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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 13 March 2024

3 pm

Prayers—read by the Lord Bishop of Leicester.

Biomass: Power Generation
Question

3.06 pm

Asked by ***Baroness Boycott***

To ask His Majesty's Government what evidence they have that power generation from biomass is (1) good value for the taxpayer, (2) not leading to forest degradation in other countries, and (3) compatible with reaching net zero emissions by 2050.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, biomass plays a vital role in ensuring that the electricity system is both reliable and low-carbon by providing dispatchable power when intermittent renewables are not available. Generators receive subsidies only for electricity generated from biomass that is compliant with stringent sustainability criteria. As set out in the biomass strategy, the Government will review sustainability criteria this year. The Climate Change Committee is clear that sustainable biomass can provide a low-carbon and renewable energy source.

Baroness Boycott (CB): I thank the noble Lord very much for his Answer, but it seems incorrect that we should fund any sort of forest degradation, either in this country or in others, such as Canada or the USA. We know that some countries are cutting down old-growth forests to feed companies here in England, such as Drax. A tree planted today, even if you replace it, is not going to sequester carbon until, probably, the end of the century—certainly not within the timeframe that we need. I hope that the Minister can agree with me on that point at least. Can he also agree that, given the short timeframe we are operating in, we should question, or potentially remove, the renewable classification from biomass electricity for the very big companies in this country, such as Drax?

Lord Callanan (Con): I can agree with much of what the noble Baroness says but, like everything else, the situation is more complicated than that. There are many forests across the world—we are talking about forests in the US and Canada here; they are not third-world countries—that are renewable, sustainable and properly managed. The vast majority of the biomass used is a by-product from existing wood cultivation. The main wood is used for forestry, boards, joinery, et cetera, and the by-product is used for biomass. Not permitting biomass would not necessarily result in those forests just carrying on as they are.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend look clearly at developing more home-produced products, such as fast-growing willow coppice, that will both give a sustainable source of energy to Drax but also help hard-pressed British farmers at this time?

Lord Callanan (Con): My noble friend makes a good point. It is not just Drax; there are many commercial and domestic biomass boilers as well that I am sure would be happy to use sustainable British-produced biomass.

Lord Browne of Ladyton (Lab): My Lords, when biomass subsidies were initially awarded, was it envisaged that the Drax power station would receive more than £2 million a day in biomass subsidies, emit about 12 million tonnes of CO_2 a year, and, last year, take more than 40,000 tonnes of wood from old-growth forests in British Columbia—a practice, incidentally, which Drax previously decried in its own sustainability reports? If not, what criteria will the Minister's department use when a decision is made about whether subsidies should be extended beyond 2027?

Lord Callanan (Con): The noble Lord posed a number of different questions. First, as I said, sustainability criteria are extremely strict. They are policed by Ofgem. I have spoken to the chief executive of Ofgem about this—it is investigating the allegations. It is Ofgem's job to uphold the rules and it will not hesitate to take action if the rules are breached. We have some strict sustainability criteria, and it is important that Drax and every other producer abides by those rules. Drax is responsible for about 5% of the UK's electricity generation, and noble Lords should be aware that this is important for keeping the lights on, and for British energy security.

Lord Howell of Guildford (Con): I agree that there is biomass and biomass, but in this case trees are being cut down to provide wooden frames to replace steel frames in construction, and are therefore contributing to carbon reduction. I understand that the residue of that cutting down—the sawdust and so on—makes up the pellets that we are talking about now for Drax. Should that other side not be borne in mind, together with my noble friend's view that it is a very complex matter? Just going for the obvious target often leads to the wrong, opposite results?

Lord Callanan (Con): My noble friend is right. It is a complicated subject and should not be the subject of easy sloganeering or campaigning. A number of different issues are involved. What the primary wood is used for is, of course, a matter for the US authorities and for the Canadians.

Earl Russell (LD): My Lords, yesterday at Oral Questions, the Minister— the noble Lord, Lord Benyon— said:

"Biomass is a perfectly legitimate renewable energy source if the wood that is being used is a renewable and sustainable harvest".—[*Official Report*, 12/3/24; col. 1897.]

[Earl Russell]
My question is simple: can the Minister—the noble Lord, Lord Callanan—confirm exactly what steps the UK is taking to verify beyond doubt that no old-growth timber is being cut and burnt at Drax?

Lord Callanan (Con): Of course I agree absolutely with the statement made by my noble friend. As I said, I have spoken to Ofgem, which is investigating. It is its job to enforce against these criteria. My officials are in touch with those in British Columbia for further discussions. However, there are many perfectly legitimate reasons why timber would be removed from old-growth forests—for instance, for firebreaks, diseased wood, et cetera. This is a complicated issue. Drax is an important part of the UK's energy security. Let us make sure that it does this sustainably and abides by the rules before we rush to judgment.

Lord Birt (CB): Has the Minister actually studied the detailed and evidenced findings of the last few weeks from "Panorama", confirmed by the Government of British Columbia, that Drax is, in fact, burning wood from old-growth primary forests—rich, diverse habitats that are over 150 years old and will take 80 years or far longer to grow back—and that it is doing so in defiance of its 2017 commitment? Against wind, solar, hydro and nuclear, is not the case for biomass as a source of renewable power fatally weak and wholly unconvincing?

Lord Callanan (Con): As the noble Lord knows—we have been in correspondence on this—I do not agree with him. As I said, we are in discussions with the British Columbia authority. This is not a third-world country; it is perfectly capable of sustainably managing its forests in its own way. There are internationally agreed strict sustainability criteria. It is important that Drax follows those rules. Ofgem is studying its application and will not hesitate to take action against it, as I have said.

Baroness Jones of Moulsecoomb (GP): My Lords, I think we are missing a point with some of these answers. The fact is that this is taxpayers' money going on a business scam. Why can the Government not see that?

Lord Callanan (Con): I do not agree with the noble Baroness—I often do not agree with her. This is not a business scam. It is actually bill payers' money, not taxpayers' money, but we spend it on a number of different sources, including those mentioned by the noble Lord, Lord Birt. It is not an either/or equation; we need a variety of different sources of fuel for our electricity and our energy uses. If the energy crisis taught us anything, it is the importance of not relying on one particular source. Yes, we need wind, solar, biomass, nuclear and some gas-fired generation in the short term. We need a resilient energy mix across all the different sources.

Lord Geddes (Con): My Lords, on the general subject of renewable energy, in the announcement yesterday of two new gas-fired power stations, an announcement was also made that there were times when renewable energy was not available to generate power. Does my noble friend agree that this simply is not true? Tidal power is constantly available.

Lord Callanan (Con): The noble Lord has asked me about this a number of times. As I have said to him, we are supportive of tidal power and are allocating funds to its development through the various CfD auctions. But I think he will recognise that it is not yet available at scale and in the quantities we would need. We are very proud of our renewable resources: almost 50% of our electricity production is now from renewables; we have the five biggest wind farms in the world; we are easily the biggest producer in Europe; and we are seeing lots of applications for solar development. Renewables are great, but it remains the case that they are not available all the time; we need more storage and back-up, and need other sources as well.

Lord Rooker (Lab): At the risk of upsetting a few colleagues, I ask: is the Minister aware that some of the forests in Canada and America were originally planted for paper? The paper mills closed because paper was not wanted; towns were decimated because they were one-product towns for the paper mills. Drax came along and saved some of those towns in the early days.

Lord Callanan (Con): I do not know the truth or not of that; I will take the noble Lord's word for it. As I said, these are complicated matters involving a number of different factors.

The Earl of Devon (CB): My Lords, the renewable credentials of biomass are dependent on the trees cut down being replaced by trees that survive and live to full growth. Sure enough, the tragic disease and deer predation of our English forestry means that biomass is not a net-zero source of energy.

Lord Callanan (Con): I do not quite understand the point the noble Earl is making. There are many sustainable forests across Europe and North America, where, as he says, there are different degrees of growth. Trees are cut down, and new ones are planted. For instance, in many of the forests in Scandinavia, more trees are planted than harvested, so it is a "sustainable plus" resource. We should be careful not to dictate to the North Americans —to the Canadians—how they manage their own forest resources. They are fully developed countries; they have environmental movements, as we do in this country; and they ensure that all their production is sustainable. As I said, we are in discussions with the Government of British Columbia, who are quite capable of managing these resources for themselves without being lectured to by us.

Covid-19: Lockdown Costs and Benefits

Question

3.17 pm

Asked by ***Lord Robathan***

To ask His Majesty's Government what initial assessment they have made of the costs and benefits of the enforced lockdowns during the COVID-19 epidemic from March 2020.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): As set out in its terms of reference, the Covid inquiry will examine, consider and report on preparations for and the response to the pandemic. We expect the inquiry to explore comprehensively the questions asked by my noble friend, identify lessons learned, and inform economic and other preparations for future pandemics.

Lord Robathan (Con): My Lords, those who fail to learn from history are doomed to repeat it, which is why I ask this Question. The inquiry to which my noble friend refers appears not to be looking at the value of lockdowns, which is illustrated by a letter, highlighted in today's newspapers, by 55 academics, who say that this is what it should do. We all know the costs: devastation of the economy and of education—both of children at school and of those at university—worklessness, backlogs in the courts, mental ill-health, excess cancer deaths and an NHS in chaos. As for the benefits, well, some lives probably were saved, but probably more were lost because of excess deaths through lack of diagnosis and treatment. The Government did very well not to listen to the siren voices of the Opposition, who might still have us locked down in a bunker for ever. Who now thinks that lockdowns were a good idea? Will my noble friend commit the Government to allow proper parliamentary scrutiny of the costs and benefits, including voting on it, before contemplating a policy of another disastrous lockdown in the future?

Baroness Neville-Rolfe (Con): My Lords, the pandemic was an unprecedented event, and the UK Government came together very well to deliver an unprecedented response to save lives and livelihoods and keep people safe. It is for the inquiry, with the benefit of hindsight, to determine whether the decisions to lock down were appropriate and timely and to advise on lessons for the future, such as on cost-benefit. I cannot prejudge its conclusion while it remains ongoing, but we are all aware of the impact of the pandemic on individuals, society and the economy.

Lord Watts (Lab): My Lords, may I suggest that the Minister takes no notice of the flat-earthers? The best estimate is that more than 17,000 lives were saved. That has had a massive effect on those 17,000 people and their families. I urge her to take no notice of those who do not want to accept scientific fact.

Baroness Neville-Rolfe (Con): I note what the noble Lord says. It is important that these issues are considered fully from every angle. That is why the Government set up the Covid inquiry and why it is looking into many areas.

Lord Deben (Con): If the Government had not acted but had waited for Parliament to discuss the matter, they would have been in serious trouble. Is it not right that the Government acted immediately in the face of an unprecedented challenge?

Baroness Neville-Rolfe (Con): I look forward to the results of the inquiry on these points. We expect to get some findings from module 1 in the not-too-distant future, and module 2 looks at a lot of the points that my noble friend has mentioned.

Lord Allan of Hallam (LD): My Lords, I am sure the Minister would agree that policy-making is best done based on hard evidence rather than on opinion and speculation. In that respect, can she say whether the Government will publish a review independent of the inquiry of all the many academic studies taking place on the impact of lockdowns in the UK and elsewhere? And—who knows?—whichever side we start on, some of us may even change our minds on the basis of reading such a study.

Baroness Neville-Rolfe (Con): I agree that hard evidence is important and I too value academic studies. A lot of academic studies and reviews of the pandemic in other countries have already been published and are generally available. We are focusing on responding to the Covid inquiry. Clearly, we hope that it will cover all these different points and make sure that future pandemics are tackled as expeditiously and as well as possible, looking at the broader impacts.

Lord Patel (CB): My Lords, I was the one who first mentioned the dangers of this virus a few weeks before we entered lockdown. On whether lockdown worked, at that time we did not know much about the virus or its behaviour. The proof of the pudding was that every country that had a lockdown benefited from it by reducing the rate of infection. The only country that did not lock down was Sweden, and it had a higher rate of infection than its neighbouring countries, Norway and Denmark, which had a lockdown just like we did. It was implemented to control the infection.

Baroness Neville-Rolfe (Con): I thank the noble Lord for his wise observations. I would observe that the health of the economy and the health of the population tend to go in tandem, and that was one of the things that we noted during the pandemic. However, I come back to my point that the inquiry needs to look at these things for us. We need to learn the lessons and look at evidence objectively.

Baroness Chapman of Darlington (Lab): My Lords, throughout the pandemic, the great British public stepped up, stuck to the rules and did everything asked of them, from staying indoors to volunteering at vaccine centres. There is plenty to be learned about what worked and what did not, not least when it comes to government procurement. While the Minister is in this reflective mood, can she tell us what is to stop the same wasteful approach to emergency contracting rules that we saw during the pandemic, with friends and donors of the Tory party given fast-track VIP access while decent, skilled, local businesses were denied the same opportunity?

Baroness Neville-Rolfe (Con): I cannot accept that conclusion. Due diligence was carried out on all companies that were referred to the Department of Health and Social Care, and companies were subject to the same checks. However, module 5 of the inquiry will look at procurement. The noble Baroness and I worked on changes to the Procurement Act, not least to bring in a higher degree of transparency and to make sure that we have more competition in procurement, which I am sure will be helpful in a future pandemic.

Lord Framlingham (Con): My Lords, given the acceptance now of the damage that can be inflicted by the Covid booster vaccinations causing heart problems, what steps are the Government taking to establish the extent of this and what advice are they giving to the medical profession?

Baroness Neville-Rolfe (Con): That is more a matter for the Department of Health and Social Care than for me, but module 4 will look at vaccines, therapeutics and antiviral treatments across the UK. It is a public inquiry, and it is legitimate for people to make points from different perspectives. I welcome those, and I welcome the openness of this debate.

