There was no comment from the Northern Ireland Administration, and the Scottish Administration had some criticisms of the Government's approach, which is perhaps unsurprising given their approach to this issue.

I think I have answered most of the noble Baronesses' questions, but we will check in *Hansard* and—

Baroness Thornton (Lab): What about Germany?

Baroness Barran (Con): The legislation in Germany has not yet been passed. The noble Baroness alluded to this—forgive me; it was on my list.

As a team within the equalities hub, we remain very open to discussing these topics and some of the wider policies that both noble Baronesses raised.

Motion agreed.

Social Housing (Regulation) Act 2023 (Consequential and Miscellaneous Amendments) Regulations 2024

Considered in Grand Committee

4.36 pm

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

That the Grand Committee do consider the Social Housing (Regulation) Act 2023 (Consequential and Miscellaneous Amendments) Regulations 2024.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, this draft instrument makes technical, consequential and miscellaneous amendments to primary and secondary legislation following the passage of the Social Housing (Regulation) Act 2023.

For far too long, too many tenants have not received the quality homes and services they need and deserve. Social housing tenants deserve decent homes and to be treated with fairness and respect by their landlords. Where they experience problems, these should be resolved quickly. Where they have complaints, these must be listened to. On too many occasions, this has not happened, and we know that getting this wrong can, sadly, lead to tragic consequences. We cannot forget the Grenfell

[Baroness Scott of Bybrook]
Tower tragedy, nor the tragic death of two year-old Awaab Ishak from prolonged exposure to damp and mould that was left untreated. These events were the catalyst for change.

The passage of the Social Housing (Regulation) Act was a landmark moment for the social housing sector. The Act facilitates the biggest change to the regulation of social housing in a decade, paving the way for the introduction of a new proactive consumer regulation regime. The proactive regime will drive up standards in social housing, with regular inspections of large landlords, new tenant satisfaction measures and stronger enforcement powers for the regulator to take action when things go wrong.

During the passage of the now Act, we made a number of major amendments, and I am thankful for the constructive input from noble Lords and the other place. A key addition was the introduction of Awaab's law. This will help to ensure that hazards in social housing are assessed and then repaired within set timescales. The Act facilitates the introduction of new competence and conduct standards that will professionalise the sector to improve the quality of service that tenants receive. The 2023 Act also made a number of changes to strengthen the existing economic regulation regime.

To ensure that existing legislation remains accurate following the passage of the 2023 Act, the regulations contained in this instrument make several consequential amendments to relevant primary and secondary legislation. Part 1 of Schedule 1 makes consequential amendments to the Housing and Regeneration Act 2008, which are necessary in response to the provisions set out in the 2023 Act. Such changes include amendments that reflect the change to when a housing moratorium starts and the addition of new entries in the index of defined terms in the 2008 Act which signpost definitions added or amended by the recent Act.

Part 2 of Schedule 1 makes consequential amendments to other relevant legislation, including the Housing and Planning Act 2016. These changes are a consequence of provisions in the 2023 Act which make changes relating to moratoriums in the event of an insolvency, the definition of whether a registered provider is "non-profit" and what constitutes an "English body" for the purposes of who can be registered.

Part 3 of Schedule 1 makes consequential amendments to the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 in consequence of a change made by the 2023 Act. This change relates to the definition of "community land trust", which has been inserted into the Leasehold Reform (Ground Rent) Act 2022 by the 2023 Act.

Lastly, the regulations make two miscellaneous adjustments which correct minor errors in statute. The first removes a redundant reference to a section in the 2008 Act which was later repealed by the Housing and Planning Act 2016. The second amends a provision inserted by an SI; this change is intended to ensure consistency across the two pieces of legislation.

Although the changes I have outlined are of minor significance in themselves, they are required to ensure accuracy and consistency across the statute book following the changes made by the 2023 Act. I commend these draft regulations to the Committee.

Baroness Taylor of Stevenage (Lab): My Lords, I thank the Minister for her introduction to this instrument. I refer to my interests as recorded in the register.

We have been pleased to support the implementation of the regulation of social housing, including the revised consumer standards which will be required of landlords from April. The introduction of Awaab's law is particularly important, as evidence of the harms of damp and mould continues to accumulate; as is the building safety work since Grenfell, although I think we all agree that it could be going more quickly, and we will continue to raise the issue that buildings under 11 metres are still not addressed. We look forward to further consideration of some of the key ownership issues when we debate the Leasehold and Freehold Reform Bill later this month. We totally support the principle that social tenants should receive and deserve the very highest quality in the homes they live in and the service they receive from their housing provider.

I am sure the Minister will be pleased to know that we recognise that these technical amendments are entirely uncontentious and will therefore not object to or raise lots of issues on them. However, it would be wrong in any discussion related to social housing not to highlight the ongoing funding issues facing councils, with their housing stock, and housing associations. For councils, the increasing burden of regulation—important as we all understand it to be—places an increased financial burden on them. With the capping of rent increases and the fact that in the current cost of living crisis any significant increase in rents would place an unmanageable burden on our tenants, the cost of meeting these additional regulatory burdens is a significant pressure. This is in addition to the costs of decarbonisation and retrofitting. While government contributions to this are welcome, at the current rate of funding it would take many decades to complete the work, well beyond the target for net zero.