Lord Harris of Haringey (Lab): My Lords, I refer to my interests in the register. I am grateful to the Minister for how much she wants to take note of whatever emerges from the inquiry of the noble and learned Baroness, Lady Hallett. Why then are Government already unpicking some of the very practical arrangements that were put in place during the pandemic? If the Minister wants evidence of that, perhaps she should listen to Kate Bingham's interview on the "Today" programme on Monday morning, where she highlighted that the Government are dismantling some of the arrangements that might protect us against future pandemics.

Baroness Neville-Rolfe (Con): As it happens, I listened to Dame Kate Bingham, who we can all agree did such a good job with the Vaccine Taskforce. The decision on the Vaccine Manufacturing and Innovation Centre, which I think the noble Lord refers to, was made by the board of directors, but I should mention all the other things that have been going on to make sure that we have future access to vaccines. There is a 10-year strategic partnership with Moderna; there is an advance purchase agreement with CSL Seqirus; and my right honourable friend the Chancellor announced a terrific investment in a £450 million manufacturing site in Liverpool. All these are informed by what we need to do as a result of the dreadful pandemic.

Baroness Fraser of Craigmaddie (Con): My Lords, unfortunately I will not be in the House tomorrow because I will be giving evidence to the Scottish Covid inquiry on the experience of people with cerebral palsy during the pandemic. Does the Minister agree—this is one of the things that has struck me, as I will be saying tomorrow—that when judgments were made about what services were essential and should not be locked down, what was deemed essential did not take into account some of the most vulnerable in our society? Can she assure me that, whether it is from the Covid inquiry or in any other policy area, we will take note of the experience of all our population for future reference?

Baroness Neville-Rolfe (Con): I very much agree with my noble friend about the importance of looking after the poorest in society and I hope that it will be a focus of the inquiry, particularly in its module on the care sector. More broadly, my noble friend makes good points. The Government did a lot, but the question is how we can do the very best in future.

Scottish Government: Devolved Competences

Question

3.28 pm

Asked by ***Lord Foulkes of Cumnock***

To ask His Majesty's Government what discussions they have had with the Scottish Government regarding any activities it is undertaking that fall outwith its devolved competences.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, I start by welcoming my noble friend Lord Cameron of Lochiel and congratulate him on his recent appointment. I am sure he will prove to be a valuable Member of this House, and I look forward to working with him on all these issues.

It is a matter of public record that my right honourable friend the Foreign Secretary wrote recently to the Scottish Government to raise concerns about the need for FCDO representation when their Ministers were meeting overseas Governments. More broadly, as I set out in the House last month, the Government are also in the process of considering what further guidance may be needed for civil servants working in the devolved Administrations.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, that is all very well, but there is fury all over Scotland at the Scottish Government spending money outwith their responsibilities, particularly on vanity projects and jaunts overseas, while the services at home for which they are responsible are being cut again and again. I have had promises from the Cabinet Secretary himself that action is going to be taken. I have had Minister after Minister, including this current one, say that they are sympathetic to the point I am raising. When is someone going to grasp the nettle—I suppose grasp the thistle is more appropriate—and take some real action? If it is the noble Lord, Lord Cameron of Lochiel, then I will welcome him. Somebody has got to take action to stop this abuse of taxpayers' money.

Baroness Neville-Rolfe (Con): I hope the noble Lord, Lord Cameron, and myself will be able to take on the challenge of the thistle. I reassure the noble Lord that there have been official-level discussions on these matters, as you would expect. I am afraid that it would not be appropriate to provide a running commentary, but I will update the House in the coming months on the outcome of this work.

Baroness Goldie (Con): My Lords, does my noble friend the Minister agree, in pursuance to the question from the noble Lord, Lord Foulkes, that there has to be concern about the cost to the Scottish taxpayer of the Scottish Government taking unsuccessful court action to hold an independence referendum? They also took court action unsuccessfully to progress the Gender Recognition Reform (Scotland) Bill and, after a vast amount of work, put on ice unworkable plans for a deposit return scheme. Does my noble friend the Minister have any idea of the costs of these endeavours?

Baroness Neville-Rolfe (Con): I have no idea about the costs of those endeavours. However, I have no doubt that Scottish taxpayers will reflect on whether they were a good use of funds and whether the Government in Scotland should not be concentrating on the things that they are responsible for: health, education, social care and other matters.

Lord Wigley (PC): My Lords, far be it for me to intervene on the internal squabbles of our Scottish cousins, but would the Minister not accept that there are many aspects of policy that are devolved, including cultural and economic matters, where there may be an overlap between the devolved powers in Scotland—or in Cardiff for that matter—with UK powers? What is important is that there is good communication and there is a respect from each end on such questions. When such matters arise, London, as much as Cardiff or Edinburgh, should inform the other about their interests and work in harmony to get the best for Scotland, Wales or wherever.

Baroness Neville-Rolfe (Con): I agree with the noble Lord. There are well-established arrangements that underpin intergovernmental relationships. They do not always work. They are led by DLUHC, and I believe Brendan Threlfall is the director-general, working under Minister Gove. A recent good example would be the work together on green freeports—where there is overlap—with both the Inverness and Cromarty Firth freeport and the Firth of Forth green freeport. The Scottish Government have also been working on Project Gigabit very well, and the UK Government have contributed £50 million to this. It is important that people understand the devolution settlement and pursue the things that can be helpful on both sides.

Lord Forsyth of Drumlean (Con): My Lords, is it not ironic that the noble Lord, Lord Foulkes, is complaining about the arrangements for devolution when it was a Labour Government that put them together? A Labour Government did it thinking that it would kill nationalism stone dead. A Labour Government have resulted in Scotland being the highest taxed part of the United Kingdom, with the threat of people leaving financial services and other professions, reducing the tax base and making it even more difficult to correct the disastrous damage done by the SNP to public services.

Baroness Neville-Rolfe (Con): I can only agree with my noble friend, but I think it is a matter for Scottish taxpayers. I look forward with interest to the coming months and years. We need to try to work well together and be clear about the rules, but they were perhaps not perfect at the start.

Baroness Chapman of Darlington (Lab): My Lords, of course the Minister is right that it will be the people of Scotland who have the final say on the performance of the Scottish Government and their choice of priorities, and they will have the final say on the Government here in Westminster, too. But does the Minister understand that there has been—how can I put this?—something of a failure to respect devolved Administrations at various times by this Government? Does she also accept that the current system of joint ministerial committees has struggled to be as effective as it should be because of that, and that is one of the reasons that we have got to where we have with this issue?

Baroness Neville-Rolfe (Con): I actually think that the joint committees are important and give a sort of discipline to business. Where I am with the noble Baroness is that it is actually important, on specific bits of policy, to work together with the devolved Administrations. Certainly, in the areas that I deal with, I really try to do that—with things like borders, for example; the country is borderless, so it is very important. We can always do better, but there are differences of view, and sometimes that complexity makes it hard, such as with statistics, which I was giving evidence on yesterday.

Lord Bruce of Bennachie (LD): My Lords, Scotland has two Governments, both of which are dysfunctional and very unpopular north of the border. Will the Minister accept that what the people of Scotland would like is for each Government to accept their relative responsibilities, do them competently and not try to compete with each other to say how badly they are delivering for Scotland?

Baroness Neville-Rolfe (Con): I do not recognise that as a description of the UK Government. I have tried to explain that we are taking a responsible approach. The UK Government make very large sums of money available to the Scottish Government—quite rightly—and it is for both countries to make sure that they are spending money well, in the interests of their citizens, in all sorts of different ways on which we have been touching today.

Lord Austin of Dudley (Non-Afl): My Lords, the UK Government suspended payments to UNRWA following the shocking news that its staff had been involved in the kidnap and murder of Israeli civilians on 7 October. How can it therefore be right that the First Minister of Scotland undermines UK foreign policy by restoring those payments? What are the Government going to do about it?

Baroness Neville-Rolfe (Con): I hear what the noble Lord says, but these are matters for the Scottish Government to answer. No doubt Scottish taxpayers will reflect on whether the donation to UNRWA was justified.

Lord Wallace of Saltaire (LD): My Lords, despite our having some years of experience now with the devolved settlements, we still have a separate Scottish Office and Welsh Office in London and seats in the Cabinet. The Minister will have seen the arguments made by a number of people on our need for a smaller Cabinet. Would not it be sensible now, in making sure that the devolved Administrations have a central link with central Government, to have one department for constitutional affairs, rather than a Welsh Office and a Scottish Office with very little to do?

Baroness Neville-Rolfe (Con): I think that the way in which the Cabinet is organised and the responsibilities of different Ministers is very much a matter for the Prime Minister, but I am glad that we have a new Parliamentary Under-Secretary of State in the Scotland Office. He has been an MSP, and I think that that will bring a new dimension to our discussions on this important subject.

Baroness Bennett of Manor Castle (GP): My Lords, in responding to the noble Lord, Lord Wigley, with whose contribution I entirely agree, the Minister said that there were well-established relationships between Westminster and the devolved nations. But there is a report out today from UK in a Changing Europe titled *Brexit and the State*, which says that, particularly under the regime of the internal market Act, relationships are nascent rather than developed. The report very much focuses on how the Scottish Government have made a decision to remain, particularly in the agricultural area, closely aligned with standards in Europe—which means higher standards than we have in England. Does not much more need to be done to develop those relationships identified as nascent?

Baroness Neville-Rolfe (Con): I have not seen that report. Of course, agriculture is devolved to Scotland, and it is Scotland's choice, if it wants to do things in a different way. I think that we need to move forward on the new basis. I have nothing further to say.

Earnings: Mothers and Fathers

Question

3.39 pm

Asked by ***Lord Sikka***

To ask His Majesty's Government what assessment they have made of the research by campaign group Pregnant Then Screwed showing that mothers in the United Kingdom earned £4.44 less an hour than fathers in 2023.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, data on the gender pay gap is collected by the Office for National Statistics and published annually, with the latest results published in November 2023. These showed that the pay gap between men and women in full-time work aged 30 to 39, which is the average age of parents when they first have children, was 4.7% in 2023, down from 11% in 1997. The publication does not include information on pay gaps between mothers and fathers, and this information is not included in any routine publication of the ONS. The results of the analysis and the data and methods that were used by the group Pregnant Then Screwed have not been published; the Government are therefore unable to assess their basis.

Lord Sikka (Lab): My Lords, my Question is about the motherhood penalty, which is also a major cause of child poverty. The 2016 survey by the Equality and Human Rights Commission reported that 77% of working mothers experienced discrimination during pregnancy and maternity leave and on return from maternity leave. The Minister said that the Government do not have any information. Why not? Why do the Government not collect any data about pregnancy and maternity discrimination suffered by women? In the absence of that information, how can they eradicate that discrimination?

Baroness Barran (Con): I think the noble Lord might want to look again at what I said. I absolutely did not say that the Government do not gather any information on discrimination. Our domestic law on maternity discrimination is absolutely clear: discriminating against women in the workplace because they are pregnant or new mothers is unlawful.

The Earl of Effingham (Con): To paraphrase Christine Lagarde from the European Central Bank, if Lehman Brothers had been "Lehman Sisters", we may have avoided a global financial crisis. We need more female representation on boards of companies and we need more female CEOs. Can the Minister say what focus the Government are placing on a voluntary, business-led approach to setting targets that will see more women in leadership roles?

Baroness Barran (Con): I thank my noble friend for his question. We can all imagine how successful "Lehman Sisters" would still be. The Government have long supported an independent, business-led, voluntary approach to increasing the participation of women in senior roles, both in relation to start-ups, with the Rose review, and, most recently, with the FTSE Women Leaders Review, which has set new voluntary targets for the FTSE 350 for both board and leadership representation.

Baroness Lister of Burtersett (Lab): My Lords, there is general agreement that key to reducing the pay gap between mothers and fathers is more fathers taking parental leave. The Government's shared parental leave scheme has been an abysmal failure. What are the Government going to do about it?

Baroness Barran (Con): I do not accept that it has been an abysmal failure. I appreciate that the numbers are still modest, but they are definitely going in the right direction, with 13,000 couples taking shared parental leave in 2021-22, up from 6,200 in 2015-16. Clearly, this is part of a broader cultural shift. The noble Baroness may wish the Government to enforce everything, but this Government do not wish to.

Baroness Janke (LD): My Lords, 90% of single parents are women, and 49% of these families are in poverty. Universal credit discriminates against single parents by requiring those with children over three to work a 30-hour week, regardless of their circumstances. What steps will the Government take to end discrimination suffered by single-parent families under universal credit so that their children are not forced into acute poverty and deprivation through unfairness and discrimination?

Baroness Barran (Con): The Government have made tremendous strides, particularly in relation to the national living wage and the increases that we have seen in that in real terms since the Government came to power in 2010.

Baroness Thornton (Lab): My Lords, the Minister and I both know what the law says about pregnancy and maternity, but the facts are that 54,000 women a year lose their job because they are pregnant and another 390,000 working mums are discriminated against or experience negative treatment, and these numbers have doubled in the last decade. On these Benches, we have a plan to deal with unfair dismissal, denial of flexible working requests and a failing parental leave system; "modest" is a very kind way of describing the Government's parental leave system. Do the Government have a plan, and in what timeframe?

Baroness Barran (Con): I have touched already on issues of maternity and pregnancy discrimination. The Government have already extended legal protections on redundancy and the DBT's Pregnancy and Maternity Discrimination Advisory Board is ensuring that all our guidance is clear and fit for purpose.