Lastly, I take this opportunity to mention, as there has not been a chance anywhere else, the unfathomable decision that emerged from the small print of last week's Budget—that the Secretary of State has terminated the ability of local authorities to retain 100% of right-to-buy receipts. This returns us to the awful travesty around right-to-buy sales. I take the example of my authority, which had a council stock of around 30,000 social homes, and now has only around 8,000. Some years ago, we were offered the opportunity to buy out our stock from the Government, which you could argue we already owned, but I will leave that argument for another day. We borrowed £240 million to do so, and that loan is being paid off through the housing revenue account. Not only does the removal of the 100% retention of receipts remove the resources we would have had to replace the homes sold under right to buy, but it also eats into the income stream we had to pay off the loan we had to take out to buy back our own homes.

4.45 pm

Last week, the Housing Minister gave a figure of 172,000 social homes built since 2010, and we all know that there are more than 1 million people on housing

waiting lists. The increasing demand for temporary and emergency accommodation is overwhelming council and DWP budgets. How is it credible or rational to cut off one of the very limited sources of funding for new social housing? Can the Minister tell us what assessment was carried out, before that decision was taken, of the impact on local authority housing finance and of the impact of fewer social homes being delivered, which would have helped ease the housing crisis? We all want to see better regulation of social housing, but we would like to see more of it as well.

Baroness Thornhill (LD): My Lords, as the Minister knows, this Act has been well received by all sectors concerned with social housing, and it is supported on our Benches. As she said, this is due largely to the Grenfell tragedy, but also to subsequent high-profile failures of social housing, including the tragic death of young Awaab Ishak. Let us not forget the recent deaths in temporary accommodation, which are truly shocking.

We know that the devil will always be in the detail, and we all hope that the rhetoric accompanying the Act will live up to the reality. The Minister is clearly aware that there have been several consultations since last July, when the Bill was passed, and issues have emerged, which the sector is rightly bringing to the Government's attention in this process. It appears that the full and cumulative impact of the new changes thus far has been evidentially to expose the wide variation in the quality of provision of social housing by registered providers and councils. This was recently outlined very robustly by the deputy social housing regulator. Is the Minister confident that the new approach to inspections and the C categorisation will allow for a nuanced approach to allow those lagging behind to learn from the best and hopefully catch up, or will it be an adversarial system—a weeding out of the worst? In short, what will the approach to inspections be? I know from experience of Ofsted in schools and the CPA in local government that they can vary.

It is no surprise that there are concerns about the additional costs associated with all the changes, which I am sure the Minister will be aware of. What is in place to ensure that landlords can make progress without financially falling over, as we are seeing with some local authorities? Regrettably, we are already hearing that they are cutting back on development plans to focus on the detail of the new regime, which itself is a separate concern due to the considerable shortage of social housing. I echo the comments of the noble Baroness, Lady Taylor, with which I wholeheartedly agree. In fact, I add that I found that announcement bitterly disappointing because I believed that this Government had genuinely shaped the agenda towards a real understanding that social housing was one of the first bricks we needed to get in place to unblock the logjam and the housing crisis.

Does the Minister accept that there is also a recruitment and retention problem, highlighted and exacerbated by the professionalisation of housing management and maintenance? That is a good aspect of the Act and had cross-party support, but not surprisingly it is having an impact, as some people are jumping before being pushed—probably a good thing in some cases, I am not afraid to say, having had to do the pushing sometimes—or feel that perhaps now is the time to retire rather than go back to the classroom, but it is a very real and relevant issue.

The speed and breadth of the changes cause me to ask how confident the Government are that the sector can and will have the capacity to cope with these genuine changes.

Briefly, on the Awaab's law changes, I thank the Minister for her detailed letter in response to my question in the Chamber and her generous offer of her time. On a tangential issue, the consultation that has just closed proposed an extension to hazards beyond mould, damp and condensation to include the 29 hazards in the—this is a bit of a mouthful—housing health and safety rating system. This has caused considerable disquiet for the National Housing Federation and the Chartered Institute of Housing, to name but two. They have given convincing reasons why this extension should be reconsidered. Does the Minister agree that it is probably best to see how the sector copes with mould and damp before extending the hazards further?

It seems that there is still much to do to clarify these changes, particularly around the regulator's use of powers and the approach to inspections. Further clarity is needed on how the regulator will interact with other sector regulators, such as the building safety regulator and the Housing Ombudsman. This will take some getting used to. Such clarification is particularly important for tenants, who will also have an important role to play. In fact, the Act enshrines in law their rights to have a safe and decent home, to make their voices heard and to influence policy so that tenants can shape the homes they live in and the services they receive. I have a pertinent, but perhaps tricky, question. Does the Minister feel that the residents panel—I notice that it is currently recruiting new members, so the current one has not been in action for very long—is a strong, independent and influential voice for tenants or just a sounding board?

Lastly, I look forward to the day when private sector landlords are also subject to the same regime because it is long overdue and much needed.

Baroness Scott of Bybrook (Con): I thank the noble Baronesses opposite for their support, not only today but when we were taking the Bill through, and their challenge on what could be made better. We took some of those things on board.

The noble Baronesses, Lady Thornhill and Lady Taylor of Stevenage, brought up the pressures on the sector. We totally understand them, which is why we work closely with the sector, but my view is that it is the sector's responsibility. It is the sector's stock. It needs to keep that stock up and its tenants deserve the very best. So, we will support the sector, but we will not stop challenging it to ensure that social housing tenants live in safe, good accommodation. That is what has come from the Secretary of State right the way through this process.

On right to buy, all I can say is that there were many pressures on the Budget this year. The percentage did not get extended but, again, we are working with the sector to see how we can make the building of more

[Baroness Scott of Bybrook]
social houses, particularly by local authorities, affordable into the future. I think that noble Lords will hear more on that.

Moving on to the noble Baroness, Lady Thornhill, am I confident in the approach to inspections and learning from the best? I think learning from the best is the important thing and, yes, I am confident. I talk regularly to the social housing regulator, and it gets it and understands its role. I do not think it will go in heavy to begin with; it will allow the sector to begin to understand this important new regime. However, I think it is important that it can go in quickly if it thinks there is a particular issue to deal with and that it will do regular inspections throughout the sector in future. We will weed out the worst providers, but it is also a matter of helping them to improve and learn from the rest of the sector.

I understand the pressures on the sector, particularly for building new houses, as it has quite rightly had to put more money into making sure that the stock it has is of good quality, so there is possibly less money left for building more houses, but we have a fund of more than £11 million to do that. Housing providers are looking to use that fund continually, and we are supporting them to do that.

Recruitment and retention is out for consultation. We will listen to the sector. This was extremely important to members of the Grenfell community, in particular. They felt that their housing officers were sometimes as important as people working in social care in the council. We listened, and we found a way through that one. We also need to listen to the sector and the regulator as we move forward about the timeliness of implementing this. It is not going to be done overnight, so we will work with the sector after the consultation and listen to what it is saying on that one.

It is the same with Awaab's law, although I am very passionate about getting Awaab's law in place as soon as possible. I probably agree with the noble Baroness that perhaps we should start with the timings on damp and mould; that may be something we can look into further. We have only just finished that consultation. I have not seen the responses yet, so I do not want to pre-empt what will come out of that, but we will look, listen and do what we can to get that important part of the Act in place as soon as possible.

The noble Baroness also brought up the interaction between the Housing Ombudsman, the building safety regulator and the social housing regulator. In the department, I have talked many times with officials about the communication on this because it is a new regime; we want it to work and to work well for the tenants concerned. I think noble Lords will see a lot more communications with tenants about who to go to. Of course, if they have a problem, they should first go to their housing provider. We want to make sure that they do that and, if it is an individual case, go to the ombudsman, and then to the building safety regulator which will be working very closely with the ombudsman to make sure that it is picking up any themes coming out from a particular provider or group of providers. That is the way it will work, but communication to the tenants about this regime is important.

Finally, I turn to the residents' panel. I have been to the residents' panel, and I do not think that it is a talking shop at all. It is quite challenging. That is why we are extending them for a further year beyond just one year. What the panel says is very important not just for us as a department but for our partners, including the social housing regulator, the ombudsman and the building safety regulator. It is important to listen to the panel; it certainly tells us what it thinks.

I think that I have covered everything; I will check and, if I have not, I will write as usual. To conclude, these changes will ensure that the statute book remains accurate following the passage of the 2023 Act. This is just a small part of our wider mission to drive up the quality of social housing and ensure that all tenants are treated with fairness and respect.

Motion agreed.

5 pm

Sitting suspended.

Energy Bills Discount Scheme (Amendment) Regulations 2024

Considered in Grand Committee

5.05 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bills Discount Scheme (Amendment) Regulations 2024.

Relevant document: 15th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 7 February 2024. As we are all aware, Russia's illegal invasion of Ukraine led to an exceptional rise in energy prices. At the time, the Government responded decisively to these unprecedented circumstances by delivering critical support to households and non-domestic energy consumers facing significant increases in their bills.

Through the energy price guarantee and energy bill support scheme, the Government have spent more than £35 billion supporting households. Non-domestic customers will receive about £8 billion through the energy bill relief scheme and the energy bills discount scheme, which I will refer to as the EBDS. The swift action to introduce this legislation protected consumers from these inflated prices, mitigating what would have been more severe effects of this economic pressure had the Government not intervened.

The EBDS provides a discount on energy bills for the 2023-24 financial year for energy customers on non-domestic tariffs. The EBDS provides a further, higher level of support where those on non-domestic tariffs have domestic end-consumers. This is to support

customers on heat networks who were not supported by the energy price guarantee that was available to other domestic customers.