Lord Woodley (Lab): My Lords, to pick up the previous question, the Equality Act 2010 prohibits discrimination on the grounds of maternity. The Body Shop sacked 750 workers without any notice or redundancy package, and the company admits it broke the law. The sacked workers include 15 women on maternity leave, who will now receive only government maternity pay and not full redundancy packages, which they should really be entitled to. What assessment, therefore, have the Government made that will make sure that this flouting of employment law does not continue?

Baroness Barran (Con): Clearly, such cases are extremely regrettable. I can only repeat what I have already said: the law is absolutely clear on this, as are the routes to redress.

Baroness Chakrabarti (Lab): My Lords, surely the law is flawed, because it leaves it to individual women to enforce the law themselves. We do not do this for school standards, food standards, environmental standards, and so on. It is asking too much, surely, to expect an individual woman to find out what her colleagues are being paid and then sue her employer. Surely there is a role for the state in investigating and enforcing equality law.

Baroness Barran (Con): This is the third time in fairly short order that the noble Baroness and I have touched on this important subject. As she knows—I know she believes this is not sufficient, but to be clear—the law already protects people who want to have these crucial conversations about pay with their colleagues. We are seeing that people are increasingly open in discussing their salaries, and the Government welcome this shift. There were, of course, a number of cases: over 2,500 equal pay claims were entered into the employment tribunal system between July and September last year, and each one of those is an important reminder to employers of their legal obligations.

The Lord Bishop of Leicester: My Lords, the same report from Pregnant Then Screwed also found that a significant proportion of new fathers and secondary parents simply cannot afford to take their full paternity leave because of the low level of statutory paternity pay. Most other European countries have far more generous paternity leave entitlements than the UK's, in both length and pay, which bring benefits for family bonds and support gender equality. Will the Government commit to increasing the statutory leave entitlement so that families in the UK can also reap these benefits?

Baroness Barran (Con): I say two things to the right reverend Prelate. First, statutory leave and pay is only part of the state support available to new families in the first year of their child's life. The Government also have provisions in place such as tax credits, child benefit and universal credit. We continue to believe that arrangements for paternity leave and pay are best left to employers. I appreciate that this is somewhat old research, from 2016, but it found that fathers who work full-time experience a wage bonus, earning 22% more than similar men without children who are working full-time.

Baroness Altmann (Con): My Lords, it is commendable that the Government have done something to improve pension outcomes for women, who are particularly disadvantaged given that they automatically have lower lifetime earnings, due to caring roles, but is there anything further that the Government might be able to do? Perhaps there could be some kind of review of the overall lifetime earnings patterns of women who have to care both for children and older relatives in other stages of their life so that the disadvantage might be remedied in some way, either by contributions from a partner, which are currently not encouraged, or by some other mechanism.

Baroness Barran (Con): I very much welcome my noble friend's suggestion in this regard, and I share her belief that greater transparency and more data to help understand the issues are really helpful. I will take her suggestions back to the department.

Ministry of Poverty Prevention Bill [HL]

First Reading

3.50 pm

A Bill to make provision for establishing a new government Ministry, the Ministry for Poverty Prevention; to make provision for the objectives and powers of that Ministry; to make provision that the Ministry can only be abolished or combined with another department by an Act of Parliament; to make provision for reporting requirements on the Ministry's work; to make provision for a power to create binding poverty reduction targets; and for connected purposes.

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

Digital Markets, Competition and Consumers Bill

Report (2nd Day)

3.50 pm

Relevant documents: 3rd and 13th Reports from the Delegated Powers Committee

Amendment 64

Moved by ***Lord Clement-Jones***

64: After Clause 141, insert the following new Clause—

"Amendment of section 58 of the Enterprise Act 2002

After section 58(2A) of the Enterprise Act 2002 insert—

"(2AA) The need for free expression of opinion and plurality of ownership of media enterprises in user-to-user and search services.

(2AB) Media enterprises include—

(a) newspapers,

(b) broadcasters, and

(c) providers of video on demand and audio on demand.

(2AC) For the purposes of this section "user-to-user service" and "search service" are defined in Part 2 of the Online Safety Act 2023.""

Member's explanatory statement

This amendment updates the specified considerations that the Secretary of State can use to issue a public interest notice that reflect modern market conditions where new media may give rise to such concerns.

Lord Clement-Jones (LD): My Lords, with only one amendment in this group, I have the mixed blessing of having the Minister's undivided attention. I will be very brief as I want to give way to heavier oncoming traffic, in the form of Amendments 67 and 158. My intention in retabling this amendment on Report is to probe further the Government's intentions as regards amending the Enterprise Act 2002, in respect of mergers of digital media.

In Committee, I pointed out that the Online Safety Bill—now Act—sets great store by the importance of freedom of expression on digital media and, in the context of competition in the media, we believe that the protection of the public interest needs bringing up to date, alongside the collective consumer interest. This was on the basis that digital media now play a significant role in the national discourse, and public interest considerations could emerge from permutations of takeovers or mergers.

In Committee, I described how Section 58 of the Enterprise Act is limited in scope, and that we should add the need for free expression of opinion and plurality of ownership of media enterprises in user-to-user and search services to the existing public interest considerations that the Secretary of State can take into account. The reply of the Minister—the noble Lord, Lord Offord—was sufficiently encouraging for me to bring the amendment back for further and better particulars. He said:

"The Government are currently reviewing the recommendations on changes to the media public interest test in Ofcom's 2021 statement on media plurality. Ofcom did not recommend that online intermediaries or video and audio on-demand services should fall within the scope of the media mergers regime, which this amendment would provide for".

There is always hope. The Minister went on:

"We are considering Ofcom's recommendations carefully and, as we do that, we will look closely at the wider implications on the industry. The Government have not proposed pursuing substantive changes to the grounds for public interest interventions in mergers in this Bill. The changes recommended in Ofcom's review can be addressed directly via secondary legislation under the made affirmative procedure, if appropriate".—[*Official Report*, 29/1/24; col. GC 291.]

The Minister did not offer any detailed timetable, so this is a brazen attempt to push the Minister further in telling us what the Government really have in mind, even if it is going to be included in secondary legislation. It is quite clear, in general, that changes to the Enterprise Act are needed and should be in contemplation. I very much hope the Minister can go rather further than he did in Committee. Indeed, it may be that there is a vehicle available, in the form of the Media Bill, which could take the position further. I beg to move.

Lord Lansley (Con): My Lords, I intervene very briefly to support the noble Lord, Lord Clement-Jones, in the intentions of his amendment. A number of noble Lords will recall that, about eight years ago, we sought that the Government would use secondary legislation to extend the definition of media enterprises under the Enterprise Act.

The point that the noble Lord, Lord Clement-Jones, is making is in this territory. Clearly, if media enterprises for these purposes were defined more widely, it would capture some of the providers that the noble Lord, Lord Clement-Jones, was talking about. At the moment, media enterprises basically consist of print newspapers or broadcasters—and broadcasters are only those that are licensed under the Broadcasting Acts.

I hope it will be evident to noble Lords that there are now many more news creators and aggregators, and sources of news, that make up the news landscape and are not comprised within the definition of print newspapers or of broadcasters under the Broadcasting Act. So we need to make sure that the specified considerations under Section 58, about free expression, accurate presentation and plurality, are applied in relation to this wider definition of media enterprises.

This was something that Ofcom said to Ministers in pursuance of the consultation about the media public interest test, I think as far back as 2021, or maybe at the end of 2022. So I suppose what I am asking is to share in the urging of the noble Lord, Lord Clement-Jones, that Ministers might take this on, and to give advance notice that—from my point of view—we should address this in the Media Bill quite soon, in order to give them further encouragement for this purpose.

Lord Bassam of Brighton (Lab): My Lords, we are very grateful—we are always very grateful, actually—to the noble Lord, Lord Clement-Jones, for tabling this amendment, which raises a valid concern around the suitability of the current provisions in Section 58 of the Enterprise Act.

We take the view that the world has changed significantly since that legislation was put on the statute book. It was changed as a result of the passage of the National Security and Investment Act, but not in a way that addressed the points that have been properly raised by the noble Lord. Some aspects of this debate featured during the passage of the Online Safety Bill,

and I strongly suspect we will revisit this on other occasions in the future, as the noble Lord, Lord Lansley, has invited us to with the Media Bill.

The noble Lord, Lord Clement-Jones, described this as a "brazen attempt" on his part. Well, I hope the Government will be open-minded about looking at whether and how the public interest notice regime could be revised in the future, to take account of different types of media provider. However, because I know that noble Lords would like to progress on to another interesting group on a similar topic, I will hand the Floor to the Minister.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): I thank the noble Lord, Lord Clement-Jones, for Amendment 64. It would expand the list of media merger public interest considerations to include:

"The need for free expression of opinion and plurality of ownership of media enterprises in user-to-user and search services".

I previously addressed this issue in Committee, when I referred to the Government's ongoing consideration of Ofcom's recommendations. As suggested by the noble Lord, ensuring that our regime is updated to reflect current market conditions remains important.

My noble friend Lady Stowell of Beeston has been engaging extensively with government on changes to the wider media merger regime, and I understand that discussions have been constructive. My noble friend Lord Parkinson of Whitley Bay, who is in his place, is the Lords Minister responsible for media mergers. To avoid repetition, I will not speak to the detail of these discussions now but will leave it to my noble friend, who will return to the substance of this in the next debate. I hope the noble Lord will be able to withdraw his amendment and allow us to discuss this further when the next group is debated.

4 pm

Lord Clement-Jones (LD): My Lords, I can barely contain my excitement. It is very good to see the noble Lord, Lord Parkinson, in his place, and I very much look forward to hearing what he has to say in the debate on the next group. There is a difference in principle, though, between the amendments in the next group tabled by the noble Baroness, Lady Stowell, on ownership by foreign Governments and the future-proofing that my amendment seeks for digital media.

I very much appreciate what the noble Lords, Lord Lansley and Lord Bassam, said about the need to encompass this type of media. Whatever the content of the Minister's response, I believe that if we do not deal with digital media in this Bill, we will need to deal with it in the Media Bill. It is a current issue; the Minister used the phrase "current market conditions", which was a slightly odd way of describing the fact that we now have an incredibly lively digital media. After all, why do we have the final offer mechanism in the digital markets Bill? It recognises the issues related to news media and the need to make sure that there is a proper negotiation on the use of, and links to, news media. We need to make progress on this, but I will give way to the oncoming traffic of the next group. I beg leave to withdraw my amendment.

Amendment 64 withdrawn.

Amendment 65

Tabled by ***Lord Tyrie***

65: After Clause 141, insert the following new Clause—

"Review of whistleblowing provisions

(1) The Secretary of State must commission an independent review, chaired by someone appointed with the consent of the relevant Select Committee of the House of Commons, of the extent to which whistleblowers are adequately protected and supported under the competition and markets regime in the United Kingdom.

(2) The review under subsection (1) must consider, but is not limited to assessments of—

(a) whether existing protections are sufficient to encourage whistleblowers to act;

(b) what protections exist in competition regimes in other jurisdictions;

(c) whether further protections should be introduced and what form they should take;

(d) any matter related to whistleblowing provisions that the relevant Select Committee of the House of Commons reasonably requests that the review consider.

(3) The review under subsection (1) must be published and laid before Parliament within 12 months of the passing of this Act.

(4) In this section "relevant Select Committee of the House of Commons" means the Business and Trade Select Committee and any successor."

Lord Tyrie (Non-Afl): This was all debated on Monday evening, but I am sure that many of us have already forgotten exactly what happened then. The amendment would secure a review for improving the prospects for effective whistleblowing. The case—in my view and, it seems, those of almost everybody who participated—is unanswerable. I was not surprised that the Government did not come forward with any effective answers to it, but I was surprised—

Lord Evans of Rainow (Con): My Lords, does the noble Lord wish to move the amendment or not? He already spoke to it on Monday, so he cannot speak once again.

Lord Tyrie (Non-Afl): I do not wish to move the amendment.

Amendment 65 not moved.

Schedule 13: Orders and regulations under CA 1998 and EA 2002

Amendment 66

Moved by ***Lord Offord of Garvel***

66: Schedule 13, page 304, line 22, after "(6)" insert ", 111(4) or (6)"

Member's explanatory statement

This amendment, which would amend section 124 of the Enterprise Act 2002 (orders and regulations), is consequential on paragraph 17(6) and (9) of Schedule 9 to the Bill which omits order making powers in section 111(4) and (6) of that Act.

Amendment 66 agreed.

Amendment 67

Moved by ***Baroness Stowell of Beeston***

67: After Clause 146, insert the following new Clause—

"Foreign power acquisition of news media organisations

(1) A foreign power (as defined in section 32 of the National Security Act 2023) may not acquire a news media organisation or publisher of news in any form ("a publisher") where the publisher's primary place of business is in the United Kingdom, unless the conditions in subsections (2) to (4) are met.

(2) Investigations by the CMA under sections 44 and 45 of the EA 2002 and by OFCOM under section 44A of the EA 2002 have been completed.

(3) The Secretary of State has made and published their decision under section 54 of the EA 2002 stating that there are no competition-related or consumer-related concerns.

(4) Where the conditions in subsections (2) and (3) are met, the Secretary of State must by regulations approve the acquisition.

(5) Regulations under subsection (4) are subject to the affirmative procedure."

Member's explanatory statement

This amendment would prevent the acquisition of a UK news media organisation by a foreign power without the approval of both Houses of Parliament, where competition or consumer-related concerns have been raised.

Baroness Stowell of Beeston (Con): My Lords, I will also speak to the consequential Amendment 158 in my name. I thank noble Lords who have signed my amendment: my noble friend Lord Forsyth and the noble Lords, Lord Robertson of Port Ellen and Lord Anderson of Ipswich. I am grateful to them all for their support and expertise, which have been invaluable in getting us to this point. I am sorry that the noble Lord, Lord Anderson, is unable to be in the Chamber today because of other responsibilities overseas, but he has asked me to restate his support.