Heat network customers were not protected as heat networks normally purchase their energy through commercial contracts, which they then sell on to domestic customers. All eligible heat suppliers with domestic customers were required by the EBDS regulations to apply for this additional level of support and to pass this benefit on to their customers. They were required to do this within 90 days of the scheme being launched or within 90 days of becoming eligible. The support given by this scheme ensured that householders who might have otherwise been exposed to the full wholesale market price were instead protected. This support is estimated to be worth about £180 million in total or an average of £1,200 per customer supported.

I turn to the specific amendment to the EBDS regulations that we are discussing. Under current regulations, if a heat supplier has failed to apply to the scheme within the deadline set by the rules, it can still apply for support. Indeed, we have required heat suppliers still to apply for support in order to ensure that as many households as possible can benefit. However, the current regulations allow suppliers to apply for support even after the scheme ends at the end of this month. This means that a customer would not get their support in a timely manner, and it also means that the Government would be legally required to process and pay for the administration of applications potentially indefinitely, at a large administrative cost to the taxpayer.

Therefore, this amendment instead provides for an end date, after which no further applications can be made. The final date will be specified in rules that will be made and published if this instrument is approved by the House. The deadline we intend to set is 31 March 2024, which aligns with the end of the period of cover of the EBDS. We have publicised this 31 March end date widely across the relevant sector. There would be one exception to this 31 March deadline for heat suppliers that become eligible so close to the deadline that it would be unreasonable to expect them to apply. Those heat suppliers would have until 14 April to apply.

I come to the most important aspect of this scheme: the impact it has on households facing high bills. It is right to introduce this deadline for those customers too, so that they benefit from this scheme when they need it most, not at an undetermined point in the future. It is essential that as many people as possible benefit from this support, and my department has been conducting extensive engagement to encourage applications from all eligible heat suppliers.

We are also mindful of the number of vulnerable domestic customers who live on heat networks. We have taken action to try to ensure that these customers receive the support they need, for example, by working with applicants in the social housing sector to ensure that all those applications are approved.

To be clear, this deadline does not stop customers being able to seek redress where their network has failed to apply. The Energy Ombudsman in Great Britain and the Consumer Council for Northern Ireland can provide support with dispute resolution and require payments to be made to customers. If necessary, customers can also choose to pursue claims through the civil courts.

To conclude, this instrument amends the EBDS regulations so that the duty for heat suppliers to apply for support is a duty to apply in a timely way, ahead of a deadline. This is a responsible step to ensure that we support customers while limiting the administrative burden on the taxpayer as pressures from energy bills, thankfully, ease. I commend these regulations to the Committee, and I beg to move.

Lord Vaux of Harrowden (CB): My Lords, I remind the Committee of my interests as a generator of small-scale hydroelectricity and as a recipient of feed-in tariff payments.

I do not have any specific comments on the SI, which simply fixes a wrinkle in the various energy support schemes, but I point out the concern raised by the Secondary Legislation Scrutiny Committee that up to 60,000 domestic customers may be missing out on the support available. The Minister has given some examples of what the Government are doing, but it seems that more could be done to ensure that domestic customers do not miss out on this money. How many heat networks are there and have we made attempts to contact all of them to push them into making applications?

I take this opportunity to ask the Minister more generally about progress in dealing with the underlying distortions that made the schemes necessary in the first place. As he said, the support schemes arose because of the substantial increases in energy prices following the Russian invasion of Ukraine. It was entirely understandable and right to support people and businesses under those circumstances, but those schemes did nothing to fix the underlying distortions in the electricity markets that are, in part, the cause of the high pricing.

The key feature is the fact that the price is driven by the marginal pricing of electricity and therefore by the price of gas. That means that the price of electricity from all sources, including renewables, where the generation cost fell during the same period, was driven by the increased gas cost. It meant that people on apparently 100% renewable tariffs saw their electricity prices more than double, even though the cost of renewables had fallen. Quite apart from raising the question of how legitimate those renewable-only tariffs are, this led to some generators earning supernormal profits at the expense of consumers. The support schemes meant that we saw the strange situation of some generators having their excess profits subsidised by the Government. The same was even more true of the gas producers.

I realise that it is more complex than that, as I am sure the Minister will say, especially with the expansion of contracts for difference, but it is generally recognised that electricity prices need to be decoupled from the marginal rate, and especially from gas prices, to remove the distortions and fluctuations that the current situation generates. I asked the Minister about this in an Oral Question on 6 September 2022. He referred then to

"the review of market arrangements, which is looking urgently at that exact situation".—[*Official Report*, 6/9/22; col. 91.]

Yet I see that the Government have today launched yet another consultation covering, among other things, exactly the same issue. Launching another consultation does not feel like the urgency that he promised 18 months ago. Can he provide an update on progress and when

[Lord Vaux of Harrowden]
we might finally see electricity pricing decoupled from the marginal cost of gas generation and the market distortions reduced?

5.15 pm

Earl Russell (LD): My Lords, this statutory instrument sets out to enable the Secretary of State to put down a date after which heat networks may no longer be able to make an application for support under the energy bills discount scheme. The EBDS was established in April 2022 to provide non-domestic energy consumers with a discount on their higher gas and electricity bills. It also gives discounts to domestic consumers on communal heat networks, who, unlike households using a normal mains electricity or gas supply, were not supported under the terms of the energy price guarantee.

Under the terms of the EBDS, qualifying heat suppliers—QHSs—are required to apply for support, which they must then pass on to the domestic customer in the form of energy bill discounts. The Minister in the other place noted:

> "Without that support, domestic customers on heat networks would have been exposed to the full impact of high wholesale market prices. The support that we have provided through the EBDS regulations is estimated to be worth £180 million in total, and £1,200 for the average … customer".—[*Official Report*, Commons, Fifth Delegated Legislation Committee, 5/3/24; col. 3.]

This is, if you like, the architecture that was set up at pace and at scale to deal with, as the Minister here has said, the consequences of the invasion of Ukraine, its impact on rising energy costs here and the impact of that on the cost of living.

I want to be clear that any comments I make on this statutory instrument are set against a background of welcoming all the measures that the Government put in place, at scale and at pace, to deal with those consequences in response to what was a crisis. That being said, I have some concerns about this instrument and its impacts; I am also concerned about the way in which this scheme was set up, particularly for people on communal heat networks. I also note that this instrument has been noted as being of interest by the Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments.

The Government's position is an administrative one in wanting to bring this scheme to an end. I fully understand that. The legislation, as originally drafted, means in effect that there is no end date, so, although the scheme will end, people will be able to continue to make applications for ever. That clearly has to end, so I have no disagreement there.

The intended end date is 31 March 2024. As the Minister said, there will be a two-week extension for those people who could not reasonably be expected to make an application because they hit the deadline. From a purely administrative point of view, this all seems fine and reasonable, but, from a customer's point of view, there are impacts here. The customers we are talking about are those who are vulnerable and living in social housing.

The way in which the system was set up was not brilliant. I do not think that the operators of communal heat networks should have been required to apply in order to get the discounts in the first place. There have also been problems with pass-through to customers living in communal heat networks.

I want to ask a couple of questions before I come to an end. The end date is the end of this month, so it is literally the blink of an eye away. Why the urgency here? The Explanatory Notes say that the Government are still getting 20 applications a month. Is there the possibility of extending this?

I am concerned about what the Government are doing to inform the end-users and beneficiaries of these schemes. My thinking is that one of the reasons why this scheme was set up the way it was is that the Government do not have proper databases on the number of communal heat networks that exist, let alone the people in them. I understand why, in response to a crisis and not having those databases, the Government went down the route they did. However, I feel that this situation is likely to repeated in future. I request that the Minister and his department think again about trying to set up databases, so that the next time we are in this position, the discount on the cost of energy for people living in communal heat networks can come directly to them. That would be one point.

The numbers may not be that great, but there are still 60,000 individuals from vulnerable groups, as both committees have noticed. The cost per individual is likely to be £1,200. These are vulnerable people, and this is a big loss to them.

I note that the Government say that people can still seek redress through the ombudsman and the court system. However, that is quite slow and blunt, and applies only where owners of communal heat networks have made an application and received the funding but not passed it on to the end-user. I could find nothing in the information provided, but does the Minister know how many of those particular cases there are and what action the Government will be taking to support residents in those cases? Clearly, that is a criminal case—I am sorry if I am wrong and happy to be corrected—as the owner of a network has a discount but has failed to pass it on.

That is pretty much it from me. My real concern is that these are vulnerable people, and I encourage the Minister to do everything he can to make sure that they are supported. My real point is about learning, so that, the next time we are in this position, we can make sure that people in these situations get a better deal.

Lord Lennie (Lab): My Lords, as we have heard, this instrument enables the Secretary of State to set a date after which heat networks can no longer apply for support under the energy bills discount scheme. Under the scheme, qualifying heat suppliers are required—that is the word used—to apply for support, which they then pass on to their domestic customers in the form of energy bill discounts. The Department for Energy Security and Net Zero has said that not all QHSs have applied for EBDS support. Although the scheme itself will end on 31 March, there is currently no effective date for applications to be received. The Minister has set this out—so far, so tidy.

DESNZ has estimated that 3,000 qualifying heat suppliers may not have applied for the EBDS, but we do not actually know, because there was no register of

the qualifying heat suppliers. We do not know how many there are or where they are, so we cannot follow them all up. That is one of the problems with the scheme that was set up. However, we estimate that up to 60,000 domestic customers may lose out on support as a result of qualifying heat suppliers not applying for a scheme discount, as required.

As we have heard from the noble Earl, Lord Russell, the noble Lord, Lord Vaux, and the Minister the value of lost discounts is about £1,200 a customer. That loss will disproportionately affect disadvantaged groups, such as the elderly and ethnic minorities—people who have been described as "skint little people"—who are significantly more likely to be on heat networks. Could the Minister set out what specific initiatives have been undertaken to encourage take-up of EBDS bids by heat networks? Have they made inroads into identifying where the qualifying heat suppliers are, so that they can be targeted and encouraged to apply? Which initiatives have been successful, if any, and how recently? Has it been an evolving, slow process?