I am also grateful to my noble friend the Minister and Julia Lopez, his ministerial colleague in the other place, for their constructive and generous engagement with me on this matter over the past week. I have consciously not been in contact with the Secretary of State, Lucy Frazer, mindful of her current quasi-judicial responsibilities. I will return in a moment to what action the Government might take.

I am sure your Lordships agree that freedom of the press is fundamental to a functioning democracy. Freedom of the press means freedom from government: the freedom of the media to scrutinise and hold to account those of us in Parliament on behalf of the electorate, who get to choose who governs and every Government's fate. Upholding that unbroken principle, which we have protected for centuries, is what has prevented any UK Government owning or controlling the press. It is surely inconceivable, then, that we would sanction a foreign Government or state power to do what no UK Government have ever done or would ever do.

I want to be clear that I have no problem with foreign businesses or individuals owning UK media organisations. Today's foreign UK media owners are a large reason why we have a thriving media environment that is financially independent of government, and I recognise the importance and value to our economy of foreign inward investment to a range of different sectors. The stark difference between foreign businesses and foreign Governments is that if the latter were allowed to own our news media, it would raise big questions about foreign policy, editorial independence and the relationship between an outlet's owners and its coverage.

We cannot ignore that public trust in news, Parliament and the political class has fallen significantly in recent years, and allowing foreign Governments to own such a critical and sensitive part of our nation would damage public confidence in all of us yet further if it was allowed to happen. Only yesterday, Lord Ashcroft published a poll showing that two-thirds of the British public do not support foreign government ownership of UK media. The same poll showed that this is not a partisan matter, with a similar percentage of voters who support all the major UK parties sharing the same view. The British people might not always love the British media and all that it does, but the principle of press freedom certainly matters to them. This principle is in jeopardy because of the proposed takeover of the *Telegraph* and *Sunday Telegraph* and the *Spectator* magazine by RedBird IMI, a fund that is 75% backed by the UAE.

The action taken to date by the Secretary of State for Digital, Culture, Media and Sport and the instructions she has issued to Ofcom and the Competition and Markets Authority to investigate the takeover are very welcome and demonstrate that the Government recognise the well-evidenced concerns about the potential for editorial influence and the risk of censorship by the UAE Government. My concern, which I know that many noble Lords and Members of the other place share, is not just about the potential acquisition of those important newspaper titles. This situation has exposed that in law there is nothing that clearly prohibits the acquisition of a UK news organisation by a foreign power or organisations under significant foreign government control. So although we are relying on the Culture Secretary to reach the right decision and uphold our press freedom, nothing in the current legal framework provides certainty that she can and will do so. This is particularly worrying at a time when some parts of the UK news media face significant economic challenges.

My amendment seeks to close that gap in the law. In simple terms, my amendment would prevent the acquisition of a UK news media organisation by a foreign Government or power without the explicit approval of Parliament. If passed, it would provide an additional and vital barrier of protection for press freedom in this country. The consequential Amendment 158 would ensure that the proposed new clause in Amendment 67 would take effect immediately that the Bill receives Royal Assent.

As I said, my noble friend the Minister and Julia Lopez, the excellent Media Minister, have devoted significant time for discussions with me since I tabled my amendment. I do not doubt their commitment to finding a way to provide the legal certainty that we are currently lacking, and I know that they and officials have been working very hard on this over the past week or so.

From our most recent discussions, I expect my noble friend the Minister to set out an alternative solution when he responds to this debate. I will listen carefully to what he has to say. I am not wedded to the detail of my amendment or the procedure that it sets out, and I will be pleased if the Government propose something that is better and tighter than what I have been able to bring forward. The only question for me is whether the Government's way forward meets a clear and simple objective: preventing a foreign Government representative or foreign state-controlled entity owning or controlling our news media.

I will not pre-empt what my noble friend might say, nor how I might respond to what he says. However, to be clear, I will have no hesitation in pushing my amendment to a vote if necessary. But I think we all recognise the gravity of the matter before us—the Government included—and I am confident, from the reaction and strong support I have received from noble Lords around the House and from Members of another place, that there is a collective desire to meet that simple objective. Indeed, we must meet it, because if we do not, the freedom of our press is at stake. I beg to move.

Lord Robertson of Port Ellen (Lab): My Lords, I added my name to this amendment, and I commend the noble Baroness, Lady Stowell, for the energy and effectiveness of her campaign. Just before the debate started, my mobile phone produced a Sky News newsflash, which said that, at 4 pm, the Government will make a decision to accept the basis of the noble Baroness's amendment. That is a nice piece of news to get just before you stand up to speak.

I was delighted to join the noble Lords, Lord Anderson and Lord Forsyth, in adding my name to this. Unusually, we are on the same side of the argument, although at Question Time the noble Lord, Lord Forsyth, threw out some remarks that other Members of the House will not have recognised but which were designed as an insult to previous positions I have taken on other issues.

Yesterday, I was in Prague, the capital city of the Czech Republic, congratulating it on 25 years since its entry into the NATO alliance. I made the point, as many people at the conference did, that 25 years ago the Czech Republic joined NATO, having overthrown the communist system and regained freedom after all the years in serfdom to the Warsaw Pact and the Soviet Union. The point was made that freedom is not an abstract concept but something that is very clear and precise, and it includes free speech and a free press. That is why I believe that a very significant principle is involved at this point.

As the noble Baroness said, there is no provision in the legal framework of this country at the moment to prevent a foreign Government gaining control or ownership of our media outlets. To the vast majority of the public, that would seem to be outrageous. As Lord Ashcroft's poll showed, the fact is that a large majority of the population do not agree with the idea of a foreign Government owning our media outlets. That should come as no surprise to anybody in this House or in the other place; it seems almost self-evident. Yet we do not have that legal provision, and we should.

4.15 pm

This is not simply about the *Daily Telegraph* or the *Spectator* magazine, but what that case has done is illustrate the vulnerability that we have, in this modern world, to the way in which foreign Governments might seek to impose their views and attitudes on the British public. I do not intend, given that Sky News has already told me that the Government are giving in, to make a huge issue of this here. As the noble Baroness said, I will listen with great interest to what the Minister says and what the department has told Sky News in advance; if that is right, we will all be satisfied, and the United Kingdom will be a safer place as a consequence.

Lord Forsyth of Drumlean (Con): My Lords, I congratulate my noble friend on her skill and thank the splendid, clever people in our Public Bill Office who enabled her to find a way through this legislation to have an amendment that is in scope—because, for a very long time, we thought that would not be possible. I tried with the Media Bill, and the best I could come up with was a regret Motion on the Second Reading that showed there was widespread support. The noble Baroness, Lady Stowell, deserves considerable credit for making that navigation and getting us to the point where, in her courteous way—she is much more diplomatic than me—she gives the Government an opportunity to do the right thing and support an amendment to this Bill to protect the freedom of the press in our country and, with that, the very foundations of our democracy.

I will say something about the *Telegraph* bid made by this curious organisation called RedBird IMI—it is a very odd bird indeed. We are told that Sheikh Mansour, the vice-president and Deputy Prime Minister of the UAE, is acting in a purely private capacity by those who wish to advance this so-called investment. Now I am a banker, but I do not really understand how you can have an investment strategy that involves paying multiples of the value of the asset and, in carrying out the bid, briefing the press to the effect that you would be prepared to have a minority interest and, presumably, not have a vote—that strikes me as an odd investment strategy indeed.

What it is, is what it is: an influence strategy. The payment of a rich price is about getting influence through the medium of the *Telegraph* and the *Spectator* magazine—it is not a commercial issue. Money talks, of course, and ownership matters. One of the very few things that I disagreed with Mrs Thatcher on was that she tended to the view that ownership did not matter. Ownership does matter, and the freedom of our press should never be up for sale.

I said in an earlier debate that he who pays the piper calls the tune—but this is not a melody. The very idea of an autocratic state with a poor record on human rights owning or holding any influence in a major British daily newspaper is utterly surreal: a country that hosts Putin, greets him as dear friend and purchases oil as he circumvents sanctions and conducts his blood-soaked regime and brutal, illegal war in Ukraine; a country whose laws ban any direct criticism of their rulers through the Government's national media council, where citizen journalists and bloggers are targeted for

[Lord Forsyth of Drumlean]
criticising the regime and accused of defamation, insulting the state and posting false information with the aim of damaging the country's reputation; a country that puts journalists in jail, deports critics and closes down any criticism; a country that is bottom of the class in international freedom tables; a country where, according to Amnesty International, at least 26 Emirati prisoners remain behind bars because of their peaceful political criticism.

The bidders at IMI promise editorial independence, just as they did in the case of CNN Business Arabic. According to the *Times* report of 12 January, Sultan Al Jaber, chairman of IMI, put pressure on CNN Business Arabic to avoid negative news about the UAE, despite promises to preserve journalists' editorial independence. The *Times* reported that the editor-in-chief was forced out within months of his appointment for refusing to submit to requests from Al Jaber for positive coverage. Al Jaber was previously head of the UAE's censorship agency, so had much experience in this area.

I hope I have convinced the House—I do not think I need to try very hard—that this bird cannot fly, but it is not just about this particular bird, as the noble Lord, Lord Robertson, said. No insult was intended earlier—I was just pulling his leg. There is a principle here. Foreign Governments should be nowhere near the ownership of newspapers and magazines. In fairness to the Government, no one could have predicted how this utterly bizarre bid would come to pass. I know of no democratic country that would allow a foreign state to take ownership of key national newspapers. I now regret my regret amendment. Perhaps it was a little unfair to criticise the Government for not including measures in the Media Bill and drawing the Long Title so tightly that it was impossible to amend the Bill in that respect. The debates in this House showed universal opposition. The poll by Lord Ashcroft, which has been mentioned, reflects that in the country.

This amendment may not be perfect. It is an old trick of Sir Humphrey to say, "Well, I accept the amendment in principle but unfortunately the drafting is not quite right". From my experience of talking to Minister Lopez and from the work done by my noble friend Lady Stowell, I believe the Government are working sincerely to try to find a way of having an amendment that will produce what I believe everyone in the House would like to see. They should continue to work with my noble friend and the other sponsors to ensure that the Bill leaves this House amended. Nothing less than a complete ban on foreign Governments having any role in the governance, ownership or financing of our media is acceptable. It is, as I have said before, a no-brainer.

Lord Moore of Etchingham (Non-Afl): My Lords, I refer your Lordships to my entry in the register. I have been on the staff of the Telegraph Media Group since 1979, so this interest bulks large in my mind; I had to confess it at once. I am very grateful for everything that has been said and to the noble Baroness, Lady Stowell, for moving this amendment. I am also very pleased that this has been a cross-party affair coming from all sides of the House.

My only regret so far is that the Government were inclined to regard this as a technical matter that had to be looked at in terms of rules. It is important to look at the rules, which DCMS is doing, but it is not really about that. As has been said by the noble Lord, Lord Forsyth, and all other speakers, this is a very important matter of principle. The delay involved has been very difficult for newspapers in general, and particularly for my own and for the *Spectator*, because while you do not know what will happen you cannot really get on with doing your journalism. That tends to erode things if you are not careful, so it is very important that we have got to the heart of it.

I endorse absolutely everything that the noble Lord, Lord Forsyth, said about the Abu Dhabi bid, but I am quite glad that I do not have to say it myself, because if we had had such a rule and such clarity from the start, people would not have had to get into this issue of saying rather difficult truths about many regimes across the world. We would simply have been able to say, "No, sorry, the rule is the rule, and that's that". I hope we can learn something from all that.

I have seen the leak, if that is the right word, so I have a rough idea about what we might hear later. I want to make two important points. One is that I hope the *Spectator*, and magazines like it, will be properly included in any decisions, because, as I understand the rules at present, they refer to national newspapers and not automatically to national news magazines, and I think precisely the same point should apply.

There is room for possible problems about minority ownership. It is possible, in the way that ownership works in companies, that an ownership of less than 50% can amount to a controlling interest; that can be done in a covert way or sometimes in an open way. If it were the case that, for example, RedBird IMI took a minority stake, that would be better than a majority stake but would not automatically solve the problem. I hope the Government will address that.

At the *Daily Telegraph* we have always been proud advocates and practitioners of a free press, but we have not particularly enjoyed having to advocate it quite so hard and so repeatedly to get the message across. I am glad to sense that the message has got across, and I am grateful to noble Lords on all sides of the House. I hope we can now move forward with due expedition.

Baroness Bennett of Manor Castle (GP): My Lords, I rise very briefly for two reasons. First, I offer Green support to the direction in which we are heading and join in the congratulations for the noble Baroness, Lady Stowell, on all the work she has done here.

Before I begin the second point, I declare my historical interest as a former editor of the *Guardian Weekly* and a former employee of the *Times*. I will refer to the report *Who Owns the UK Media?*, published last year by the Media Reform Coalition at Goldsmiths. I very much agree with what the noble Baroness said about the importance of the principle of press freedom, and with the noble Lord, Lord Forsyth, about the free press as a foundation of our democracy, and that ownership matters. But I urge all noble Lords who take part in this Report to consider how much diversity of media ownership matters.

As it says in that report, three UK publishers—DMG Media, News UK and Reach—control 90% of the print reach in the UK and 40% of the online reach. The report's authors said there was an "urgent need for reform", and urged Ofcom, Parliament and the Government to take action to address diversity of media ownership. If DMG Media were to buy the Telegraph Media Group, its print share would rise from 42% to 47%.

I very much welcome what I think we are about to hear and all the work that has gone into this, but I urge noble Lords to consider the much more work that needs to be done to achieve the diversity of voices that is so crucial to the strength of our democracy.