The proposal in this instrument makes administrative sense, rather than leaving open an estimated total liability of £6 million for not closing the scheme to new applicants. Administrative sense is one side of this equation; the other side is the customers, and it seems less considered from their perspective. The Joint Committee on Statutory Instruments and His Majesty's Opposition initially expressed concern that an obligation was being placed on intermediaries without any means of enforcing it. It is all very well requiring someone to do something when, if they fail to do it, nothing happens except that the individuals can take them to court or to the ombudsman.

How many times has that happened during the course of the scheme? I suspect it is very few times, if any. Can the Minister tell us whether any such initiatives have been taken? Essentially, this is about a vulnerable customer being required to take their landlord to court to get a subsidy for their gas bill. The chances of that happening are fairly remote, but we will no doubt hear from the Minister on that. This means that companies and organisations that have failed to apply for, or pass on, discounts have simply got away with it. Who knows the truth of that? We do not know who they are.

As I indicated, we support the closing of the scheme and the ending date for applications, but we are unhappy with the way the scheme has been allowed to drift into oblivion with no forfeit for those who should have acted on it.

Lord Callanan (Con): I thank all three noble Lords for their contributions. I am proud to say that, through the scheme, the Government have provided support to hundreds of thousands of households, helping them with financial pressures when they needed it most. The Government remain fully aware of the continued challenges posed by cost of living pressures, including the impact of energy bills. We are providing extensive financial support to households, including a package of support to assist households with the rising cost of living—this will total over £104 billion, or £3,700 per household on average, between 2022 and 2025. All three noble Lords recognised the extensive package of support that was put in place.

I totally understand the points made by the noble Earl, Lord Russell, and the noble Lord, Lord Lennie, on the heat network sector. The noble Earl is right that our database is not as good as it could be in terms of what heat networks are available. It is perfectly possible at the moment for anybody to build a block of flats and, in effect, set up a heat network; they do not necessarily have to tell the Government about it. However, if noble Lords remember, we recognised that in the Energy Act, where we took powers to regulate the heat network sector. That is why we are introducing new consumer regulations for heat networks and, from next year, we will have new consumer protections in place, provided through the Energy Act. That will give Ofgem powers to investigate and intervene in networks where prices for consumers appear to be unfair, or if prices are significantly higher than comparable heating systems. They are, in effect, natural monopolies, and therefore it is right that consumer protections exist. Those regulations will also seek to introduce back-billing rules, which exist already to protect gas and electricity customers.

The noble Lord, Lord Vaux, raised an important point about reaching as many customers as possible. It is indeed a priority for my department to ensure that as many customers as possible access the support available to them. So far, 12,000 applications have been approved under the scheme, which means that hundreds of thousands of domestic customers have been supported. We think that that figure of 12,000 represents the vast majority of qualified heat suppliers. We know that a scheme that was very much developed in haste in response to the energy crisis—as noble Lords will remember—was never going to be perfect. On top of that, we will strive to make sure that as many people as possible are reached by the scheme—but we think that it has reached the vast majority of eligible customers. We are targeting communications at heat suppliers with vulnerable customers, including housing associations and local authorities, and we will continue to do so.

The noble Lord, Lord Vaux, raised an important question—not at all related to this statutory instrument—about the distortions of gas and electricity pricing, and the protections provided to customers as part of that. It is fair to say that this is a big issue that we are concerned about. Ultimately, the answer to the noble Lord's question is that, as the amount of gas on the network declines and the amount of gas used to generate power declines, prices will stabilise and there will be a steady decoupling. There are no immediate solutions to that. Perhaps it would be more sensible for me to write to the noble Lord with more detail on the considerations that have gone into this, because a lot of work has gone on, including a lot of studying of the market to see how we can improve it. I recognise that many people consider that they are getting renewable electricity through their suppliers, but the price that they receive for it reflects the cost of gas in the system, because it is a centralised market. I recognise that people see that as anomalous, and we are looking closely at this.

As I said, we recognise that customers on heat networks are not currently protected by the same set of protections as other customers, so in future they

[Lord Callanan]
will be protected by Ofgem via the regulations that I mentioned earlier. The noble Earl, Lord Russell, raised concerns about the impact on vulnerable customers on communal networks. Careful consideration has been given to equality when amending these regulations. We are fully aware that heat networks are more likely than other comparable heat sources to serve vulnerable and elderly customers, which is why we have carried out a number of activities to try to ensure that they receive the support to which they are entitled. We continue to engage with stakeholders such as the Heat Trust to learn about any issues with the customer journey, such as on the pass-through, and any other heat networks struggling with their applications so that we can continue to provide them with support.

5.30 pm

The noble Lord, Lord Lennie, asked about the deadline. If we did not amend the regulations, as I said in my introduction, a heat supplier would be able to apply way beyond the end of the current scheme. The scheme is currently contracted out at £5.3 million per annum, which is a significant burden on the taxpayer. As the number of eligible customers who have not received the support continues to decline, that would be an unjustifiable cost burden on the taxpayer to support a very small number of customers, even after we have gone to the extent that we have to contact as many as possible.