Baroness Fleet (Con): My Lords, I rise to speak to Amendment 67, tabled by the noble Baroness, Lady Stowell, and I congratulate her on all the hard work she has done to get to this point.

I have not spoken previously on the Bill, but I specifically want to speak today as a passionate supporter of a free press and freedom of speech. As a former deputy editor of the *Daily Mail* and the *Daily Telegraph*, and the editor for seven years of the London *Evening Standard*, I know that anyone who buys a newspaper wants to influence society, politicians and government. All proprietors interfere. Many editors have been forced to resign because of that interference. I departed from the *Telegraph* with Max Hastings because the owner—the noble Lord, Lord Black—disagreed with the editor's support for Europe. After I left the *Standard*, the paper became a promotion vehicle for the new owner, the noble Lord, Lord Lebedev, and his personal interests. The notion that a Government, or someone appointed by a Government, buys a newspaper other than to directly influence the newspaper is fanciful.

4.30 pm

Turning to the *Telegraph*, we should acknowledge that, since 7 October, that newspaper has boldly championed the right of Israel to defend itself against Islamic terrorism. Importantly, every week the *Telegraph* has criticised the pro-Palestinian parades through London for their anti-Semitism. The idea that an Arab owner—any Arab owner—of the *Telegraph* or any other newspaper would allow its editor to support Israel and criticise pro-Palestinian anti-Semites is an absurd notion.

I go even further: perhaps one reason why a foreign Government would want to buy an important newspaper such as the *Telegraph* would be to promote an anti-Israel, pro-Palestinian point of view. Once that foreign Government owned the newspaper, there would nothing anyone could do to prevent their interference. We want a free press, not a major newspaper controlled by an undemocratic Arab state.

It is now suggested that, to avoid a blanket ban on their purchase, the Abu Dhabi Government would be content with a minority stake. Allowing that would also endanger the *Telegraph*. There would be nothing to prevent the rich minority shareholder offering an extremely tempting fortune to a co-shareholder for their stake. That would give Abu Dhabi a majority interest—just what the proposed amendment seeks to avoid.

Finally, I turn to News International. I admire Rupert Murdoch, but I must tell the House that, having been one of the independent members of the *Times* supervisory board for nine years—a similar structure to that proposed by the bidders for the *Telegraph*—we had no real power. If we do not pass this amendment, we will send out a signal that if, after Murdoch's death perhaps, News International is put up for sale, any foreign Government —perhaps Qatar or even Russia—would then be welcome to buy another chunk of our newspapers. We must protect our newspapers from that threat.

Lord Kamall (Con): My Lords, a number of principles have been spoken about. I believe firmly in the principle that no Government, British or foreign, should be allowed to own a UK media outlet. When my noble friend Lady Stowell asked me whether I would support her amendment I initially declined, because I told her it did not go far enough. I apologise for that, because, as my noble friend said, the UK Government do not own any media outlet; why, therefore, should any foreign Government be allowed to do so?

We should also be absolutely clear that this is not anti-foreigner sentiment. I and, I am sure, many other noble Lords have no objection to foreign private companies owning UK news media outlets. Indeed, in my years in the European Parliament we used to refer to the *Financial Times* as the in-house paper of the European Commission, only to find that it was owned by a Japanese company.

There are clearly some tricky issues here in drafting the relevant law that the clever lawyers will have to navigate. For example, it is well known that Chinese non-state-owned enterprises often have strong links to the leadership of the Chinese Communist Party. Indeed, some China analysts claim that there is little difference between the Chinese Government's influence over state-owned and non-state-owned companies, so were a non-state-owned Chinese company to bid for a UK media outlet there would also be a number of questions. That is possibly a debate for another day.

In short, like many noble Lords, I am against any government ownership of UK media organisations, whether it be the UK Government or a foreign Government. For these reasons, I support Amendments 67 and 158 in the name of my noble friend Lady Stowell.

Lord Clement-Jones (LD): My Lords, despite the shortness of this debate, we have had some very fine and inspiring speeches. We on these Benches wholly support the amendment moved by the noble Baroness, Lady Stowell. Indeed, like the noble Lord, Lord Robertson, I find it extraordinary that we do not have this already on the statute book. Given the importance of pluralism and freedom of speech in our media, the thought of foreign Governments impacting on our media in the way that is currently threatened seems quite extraordinary.

My main purpose is to associate myself with the remarks of the noble Lord, Lord Forsyth. When he moved his regret amendment, he talked about the ownership by the UAE of a UK quality newspaper. I have spent the last 10 years campaigning for the release of Ryan Cornelius from a Dubai jail. He was unjustly imprisoned on trumped-up fraud charges, and his sentence was

[Lord Clement-Jones]
arbitrarily extended by 20 years in 2018, just as he was due to be released. He now faces the prospect of many more years in jail. I am all too aware of the reality that lies behind the pleasant-looking tourist Dubai. Parliament should definitely have its say before a UK newspaper falls into the hands of such a Government. All this is a result of the activities of a member of the royal court of Dubai, so it very close to home in the UAE. Not only do we as a party on these Benches wholly support this amendment, but I personally feel very strongly about the need for it.

Lord Bassam of Brighton (Lab): My Lords, I think the whole House is grateful to the noble Baroness, Lady Stowell, for the way in which she set out the arguments behind her amendment, and for the clarity, force and power of her voice in putting those arguments forward. We are also grateful to the noble Lord, Lord Forsyth, for the way in which he has argued his case—not once, but twice, and several other times too, when he has been given the opportunity; I always enjoy his interventions. I am enormously grateful to the noble Lord, Lord Robertson, for bringing breaking news to your Lordships' House.

It might seem slightly ironic to some that we on the Labour Benches are trying to come to the rescue of the *Daily Telegraph*, but there is a much more important principle at stake here. It is an obvious place to start but let me begin with first principles: Labour believes in a free and fair press without state interference. We also believe in the accurate presentation of news and in freedom of expression, which is particularly important in the context of RedBird's attempted takeover. Our view on this matter is not shaped just by the Telegraph Media Group takeover proposal currently being considered by the Secretary of State; we would have similar concerns if other titles were subject to bids from other states. When the Minister explains to the House the Government's intention, can he clarify the position, too, of not just newspapers but other publications? That is not to say that we do not have real concerns about the proposed sale of the Telegraph Media Group. We very much welcomed the Secretary of State initiating the investigations by the regulators. Now that their reports have been submitted, we hope that a decision will be taken in a timely way and as soon as possible, and in a way that is consistent with the quasi-judicial nature of the process.

For the avoidance of doubt, this is not to say that we oppose foreign investment in this country; we believe that inward investment in our economy is vital. The noble Baroness, Lady Stowell, spoke eloquently on that point, as did the noble Lord, Lord Kamall. However, foreign ownership of UK media organisations raises broader questions around the accurate presentation of news and, in certain cases, the free expression of opinion. Both of these, as many noble Lords have said, are vital to the long-term health of the print media sector and, more importantly, to our democracy.

I listened very carefully to the noble Baroness's introduction and the other speeches. We have to give them all credit for the way in which they addressed the issue. I listened particularly to the noble Lord, Lord Robertson, because of his expertise, and his former role and continuing interest in security matters. While I am giving out thanks, I also thank the Minister, who helpfully found the time to meet me and my noble friend Lady Jones of Whitchurch this afternoon to discuss this important issue.

As we have seen with other legislation, most progress is often made when groups from across your Lordships' House have open, frank discussions and then work together to agree solutions. I understand that for various reasons the text of Amendment 67 is not necessarily what all its supporters would have wanted. For that reason, and for a number of others that I will set out, we are not convinced that it presents the right response to this serious matter. Our view is that a free and fair press should be without state interference, which means without undue influence from our own state as well as others.

It is correct that the Secretary of State should take an interest in cases which raise concern on competition and plurality grounds, but her responsibilities are rightly constrained by legislation, and her ability to comment is limited by the quasi-judicial role she is playing. Where security concerns may arise, the Secretary of State will no doubt receive confidential briefings on the potential implications of different outcomes. In our view, that process must be allowed to play out. That the CMA and Ofcom have reported to the Secretary of State this week points to the well-established merger regime that has been in place in this country for some time. As part of their investigations, those independent regulators draw on expert advice and are able to obtain appropriately handled confidential information, including material that may be highly commercially sensitive. On the basis of all that information, they may then come to a judgment regarding the suitability of a takeover proposal and advise the Secretary of State accordingly. Parliament has empowered the Secretary of State and those regulators. In our view, that is an appropriate level of state interest in sensitive matters.

Amendment 67 proposes that once the regulators have carried out their work and the Secretary of State has come to a decision, it should be for Parliament to approve that decision. While we generally support parliamentary scrutiny of the Executive and their decisions, we are not convinced that the mechanism envisaged by the amendment is suitable in the light of the sensitive security and commercial information that would have to be shared to inform debate and determine the outcome of votes in both Houses.

My impression from earlier discussions with the Minister and his colleagues in other departments is that a better approach would be for the Government to acknowledge the strength of feeling in this House and commit to bringing back their own text at Third Reading. If the Minister is able to make that commitment, I hope that colleagues on all Benches will be minded to accept that offer and work with Ministers, as we will offer to do, in the coming weeks to find a satisfactory outcome.

We have enormous sympathy with the noble Baroness, Lady Stowell, on this issue. We do not feel able to support her proposition in the form it is with us today. We know it has been brought forward with the very best of intentions, intentions we support, and because we share those, we urge the Minister to respond positively to finding a way forward over the next few weeks.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, it is a pleasure to speak on this Bill for the first time, even if it is some 43 minute later than advertised by some of our free media outlets. It touches on debates we have already had in connection with the Media Bill.

His Majesty's Government firmly believe in a free media and a free press. It is the bedrock of our democracy and an essential safeguard which ensures accountability and effective government. I know that noble Lords share that firm belief. We heard it strongly again today, not least from my noble friend Lady Stowell of Beeston, whom I thank for her work in reflecting these important principles through her scrutiny of this Bill, the Media Bill and others.

Media freedom depends on having a plurality of media through which the public can access a wide range of accurate, high-quality news, views and information. My right honourable friend the Secretary of State has championed press and media freedom from her very first moment at the Department for Culture, Media and Sport. She has been clear about its importance and has made it a personal priority.

4.45 pm

As my honourable friend Julia Lopez, the Minister for Media, Tourism and the Creative Industries, has also said, the purchase of UK news organisations by foreign states runs the risk of eroding trust in those important organisations. All foreign states have their own interests, quite understandably, and those may or may not be compatible with UK interests or our values. I am happy to tell your Lordships today that His Majesty's Government are committed to tabling an amendment to the Bill at Third Reading preventing foreign state ownership of newspapers.

As I have explained in our other recent debates, our existing legal framework—the Enterprise Act 2002 and the National Security and Investment Act 2021—already allows Ministers to scrutinise and, if appropriate, prevent or block media mergers on the basis of public interest considerations, such as the need for freedom of expression and the accurate presentation of the news, and of national security issues. These regimes, as set out by Parliament, therefore implicitly allow Ministers to come to a judgment on media mergers that involve foreign state ownership and influence. However, we agree with the views that have been expressed in Parliament by my noble friend and others that there is scope to provide greater clarity, so we are now bringing forward a comprehensive and clear plan to make this explicit in the legislation.

As noble Lords have said, newspapers and news magazines play a unique role in contributing to the health of our democracy by providing accurate news and information, helping to shape opinions and contributing to political debate. Recent measures considered by your Lordships' House, such as the National Security and Investment Act 2021 and the National Security Act 2023, have sought to respond to foreign state interference. It is appropriate that we take the concerns that have been raised by my noble friends and others to put this beyond doubt.

The approach outlined in my noble friend Lady Stowell's Amendment 67 is one approach but, as drafted, and as she knows, it presents some legal and operational challenges. Among other things, the role that it proposes for Parliament would set an unhelpful precedent for other quasi-judicial regimes in terms of the distinct roles of government and Parliament, and the noble Lord, Lord Bassam of Brighton, set out that distinction very helpfully in his contribution. For that reason, we are unable to accept my noble friend's amendment or her Amendment 158, which is consequential to it.

Instead, I am happy to undertake to my noble friend and to your Lordships' House—in renewing my thanks to her for her engagement on this matter over recent days—that the Government will table an amendment at Third Reading to address these important issues clearly and comprehensively. We will amend the media merger regime explicitly to rule out newspaper and periodical news magazine mergers involving ownership, influence or control by foreign states.

The noble Lord, Lord Bassam, and others asked about periodical news magazines. To pick up the point raised by the noble Lord, Lord Moore of Etchingham, and as he may know—the noble Lord, Lord Bassam, may not be as avid a reader of the "Spectator's Notes" column as I am, but in that the noble Lord, Lord Moore, fights a sometimes losing battle to refer to the *Spectator* as a newspaper—under the terms of the Enterprise Act 2002, the *Spectator* is not a newspaper as defined in statute, but the provisions that we will bring forward will cover periodical news magazines, which include organs such as that.

Under the new measures, the Secretary of State would be obliged to refer media merger cases to the Competition and Markets Authority through a new foreign state intervention notice where she has reasonable grounds to believe that a merger involving a UK newspaper or magazine has given or would give a foreign state—or a body connected to a foreign state—ownership, influence or control. The Competition and Markets Authority will be obliged to investigate the possible merger and, if it concludes that the merger has resulted or would result in foreign state ownership, influence or control over a newspaper enterprise, the Secretary of State will be required by statute to make an order blocking or unwinding the merger.

We intend to expand on the current definition of "foreign powers" used in the National Security Act 2023 to ensure a broad definition that also covers officers of foreign Governments acting in a private capacity and investing their private wealth. This expanded definition is the one that the CMA would apply in its investigation.

The regime will work in parallel with the existing public interest regime and is without prejudice to the Secretary of State's ability to issue a public interest intervention notice under the current rules. These changes will take the form of amendments in primary legislation to the Enterprise Act 2002, and we intend that the changes should take immediate effect upon Royal Assent.

As noble Lords know, the Secretary of State is currently considering a live merger case under the Enterprise Act regime on which I cannot comment

[Lord Parkinson of Whitley Bay]
further today. With regard to any live case, if it is still ongoing when the changes come into effect, the Secretary of State will continue to follow the process set out in the existing regime and will also apply the new measures that will be set out in the government amendments.

I should note that the Government remain committed to encouraging and supporting investment into the United Kingdom and recognise that investors deploying capital into this country rely on the predictability and consistency of our regulatory regime. The UK remains one of the most open economies in the world, which is key for the prosperity and future growth of our nation. Our focus here is not on foreign investment in the UK media sector in general; this new regime is targeted and will apply only to foreign states, foreign state bodies and connected individuals, and only to newspapers and news magazines.

Lord Forsyth of Drumlean (Con): I am very grateful for what my noble friend has said. Could he clarify the position on minority stakeholders? He used the word influence. Would that mean having a small number of shares?

Lord Bassam of Brighton (Lab): My Lords, in order to help, can we be absolutely clear that this covers minority ownership and control? We need clarity on that. The noble Lord, Lord Moore, made that point. It would help the House for the avoidance of doubt.

Lord Parkinson of Whitley Bay (Con): The noble Lords have intervened at a helpful point, because I was about to outline that we want to ensure that the new measures do not have undesired effects on wider foreign business investment in the UK media, or on purely passive investments made by established investment funds.

In the amendment we will bring forward at Third Reading, it will be necessary to take a power to make secondary legislation to set out two points clearly: first, what limited types of established investment funds we mean, which could be split out of the general prohibition on foreign state ownership provided for by this regime; secondly, the very low threshold up to which they may be permitted to invest, which we intend to be considerably lower than the current thresholds for material influence in the Enterprise Act.

As we bring this forward ahead of Third Reading, we would be very happy to discuss the drafting with noble Lords before it is tabled so that we can discuss the detail. We will set that out in the provisions at Third Reading.

Lord Lansley (Con): I am sorry to interrupt my noble friend but, as he knows, I am interested in the question of media enterprises more generally. Is he intending that the amendment to be brought forward will relate only to newspapers, and therefore will not touch upon broadcasters, as they will be excluded? I am not sure I understand why the presentation of news by broadcasters is to be treated differently from the presentation of news by newspapers.

Lord Parkinson of Whitley Bay (Con): The provisions we will bring forward at Third Reading will relate to newspapers and periodical news magazines, as I have set out. It will not cover television and radio broadcasters at this time, but that is something we will continue to consider. We have already been considering it as part of our broader work on the media mergers regime. That work will continue. I am happy to speak with my noble friend Lord Lansley and others about it.

Lord Clement-Jones (LD): Could the noble Lord go through again what will happen to an existing merger, which is subject to existing procedure? He seemed to be saying that, as soon the new provision comes in when the Bill passes, it will be subject to the new procedure as well as the old. Is that what he was saying, and how will that work?

Lord Parkinson of Whitley Bay (Con): That is what I was saying, but it depends on when the Bill gets Royal Assent. That is in the hands of noble Lords and not just the Government. If any live case is still ongoing at the time of Royal Assent—we intend for the new provisions to come into effect at Royal Assent—then the Secretary of State will obviously follow the provisions as set out in other Acts of Parliament as decided by Parliament previously, and follow the law as enacted after Royal Assent.

Lord Clement-Jones (LD): I have a second question. I am assuming that internet digital news media—not a newspaper—will not be covered by these provisions.

Lord Parkinson of Whitley Bay (Con): No. I am grateful that we have separated the debate on the noble Lord's previous amendment from this so that I can respond directly to the amendment brought by my noble friend Lady Stowell. I am grateful for his understanding of that.

The Government are focused on the reforms to media ownership rules, which were suggested in Ofcom's 2021 review. It did not recommend that online intermediaries, including social media platforms, search and video/audio-on-demand services should fall in scope of that. I heard what the noble Lord said about having this debate in the Media Bill, and I look forward to doing so.

The secondary legislation provisions that I have outlined will be subject to the affirmative procedure in Parliament. Until such time as those regulations are laid and approved by Parliament, the whole regime applies to everybody caught by the general foreign state prohibition.

We have always believed that the trustworthiness of our news and the lack of government interference in it, whether domestic or foreign, is of paramount importance, which is why we are setting out today our plan to make that more explicit in the regulatory regime that exists. As my noble friend Lady Stowell is aware, work is already under way to update the media mergers regime more broadly, and I touched on that in my responses to noble Lords. We will continue to take that work forward. I hope that, on that basis, my noble friend is able to withdraw her amendment today. With

renewed thanks to her and a renewed commitment to work with those who have supported her, I am grateful for the opportunity to speak today.

Baroness O'Neill of Bengarve (CB): My Lords, for the avoidance of doubt, could the Minister clarify whether the proposed restrictions apply not only to print and broadcast media but to digital media?

Lord Parkinson of Whitley Bay (Con): No, it is just to newspapers and periodical news magazines.

Baroness Stowell of Beeston (Con): My Lords, I am very grateful to all noble Lords who have spoken for their support and for the powerful speeches that they have given, and I am very grateful to my noble friend for his clear and comprehensive explanation of the Government's position, and their firm intention to bring back an amendment at Third Reading to address that simple objective that I outlined at the start of this debate.

Because my noble friend covered such a lot of ground and this is quite complex stuff, for the benefit of other noble Lords and anyone else following this debate, I shall play it back at him a little bit, perhaps in plainer English, if I may—although noble Lords must forgive me if some of it is not as plain as it would be if I was speaking outside the House.

What we have heard is that the Government will bring forward an amendment at Third Reading that will expand the definition of foreign power beyond that in the National Security Act to include individuals who might not otherwise be adequately captured. That is something that has been of particular interest and concern to some of the legal noble Lords who have been following and commenting on my amendment. The amendment will expand the definition of "newspaper" in the Enterprise Act to include news magazines explicitly. The amendment will give the Secretary of State a new power to issue a foreign state intervention notice if she is notified or becomes aware at any time of possible foreign state involvement to own, control or influence a newspaper or news magazine. Once her order is issued, the CMA must investigate and, if it establishes that it is a foreign state, as newly defined, any investment or takeover will be blocked—or, if the investment has already happened, the Secretary of State will have the power to unwind that investment. All that will come into force once the Bill gets Royal Assent, and it will apply to any live regulatory case alongside the existing procedure that the Secretary of State is following.

In addition, at Third Reading, the Government will bring forward an amendment to create secondary legislation, which will be subject to the affirmative procedure. Those regulations will define what kind of indirect foreign state entity might be allowed to make a passive investment, such as a sovereign wealth fund of a democratic state, and include a very low threshold below which such an entity could invest. The purpose of those regulations will be to preserve the opportunity of legitimate foreign investment in news media. For example—and I think that it helps to get an example to understand what we are talking about here—it has been pointed out to me that the Norwegian state investment fund has single digit investments in News Corp, Reach, which is also known as the Mirror Group, Paramount Global, which owns Channel 5, and Comcast, which owns Sky.

To me, what my noble friend has outlined today, on my simple interpretation of it, makes sense. I am very grateful to the Minister for emphasising the very low-level investment that the Government are considering for the secondary legislation that will come forward, but the precise percentage will matter. I know that he will not be able to commit now to bringing forward the regulations in draft at Third Reading, because there is a lot of work for officials to do between now and then, but I hope that he can commit to doing as much as he can at Third Reading to provide the detail that we will need to be properly satisfied that what then follows will meet all our concerns.

5 pm

Overall, I congratulate my noble friend and the Media Minister, Julia Lopez, on bringing forward such a comprehensive proposal. On the basis of what my noble friend has committed to today, I will withdraw my amendment. Of course, as he knows, I reserve the right to retable it at Third Reading and to divide the House then if, for whatever reason, what has been promised is not delivered, but my priority now—I mean this most sincerely—is to work with the Minister to ensure the adequacy of the amendments that come forward at Third Reading. My noble friend Lord Forsyth has already asked that I and my co-sponsors be consulted. I understand from what my noble friend said in response that he is agreeable to that. I am sure that noble Lords will want the opportunity to make sure that, at Third Reading, we are able to agree to what is brought forward and to discharge the Bill back to the Commons for their consideration. With that, I beg leave to withdraw my amendment.

Amendment 67 withdrawn.

Clause 148: Relevant infringements

Amendment 68

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

68: Clause 148, page 94, line 33, at end insert—

"(c) the collective interests of consumers includes avoiding any detriment that might be incurred by consumers as a result of advertising products and services which will have a significant impact on the United Kingdom's ability to reach a level of net zero carbon emissions by the year specified in section 1 of the Climate Change Act 2008."

Member's explanatory statement

This amendment seeks to amend the definition of the 'collective interests of consumers' to include the detriment caused by advertising and promotion of high carbon products and services.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to move Amendment 68, but it is not my intention to speak to any of the other amendments in this diverse and large group, in the interests of proceeding in a timely manner.

Noble Lords will see that this amendment seeks to amend the definition of the collective interests of consumers to include

"the detriment caused by the advertising and promotion of high carbon products and services".

[Baroness Bennett of Manor Castle]
For noble Lords who were not in Committee, I will tell the story of the origins of this, which was Amendment 109 from the noble Baroness, Lady Jones of Whitchurch. Her amendment basically set out that there would be controls to avoid detriment for any action that would prevent us reaching net zero by 2050. I pointed out to the noble Baroness that, given that at that time the Climate Change Committee was saying that we were well off track for meeting that 2050 net-zero target, the amendment, in effect, would have stopped all advertising of any product producing carbon, which I do not think was the noble Baroness's intention.

I therefore find myself in the unusual situation of tabling on Report a more moderate amendment than we were discussing in Committee in terms of reducing carbon emissions and looking to reduce the detriment for consumers. That is why my amendment focuses on high-carbon products. As I said in Committee, high-carbon products obviously include fossil fuels, flights, SUVs and plastics, but also fast fashion, meat and dairy, and banks that are funding the likes of BP and Shell. It is worth noting, going back to when the Government first started promoting this Bill, that we were promised a huge amount of action; one of the purposes of the Bill was to provide protections from greenwashing. We have gone a long way backwards from that. My amendment is an attempt to reinstate, in a small way, what was stated to be an original intention of the Bill.

I promise that this was not co-ordinated, but I note that I speak to this amendment just a few hours after—we are very timely—another Member of your Lordships' House, the noble Baroness, Lady Brown of Cambridge, has published an article on Business Green pointing out how the UK is not in any way on track to meet the needs of climate adaptation. She talks about us

"sleepwalking into an energy system"

that cannot be implemented and achieved, while we face flooding, extreme heat and water scarcity that will cost lives.

Therefore, this is an amendment to take us in a direction that we surely need to go. There is no right to advertise. We can decide what sort of advertising all our consumers are subjected to, particularly in the digital space, where people are bombarded, every second, with more and more adverts, and we know how advertising tracks us: once we have shown an interest in one topic, we are subject to bombardment. We do not have to say that it is open slather and you can do whatever you like in terms of advertising and promotion. Cigarette advertising is an obvious area where we have already taken quite tight action, and I note that Transport for London now restricts advertising of a range of products, including junk food, and there is talk of banning gambling promotion. France and Amsterdam are also looking at a ban similar to the one that this amendment would point us towards, banning high-carbon adverts.

It is not my intention to put this to a vote. There are so many areas of government action in which the Greens start saying something and, 10 years later, it gets delivered and becomes government policy, but we really cannot wait on climate action, as the independent Climate Change Committee says; that, of course, features Members of your Lordships' House. We really need to act now, and if we are not going to see this from the Government in this Bill, there will be opportunities forthcoming. The Media Bill comes to mind, and we will see where we can continue to push for action in this area. I beg to move.

The Earl of Lindsay (Con): My Lords, I shall speak to Amendments 99 to 101 and I declare an interest as president of the Chartered Trading Standards Institute. I am pleased that also sponsoring these amendments are my predecessor as president of the institute, the noble Baroness, Lady Crawley, and the noble Baroness, Lady Bakewell of Hardington Mandeville, a former leader of Somerset County Council.

Before speaking to these amendments, I thank my noble friend for using the Bill to extend online interface order provisions to trading standards, an issue we raised in Committee in amendments moved very ably by the noble Lords, Lord Clement-Jones and Lord Bassam of Brighton. I thank my noble friend also for the correspondence and discussion with him and his officials since Committee about the ongoing concerns that have prompted our amendments in this group and the next.

Amendments 99 and 100 would enable local authority trading standards officers to exercise their powers throughout the United Kingdom. Currently, the legislation implies that officers in England and Wales can exercise powers only in England and Wales but not in Scotland, and vice versa, but rogue traders operate across our internal borders and the legislation and powers that underpin trading standards and consumer protection should recognise this cold, hard reality. We fully respect the different legal jurisdictions involved. The current restriction, however, relates to the exercise of powers, not to the ability to take legal proceedings, and the legislation applies equally in the devolved nations. The restriction makes enforcement more challenging if, for example, a trader based in Scotland commits an offence in England, as trading standards officers can face legal challenges if they request documents they would be entitled to were it not for this anomaly. I should add that trading standards officers across Scotland, England and Wales support this amendment, as it would allow them to conduct investigations throughout the United Kingdom in a more efficient and cost-effective manner.