As a further example of our engagement, we have conducted extensive stakeholder communications campaigns and reached out to all known heat networks on government databases. We have worked with government and industry partners, devolved Governments and Members of Parliament to try to reach as many potentially vulnerable domestic customers as possible. We have also streamlined the application process to make it easier for heat networks to apply and we supply them with help if necessary, for example if they are very small.

We work closely with the Office for Product Safety and Standards to initiate enforcement action against known heat networks that have failed to apply, because there is a legal duty on them to apply for this. The noble Lord asked how much enforcement action has taken place. The Office for Product Safety and Standards has informally dealt with 657 heat network cases. Outcomes include the heat supplier making an application, when they have been encouraged to do so and reminded of their legal duty, confirming existing applications or providing confirmation that they are not responsible for the heat network or networks in question.

I hope that I have answered all the questions asked of me and convinced the Committee that these EBDS regulations are necessary to ensure that the Government are not continually legally obliged to accept applications to the scheme indefinitely, as I said, at the cost of many millions of pounds a year just on administration. As always, these decisions are difficult, but this balances our responsibility to limit the fiscal burden on the taxpayer with getting support to those vulnerable customers whom we want to help. I commend these draft regulations to the Committee.

Lord Lennie (Lab): In the unlikely event that a customer takes a heat network to a court or ombudsman before the scheme closes, I presume that that application could continue beyond 31 March if it is not resolved by then and that the payment could duly be made.

Lord Callanan (Con): That is indeed the case. The application would continue beyond 31 March. Even after the scheme has ended, the responsibility of the supplier during the application of the scheme continues to be legally valid and therefore it is possible to take retrospective action against a heat supplier that has not fulfilled its legal obligations.

Motion agreed.

National Minimum Wage (Amendment) (No. 2) Regulations 2024

Considered in Grand Committee

5.36 pm

Moved by ***Lord Offord of Garvel***

That the Grand Committee do consider the National Minimum Wage (Amendment) (No. 2) Regulations 2024.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): My Lords, the purpose of these regulations, which were laid before the House on 31 January, is to raise the national living wage and the national minimum wage rates on 1 April 2024.

The Government will increase the national living wage for workers aged 21 years and over by 9.8%, to £11.44 an hour. This record cash increase of £1.02 per hour means that we will hit this Government's long-term target for the national living wage to equal two-thirds of median earnings for those aged 21 and over in 2024. With this national living wage uplift, this Government are also delivering their long-held ambition to extend the national living wage to workers aged 21 and over, as we reduce the age threshold from 23 and over this April, meaning that those aged 21 or 22 will see a £1.26 cash increase in their hourly pay.

This is a historic moment, as we are ending low hourly pay for those on the national living wage in the UK. The UK was the first country in the world to set such an ambition, and we are now proud to achieve it. A full-time worker on the national living wage will see their gross annual earnings rise by over £1,800 per annum. In total, the average earnings of a full-time worker on the national living wage will have increased by over £8,600 since it was announced in 2015. That is double the rate of inflation.

The Government will also increase wages for young people under the age of 21. For those aged 18 to 20, the national minimum wage rate will increase to £8.60, which is an increase of 15%. For those aged under 18, the national minimum wage will increase to £6.40 an hour, which is an increase of 21%. The minimum hourly wage for an apprentice under the age of 19, or

in the first year of their apprenticeship, will increase to £6.40 an hour, an increase of 21%. The accommodation off-set will also see an increase to £9.99.

The new rate increases are based on recommendations from the Low Pay Commission, following its extensive consultation with stakeholders and consideration of the current economic data and circumstances. The Low Pay Commission is an independent expert body made up of employer and worker representatives and independent commissioners. This year has seen some challenging economic circumstances for both workers and employers, including high inflation. When the Low Pay Commission recommended the new rates for the minimum wage, it took into account many of these economic circumstances, including how affordable the rate increases are for businesses and the current state of the economy. By accepting these recommendations from the Low Pay Commission, the Government are striking the right balance between the needs of workers and the affordability to business, while also ensuring that we deliver on our long-term commitments on the national living wage.

The Government would like to place on record their thanks to the Low Pay Commission, its previous chair Bryan Sanderson and the commissioners for their commitment to gathering thorough evidence and providing these recommendations. I also welcome the noble Baroness, Lady Stroud, to her role as the new chair of the Low Pay Commission.

We expect that this increase to the minimum wage will put more money in the pockets of around 3 million of the lowest-paid people in every corner of the country. The new rates are due to come into force on 1 April 2024. In the meantime, any worker who is concerned that they are not being paid the correct wage should check their payslip and speak with their employer. If the problem is not resolved, they can contact ACAS or complain to HMRC.

Since 2015, the Government have more than doubled the budget for compliance and enforcement to £27.8 million in 2022-23. HMRC enforces the national living wage and national minimum wage on behalf of my department. I thank HMRC for its ongoing work with employers and workers to ensure that all workers receive the pay they are due and help give businesses the right resources to stay national minimum wage compliant.