Amendment 101 would enable trading standards to access information by letter, rather than being restricted to having to exercise a power of entry to access that same information. As the Bill is currently drafted, trading standards need to visit the business in person to obtain paperwork to use as evidence in criminal proceedings. This amendment would ease the pressure on businesses, as they will then have time to gather and send any documents requested, and to seek legal advice, rather than face a trading standards officer just turning up at their business address without notice and seizing documents.

This proposal is therefore in the interests of both businesses and enforcers, and we believe that it does not breach the individual's human rights or cause any greater risk of self-incrimination. It also reflects the financial difficulties that local authorities are facing, not least those that have declared bankruptcy. There are clear cost implications if an enforcement officer is required to drive half way across the country to obtain

documents. Cases can be dropped if there is insufficient council budget for such travel. The documents I am referring to are those that the officer has the right to request and seize when on the business premises, and in those circumstances a trader would have to provide them immediately.

We believe that the ability to make a written request for documents that are held by the business and are required as evidence would substantially reduce costs to the local authority, reduce pressure on businesses and allow those breaching the legislation to be brought to justice more efficiently and cost effectively.

Baroness Crawley (Lab): My Lords, I support the noble Earl, Lord Lindsay, and I wish to speak briefly to Amendments 99 to 101 in his name, mine and that of the noble Baroness, Lady Bakewell of Hardington Mandeville. In doing so, I apologise for not being able to speak at Second Reading or in Committee. I sincerely thank my noble friend on the Front Bench and the noble Lords on the Lib Dem Front Bench for promoting and supporting our amendments in our absence. I also thank the Minister for being so very generous with his time in meeting us between Committee and Report, and for listening so intently to trading standards officers who do this work on the ground, day after day.

The effect of Amendments 99 and 100 would be to give new powers to trading standards officers to operate across national borders when necessary. Current legislation does not make it clear that trading standards officers in England and Wales can exercise their powers across the border with Scotland, even though this is an area of reserved powers. In fact, the current legislation implies that this cross-border enforcement activity is not permitted. It would be helpful if the Minister, in his reply, could make clear the exercise of powers across borders, so that it is at least on the record for trading standards professionals.

At a post-Brexit time when the UK is building up its new internal market in goods and services, and needs corresponding consumer protection, this current questionable restriction on pursuing officers makes it very difficult to enforce legislation where a rogue trader offends across a national border. I am sure the Minister will agree that, for the success of the new internal market, trading standards officers should be able to pursue and enforce right across the United Kingdom.

Amendment 101, to which I have also added my name, would be an opportunity to finally update trading standards officers' powers of entry, as the noble Earl said. At present, trading standards officers are required to exercise physical powers of entry to premises before information access or the seizing of documents, which may well be needed in criminal proceedings. The amendment, which we support, would have the effect of changing their information-gathering powers to enable documents to be requested in writing and without the need for physical entry, and for those documents to still be used in criminal proceedings.

This would be a lot less hassle for legitimate businesses and traders, and would give them more time to source the required documents. For the small, overstretched band of trading standards officers, the requirement to exercise physical powers of entry across the country, in order to seize documents that they may need to use in criminal proceedings, is not cost effective for their cash-strapped local authorities. Rogue traders are not constrained by local authority boundaries, and trading standards officers may have to travel long distances to obtain documents physically. Their local authorities may not be able to finance such activity, and the case would therefore be dropped. I ask the Minister to think again on this matter, to sustain consumer confidence in the consumer enforcement powers of a UK-wide trading standards profession.

5.15 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I wish to speak briefly to support Amendments 99 to 101 in this group, to which I have added my name. The noble Earl, Lord Lindsay, and the noble Baroness, Lady Crawley, have very clearly set out the arguments and the rationale for our amendments, so I will not go into the same detail.

I thank the Minister for his time and that of his officials in meeting with those of us who have signed these amendments, and for his letters clarifying the position. We are grateful for the Government's movement on several of the issues we raised in Committee. They were not actually raised by us—because of other circumstances, none of us was able to be here—but they were ably covered by the noble Lord, Lord Bassam, and my colleague, the noble Lord, Lord Clement-Jones.

Amendments 99 and 100 raise the issue of how trading standards operate across borders throughout the country. This is causing them considerable concern, and I will not repeat what has already been said, except to say that trading standards are a vital local authority service, but not one that attracts the same level of support as children's services or disability services. I declare my interest as a vice-president of the LGA.

Local authority budgets are stretched beyond what is needed to make many vital services safe for the consumer. On Amendment 101, trading standards needs support in order to operate as effectively and efficiently as it can to protect the public. Requesting documents by post is more cost effective than going to the trouble of crossing the country to fetch documents. Trading standards needs to be able to operate effectively across the whole UK, and I support this amendment.

Lord Clement-Jones (LD): My Lords, it is very good to see the full team back on the trading standards amendments. I congratulate all three noble Lords on their championing of trading standards. They need the powers that are being argued for in these amendments; they are the unsung champions of the consumer, and we should support them.

My main purpose in rising is to speak to Amendments 69, 91, 92 and 152. As regards Amendment 69, on misleadingly similar parasitic packaging, it was encouraging to hear the Minister confirm in Committee that the prohibition of misleading actions in Clause 224 and the banned practice in paragraph 14 of Schedule 19 will address the long-standing unaddressed practice of misleadingly similar packaging.

[Lord Clement-Jones]

However, those provisions matter little if they are not enforced. During consultations and the debate on the Consumer Protection from Unfair Trading Regulations 2008, the then Government stressed that public enforcement would be effective and efficient. This has not proved to be the case, with just one enforcement action by trading standards in 2008—albeit a successful one. If shoppers are to be protected from this misleading practice, there must be a realistic expectation that the Bill's provisions will be enforced.

Historically, the Government have placed the duty on public enforcers. That is unrealistic, as trading standards face diminishing resources. The CMA stated clearly that misleadingly similar packaging is a consumer protection, not an IP, issue, following its investigation of the groceries market in 2008. Yet is has undertaken no hard or soft enforcement and did not include it in its recent scrutiny of the grocery sector; there is no sign that it will take a different approach in the future. There are no other realistic public enforcement options available. For the Bill to make a difference, it is essential that affected branded companies are granted powers to bring civil cases using the Bill's provisions on the specific practice of misleadingly similar packaging alone. It has been ignored by public enforcers for the last 15 years, despite the many examples that appear year on year. Granting affected brand owners such powers would mean that shoppers would have the protection envisaged by the Bill, and affected brand owners would have more effective redress at no cost to the taxpayer.

Amendments 91 and 92 concern an area of concern for the retail industry, expressed by its representative body, the British Retail Consortium, in which I was an active participant more years ago than I care to remember. The well-established and well-used primary authority system enables a business to request assured advice from a primary authority that it has appointed. Provided that the business follows the advice, it cannot be prosecuted by any local authority for its actions. Under the Bill, the CMA will receive additional powers on consumer protection, whereby it will move to administrative fines that are potentially very high. I am informed that the CMA currently refuses either to provide assured advice of its own or to accept primary authority advice. It says that it may not agree with the advice and that it would be too costly, ignoring the fact that it is at a cost to the business. That undermines the primary authority system and will do so even further when the CMA receives its new fining powers because businesses will feel unable to rely totally on primary authority advice for what they are doing in the overlapping areas.

The amendments attempt to deal with that, either by requiring the CMA to provide assured advice itself, as set out in Amendment 91, or, perhaps more practically, by accepting primary authority advice as binding up to the point that it may be repealed if it is shown to be inaccurate, as set out in Amendment 92. That would mean that a business could rely on it for anything it does up to any repeal. It should also be remembered that the CMA can, if it wishes, act as a supporting regulator, whereby it can be called on to provide its view to a primary authority when that authority is looking at providing advice in an area of relevance and overlap to the CMA.

Finally, it should be noted that the CMA has decided to provide what is, in effect, assured advice on competition matters in the sustainability area; namely, it has agreed not to prosecute a business that seeks its advice and follows it in a small area on the competition side. This means that, in principle, the CMA does not seem to be opposed to such an approach. Green claims on the consumer side are a key area of uncertainty for business, an area where assured advice would in fact be most useful.

I turn to my final amendment, Amendment 152. As I explained in Committee, standard essential patents are patents that are necessary to implement an industry standard, such as wifi or 5G. Because the market is locked into a standard, and to prevent abuse of the market power that this situation conveys, SEP owners are required to license their SEPs on fair terms. Unfortunately, there is widespread abuse of this monopoly power by SEP holders. The principal issue raised with me by the Fair Standards Alliance is the threat of injunctions; the costs to many businesses can be ruinous. This tactic not only threatens innovation by UK businesses but represents a strategic risk for UK priorities, such as 5G infrastructure diversification and smart energy network security, by limiting the competing players. The availability of injunctions for SEPs gives foreign SEP holders the ability to prevent others in the UK from entering, succeeding and innovating in those markets.

The Minister, the noble Lord, Lord Offord, gave a somewhat encouraging response in Committee—I keep using the word "encouraging" about his responses, although I keep hoping for better—to the effect that the Government would set out their thinking in the very near future, and that that would include the question of injunctions.

After many months of consultation, the IPO has published its 2024 forward look on this issue. It has reported its findings to Ministers and has agreed key objectives concerning SEPs. Those are

> "helping implementers, especially SMEs, navigate and better understand the SEPs ecosystem and Fair Reasonable and Non-Discriminatory (FRAND) licensing … improving transparency in the ecosystem, both pricing and essentiality; and … achieving greater efficiency in respect of dispute resolution, including arbitration and mediation".

Although the IPO has confirmed that SMEs are especially disadvantaged by the current SEP regulations, it states, disappointingly, on injunctions that

> "we have concluded that we will not be consulting on making legislative changes to narrow the use of injunctions in SEPs disputes",

with very limited justification for the decision, saying simply that it was taken after

> "careful consideration of the evidence, operation of relevant legal frameworks and international obligations".

The Coalition for App Fairness has pointed out to me that a day after the IPO announcement, the European Parliament voted by a large majority to approve its own SEP regulation. The EU framework will include the creation of an SEP register, database and essentiality checks; a defined maximum total royalty for an SEP; and an independent, expert-led conciliation process to establish the fair price for SEPs, which, crucially, will

block the use of injunctions while the process is taking place. That seems entirely appropriate. The EU has proved that such a regulatory regime can be delivered; why cannot the UK Government, with all the freedom of Brexit? What is the basis for the IPO decision? What evidence, legal frameworks and international obligations prevent it from dealing with and legislating on injunctions? Why cannot the IPO likewise establish a truly fair SEP licensing ecosystem?

The least the Government can do is give more detail to the many SMEs affected by this decision. The forward look states, rather lamely:

"The IPO will continue engagement with relevant industry and institutions to continue to inform our ongoing policy development and implementation of those actions set out above".

What on earth does that entail? That is pretty mealy-mouthed. What benefit will there be from that?

Lord Stevenson of Balmacara (Lab): My Lords, this is a wide-ranging group; there is good news hidden in the middle of it, and bad news—we will have to wait for the Minister to respond to get a full picture. Others have spoken in some depth and so I will not try to repeat what has been said. I certainly will not try to follow the noble Lord, Lord Clement-Jones, whose expertise exceeds the combination of everybody's in the Chamber at present. On SEPs, I can only stand back in amazement that he has been able to understand what is being recommended by the IPO, let alone to have come forward with a plan that might take us a bit further down the track that we clearly ought to have gone down.

I turn first to the questions the noble Baroness, Lady Bennett, raised, which cut to the heart of what, is in some senses, the purpose of the Bill. I am afraid that she rather weakened her case at the end by saying that it was a much broader basis for debate and discussion than could be encompassed within this Bill; I think she saw it primarily as a way of continuing a much larger battle, and I wish her well with that. In that sense, we do not need to take this forward. However, I hope that the Government are taking note of the impacts that some of the provisions in the Bill are having, in the sense that it is not achieving the aims and objectives, which I think we all share, of making sure that we reduce carbon and try to meet targets which have been set for us in the long term on this. Therefore, greenwashing will continue, but we hope that it will be better in scope and that the focus will be more across the range of government activity.

On imitation packaging, as the noble Lord, Lord Clement-Jones, said, we have also been discussing this for a number of years in various Bills as they have come forward, and it is good that the assertion now is that in Clause 224 and Schedule 19, there will be help. However, the question is, of course, enforcement. I would be grateful if, when the Minister comes to respond, he could give us a bit more information about how that might happen in practice.

The questions raised by the noble Earl, Lord Lindsay, and supported by "the team", as it was described, are a continuation of debates and discussions we have been having in this House for as long as I have been here—and I certainly have participated in them. It is good to see the government amendments in as far as they go, but the three remaining questions, as raised in Amendments 99, 100 and 101, need answers. I hope the Minister will expand on where the Government have taken us so far and give us some assurances.

5.30 pm

If it is really the case that we are requiring a limited number and badly resourced group of trading standards officers to have a physical presence in order to exercise their duties, there must be a better way of doing it. If it is difficult for them to cross boundaries, surely we could use this debate to, at the very least, make it clear from the Dispatch Box that the issues are in two parts, as has been said, and the part that can be effected—the ability to pursue across a boundary—is not constrained by the existing law. That would be helpful.

The longer-term question is around resources for TSOs. They are the unsung, underpaid and under-resourced champions of consumers. How can we resolve this? Every time this comes up, we make the same plea that we must make sure that they are properly resourced, for some time, through local government, but that should not mean that their funding and resources need to be as constrained as the rest of local government services. They do such an important job; surely we can get some movement on that.

On the narrow question raised by Amendments 91 and 92 of how to make sure that businesses get assured advice, the case has been well made by the noble Lord, Lord Clement-Jones. However, a clear statement from the Dispatch Box, or at least a letter consequent to the debate, would help make sure there was progress.