I remind the Grand Committee that, on 1 April, regulations will also come into force to ensure that so-called live-in domestic workers are paid at least the relevant minimum wage rate, providing protection from exploitative low pay. This will help protect these workers, giving them a new right to the entitlement to the national living and minimum wage for the first time. These regulations, alongside the regulations debated today, will aim to reward the lowest-paid workers in every sector and in every part of the country for their contribution to our economy.

This Government are aware of the cost of living pressures and will continue to closely monitor all the impacts of increases to the national living wage and national minimum wage rates on workers and businesses alike. We will continue to carefully monitor economic developments as the NLW target is implemented. The Government will shortly publish this year's remit to the Low Pay Commission and ask it to provide recommendations for the rates, which will apply from April 2025.

Lord Leong (Lab): My Lords, we are pleased to welcome this instrument and thank the Minister for introducing these regulations. As he referred to, they implement the recommendation from the Low Pay Commission to lower the age of eligibility for the national living wage from 23 years old to 21 years old. We also welcome the inflation-related annual increases in the national minimum wage and in the apprentice hourly rates for those aged under 21.

However, even after the increases enabled by this instrument come into effect on 1 April this year, under-18s will earn just £6.40 per hour, while 18 to 20 year-olds will earn only £8.60 per hour. Unfortunately, as young people know, most shops, landlords and services do not offer lower prices for customers aged under 21. Ironically, many of these businesses actually employ people under 21 on the national minimum wage. What further sanctions will apply to businesses that do not pay the national minimum wage?

If we are privileged to be elected, the next Labour Government will use its New Deal for Working People to eradicate in-work poverty by tackling the structural causes of inequality. We are committed to raising the national living wage to ensure that it is adequate and addresses the rise in the cost of living and inflation. Having a national minimum wage that does not reflect the actual cost of living particularly impacts people who do not have family who can support them; care leavers are one severely affected group.

Some of the most disadvantaged and economically insecure young people in the country, even if they try to do the right thing and work hard, can find themselves unable to meet basic costs. As most noble Lords know, the previous Labour Government proudly introduced the national minimum wage. The next Labour Government would make sure that the national living wage actually lives up to its name. We would ensure that a genuine national living wage is applied to every adult worker and is properly enforced, because we know that giving working people more money in their pocket means that more money will be spent in their community and in the everyday economy, nourishing their neighbourhoods and creating more and better-paid jobs locally.

Without hesitation, we support these regulations. I look forward to the Minister's response to my question about sanctions.

5.45 pm

Lord Offord of Garvel (Con): I thank the noble Lord for his contributions to today's debate. As I said, these updated regulations will reward low-paid workers right across the country for their contribution to our economy.

I will deal with some of the points made, especially in relation to our young people. As was discussed in the Chamber recently, it is crucial that we get young people into work immediately after they come out of school. If at that point in their early careers, they do

[Lord Offord of Garvel]
not have the skills to make that wage, we must not lock them out. The graduated scheme to allow them to come in at the lower rate and move up as they get to 21 is similar to what any of us who have been in work experienced. When we started out and were relatively unskilled, we were on a lower wage rate, and then we graduated to the national minimum wage aged 21. That is a perfectly reasonable graduation scheme for our young people. We know the impact on their lives of not getting into work immediately—it can create a lifetime wage scar—so it is very important that we do not lock them out of the market at the most formative period of their working life.

On sanctions, HMRC administers the scheme. We very actively monitor who is not paying the right rate. Every year, we do a very public name and shame on those companies—sometimes some well-known names are named—which we know has a major impact on behaviour. There are sanctions that can be applied by HMRC directly to companies that do not comply.

It is absolutely fair to congratulate the previous Labour Government on introducing the minimum wage. The noble Lord referred to a possible change of Government, but a note of caution is that we must take businesses with us on this journey. There are 5.5 million companies in the UK, of which 99% are SMEs. That is why the Low Pay Commission is so crucial to this debate: it sets what is considered to be a fair rate. Bearing in mind that the burden will fall on businesses—this will cost £3 billion over the next five years—we need to get the right rate.

I will make one more point on that. Prior to this Government being in place, our lowest-paid cohort had a higher percentage of their annual income coming from benefits. Today, a higher percentage comes from earnings, so we have been successful in moving that cohort into work. I emphasise that a full-time worker on the national living wage is earning £8,600 more today than in 2015. That will be an increase of 70% by 1 April this year. As inflation has been 35% in that time, this cohort has had a double increase in their wages. We are now in a position to say that with the national living wage being set at two-thirds of median earnings, that cohort has been taken out of low pay, which is defined as being below two-thirds of median earnings. There are now 1.5 million people on the national living wage who are no longer in that category.

We are proud of the Government's record of delivery. We have achieved our target of the national living wage reaching two-thirds of median earnings for all workers aged 21 and over. I again extend my thanks to the Low Pay Commission, which is very important. Its independent and expert advice means we can ensure that the right balance is struck between the needs of workers, affordability for business and the wider impact on the economy. We look forward to receiving its recommendations for the 2025 rates, which will be published later this year.

Motion agreed.

Committee adjourned at 5.49 pm.