The question of the IPO's report and the licensing of standard essential patents has been a continuous problem. The noble Lord has made a number of proposals, which I think are absolutely appropriate and something about which the Government could do more. There is an unhappy balance between the CMA's powers and where the IPO's responsibilities and background impact more generally on intellectual property, but no action ever seems to emerge from that. When can we see this happen?

Lord Offord of Garvel (Con): I thank noble Lords for their amendments, contributions and questions. I turn first to Amendment 68, proposed by the noble Baroness, Lady Bennett of Manor Castle. This amendment would provide that consumers' collective interests included avoiding any detrimental effects resulting from the advertising of high-carbon products and services. The Bill already protects consumers during the transition to net zero. Enforcers can take action to tackle misleading green claims. Moreover, helping to accelerate the UK's transition to net zero is one of the priorities in the CMA's new annual plan. I hope that this reassures the noble Baroness.

Amendment 69, from the noble Lord, Lord Clement-Jones, would prohibit the use of packaging that is similar to that of other products. The promotion of imitation packaging is already a banned commercial practice, as listed in Schedule 19. Part 3 strengthens the civil enforcement regime, ensuring that enforcers can tackle misleading replica goods. I hope the noble Lord will therefore not press his amendment.

Lord Clement-Jones (LD): My Lords, that is a bit terse, even by the Minister's standards. I think we need to hear a little more about the form of enforcement, because the amendment is about the unsatisfactory nature of current enforcement. I referred to there having been only one enforcement since 2008, despite the fact that it was successful. What guarantee do the welcome recipients of the provisions in paragraph 14 of Schedule 19 have that there will be an effective enforcement regime?

Lord Offord of Garvel (Con): The view of the Government in this legislation is that the banned commercial practice is banned already, as set out in Schedule 19, and that a strict civil enforcement regime is already in place, strengthened by Part 3. It is down to enforcers to tackle these misleading replica goods; our view is that it is up to the enforcement regimes to enforce under the current law.

Lord Clement-Jones (LD): My Lords, I am not sure that the Minister has a full brief about the nature of the available enforcement. Will he write to me to provide a few more particulars and give more assurance in this respect?

Lord Stevenson of Balmacara (Lab): My Lords, it is important that we unpick the point made by the noble Lord, Lord Clement-Jones, which I think was touched on but not addressed by the Minister. If we rely on civil remedies, we are not really addressing the problem that there is, in effect, an opportunity, for those who wish to, to exercise criminality; this surely cannot be left to the civil courts.

Lord Offord of Garvel (Con): As some clarification is required, I am happy to write further on the matter.

Amendments 70, 71 and 93 to 98 are technical government amendments. The Bill empowers the courts to impose monetary penalties for a breach of consumer law and procedures. To accommodate the different processes by which court orders are served or enforced in Scotland and Northern Ireland, the amendments provide that prescribed penalty information may accompany an order in a separate notice, as well as being contained within it.

On government Amendments 72 to 90, on online interface and the powers of consumer law enforcers to tackle illegal content, I thank noble Lords who have contributed on this important issue. I am pleased to bring forward government Amendments 72 to 90 to give all public designated enforcers take-down powers to tackle infringing online content. The amendments enact the commitment made by the Government in their recent consultation response.

I thank the noble Lord, Lord Clement-Jones, for Amendments 91 and 92. Amendment 91 would require the CMA to provide advice on a business's compliance with consumer law on request. It would also prevent enforcement action by any enforcer if the advice were complied with. The CMA already provides general guidance and advice on compliance. It is businesses' responsibility to comply with the law, referring to guidance and seeking independent legal advice where necessary. It would not be appropriate to transform the CMA into a bespoke legal advice service. The amendment would also drain CMA resources from much-needed enforcement activity. Moreover, Amendment 92 compels the CMA to accept primary authority advice received by a business where that advice has been complied with. It is common practice for the CMA to consult the primary authority before taking action; this strikes the right balance and avoids binding the CMA to such advice, thus inappropriately neutering its discretion. I hope the noble Lord will agree that the purpose of a direct enforcement regime is for the CMA to enforce faster and more frequently; these amendments would diminish this objective and remove the deterrent effects of the regime.

Lord Clement-Jones (LD): My Lords, does the noble Lord understand the need for certainty of advice when it is given by a primary authority and that the primary authority must feel, when it gives that advice, that it has the full backing of the CMA? There seems to be no assurance that this is under consideration or even a matter of concern.

Lord Offord of Garvel (Con): We are clear that the CMA provides general guidance and advice, but it is the responsibility of businesses to comply with the law. If the CMA is transformed into a bespoke legal advice service, it will not be doing the work it is meant to do, which is focusing on enforcement. Therefore, we believe the balance is right in the mechanism put forward.

Turning to trading standards and Amendments 99, 100 and 101, I am grateful to my noble friend Lord Lindsay and the noble Baronesses, Lady Bakewell and Lady Crawley, for their continued advocacy for trading standards departments and for meeting with me on these issues. I very much enjoyed meeting the case officers in this place. Amendment 101 would end the prohibition on enforcers using information that a person has been compelled to provide under broad information notice powers in criminal proceedings against that person. This prohibition safeguards a person's right not to self-incriminate—a long-established right protected by the common law and the Human Rights Act. The courts have held that material which exists independently of the will of the suspect, such as pre-existing data obtained during a search of the suspect's premises, may be admissible in a criminal trial against them. By contrast, to comply with an information notice, a person will likely be required to generate documents. Legislation already permits trading standards departments to exercise their investigatory powers outside their local authority boundaries, including by carrying out in-person inspections of business premises. We have been informed that trading standards departments have used these on-site powers to secure documents from traders suspected of an offence and then relied successfully upon such documents in prosecutions against them.

Amendments 99 and 100 would permit any trading standards department based in Great Britain to carry out investigations across national borders. As I committed to my noble friends in writing, I have asked government officials to work further with trading standards to identify practical measures supporting greater cross-border co-ordination. To clarify, if an infringer is based in Scotland

and the offence has caused harm in England, the English enforcer can pursue a prosecution through the English courts and vice versa—the procurator fiscal can prosecute a case where a trader is based in England but the infringement was committed in Scotland. All court orders in respect of consumer protection breaches have effect in all parts of the United Kingdom, regardless of where they have been made. We are open to exploring a variety of options, for example, exploring how best to facilitate local authorities across the country to exercise investigatory powers on behalf of each other. I have asked them to consult with trading standards when developing guidance on this legislation to ensure clarity on what it provides for. Once again, I thank my noble friend and the noble Baronesses for their engagement on this issue.

Government Amendments 102 and 103 make further consequential amendments to the Estate Agents Act 1979. They achieve consistency in how the Act applies to non-compliance with obligations under the court-based and the CMA direct enforcement regime.

Turning to standard essential patents, raised by the noble Lord, Lord Clement-Jones, through Amendment 152, I can confirm that the Government have now published their key objectives on SEPs and a forward look at work to be conducted in 2024. This follows input received in 2023 from key stakeholders from industry. The Government will first take forward non-regulatory interventions where action can be taken now. Later in 2024, the Government will launch a technical consultation on other potential interventions. On the question of injunctions, the Government believe that other measures, such as guidance, information on SEP licensing and how to respond to SEP disputes, is a proportionate government response at this stage. A resource hub will provide guidance that will enable businesses to better understand the SEP licensing system and the UK courts' approach to the remedies available for patent infringement and existing services available for dispute resolution. The IPO will also continue engagement with relevant industry and institutions to continue to inform our ongoing policy development and interventions. My noble friend Lord Camrose has confirmed that his department will be making steps in what the noble Lord, Lord Stevenson, has described as a very complicated area.

I hope that this will—

Lord Clement-Jones (LD): I am sorry to intervene again. The Minister is really confirming what the IPO has advised in its forward look. The Minister is saying, "Yes, this is important, but we are not going to do anything about injunctions". Does he recognise the asymmetry in all this? This is why SMEs need enforcement to be looked at much more carefully in terms of the amendment that I have tabled. What is the essential objection to going forward with some kind of change, given that the rest of the proposals from the IPO seem to be pretty satisfactory?

5.45 pm

Lord Offord of Garvel (Con): On the basis that my noble friend Lord Camrose has responsibility for the IPO, he has kindly offered to write to the noble Lord on this matter and give further clarification.

This has been a varied and valuable debate. I thank noble Lords again for their engagement. I hope the assurances that I have provided will therefore give noble Lords confidence not to press their amendments.

Baroness Bennett of Manor Castle (GP): My Lords, I thank the Minister for his response, though I am not sure "confidence" is quite the right word for the emotion I am feeling at the moment.

I said that I would comment only on my Amendment 68, but I must make brief reference to commend the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Crawley, for doing what many think your Lordships' House should be restricted to—providing modest improvements and ways to help the Government make the system work better. I do not think it should be restricted to that, but it is certainly important that it does it. Reflecting on the trading standards issues, it was not mentioned but is worth noting that the Chartered Trading Standards Institute noted last year that, in the last decade, the number of trading standards officers in local authorities has halved, so they need anything that makes their work easier. The Government would, I am sure, say that they believe in efficiency and government productivity, and the suggestion from the noble Baroness seemed to be designed for that purpose. None the less, those are very technical areas, so I will park them there, as I will park the government amendments.

Regarding my Amendment 68, we will be watching closely what the CMA does in terms of action on green-washing. There is a general belief that the Bill simply does not have the teeth, or strength, that it needs. The overall issue—that we are way beyond our current targets on climate emissions—was not addressed by the Minister. I thank the noble Lord, Lord Stevenson of Balmacara, for the comments and strength he brought to the intention to see more action in this area. In the meantime, I beg leave to withdraw the amendment.

Amendment 68 withdrawn.

Clause 150: The specified prohibition condition

Amendment 69 not moved.

Clause 158: Enforcement orders: requirement to pay monetary penalty

Amendments 70 and 71

Moved by ***Lord Offord of Garvel***

70: Clause 158, page 102, line 32, after second "order" insert ", or a notice accompanying service of the order,"

Member's explanatory statement

This amendment provides that, where an order is made requiring payment of a monetary penalty, the requirement to provide monetary penalty information (see clause 203) within the order may instead be met by providing the information in a separate document. This will ensure that if any such information is not known at the time of making the order it can be included instead in that document.

71: Clause 158, page 103, line 7, at end insert—

"(9) In the application of subsection (4) to Scotland, "service of the order" includes service of an extract order in execution of or diligence on the order."

Member's explanatory statement

This amendment is consequential on my other amendment to clause 158.

Amendments 70 and 71 agreed.

Clause 160: Applications

Amendments 72 to 75

72: Clause 160, page 104, line 21, leave out "The CMA" and insert "A public designated enforcer"

Member's explanatory statement

This amendment enables all public designated enforcers to apply for online interface orders, and interim online interface orders, instead of only the CMA.

73: Clause 160, page 104, line 22, leave out "CMA" and insert "enforcer"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

74: Clause 160, page 104, line 27, leave out "CMA" and insert "enforcer"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

75: Clause 160, page 105, line 4, at end insert—

"(4A) Section 154 (CMA directions to other enforcers) applies where it appears to the CMA that another public designated enforcer intends to make an application for an online interface order, or an interim online interface order, as it applies in relation to intended applications for enforcement orders and interim enforcement orders, but for this purpose the reference to such other enforcer in subsection (2)(b) is to be taken as a reference only to such other public designated enforcer."

Member's explanatory statement

This amendment extends the power of the CMA to give directions to other enforcers intending to make an application for an enforcement order or an interim enforcement order so as to include intended applications by other public designated enforcers for online interface orders and interim online interface orders (see my first amendment to Clause 160).

Amendments 72 to 75 agreed.

Clause 161: Online interface orders

Amendments 76 to 78

76: Clause 161, page 105, line 25, leave out "CMA" and insert "public designated enforcer that applied for the order"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

77: Clause 161, page 105, line 26, leave out "CMA" and insert "public designated enforcer that applied for the order"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

78: Clause 161, page 105, line 32, leave out "CMA" and insert "enforcer"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Amendments 76 to 78 agreed.

Clause 162: Interim online interface orders

Amendments 79 to 81

79: Clause 162, page 106, line 21, leave out "CMA" and insert "public designated enforcer that applied for the order"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

80: Clause 162, page 106, line 30, leave out "CMA" and insert "public designated enforcer making the application"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

81: Clause 162, page 106, line 33, leave out "CMA" and insert "enforcer that applied for the order"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Amendments 79 to 81 agreed.

Clause 166: Consumer protection orders or undertakings to court: further proceedings

Amendments 82 and 83

82: Clause 166, page 109, line 39, leave out "an enforcement order or an interim enforcement" and insert "a consumer protection"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

83: Clause 166, page 110, line 1, after "154" insert "and 160(4A)"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Amendments 82 and 83 agreed.

Clause 167: Undertakings to public designated enforcers: further proceedings

Amendments 84 and 85

84: Clause 167, page 110, line 36, leave out "an enforcement order or an interim enforcement" and insert "a consumer protection"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

85: Clause 167, page 110, line 38, after "154" insert "and 160(4A)"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Amendments 84 and 85 agreed.

Clause 169: Notification requirements: applications

Amendments 86 to 90

86: Clause 169, page 112, line 4, leave out "an enforcement order or an interim enforcement" and insert "a consumer protection"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

87: Clause 169, page 112, line 11, after "order" insert "or an online interface order"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

88: Clause 169, page 112, line 13, after "order" insert "or an interim online interface order"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

89: Clause 169, page 112, line 15, leave out "an enforcement order or an interim enforcement" and insert "a consumer protection"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

90: Clause 169, page 112, line 20, leave out "an enforcement order or an interim enforcement" and insert "a consumer protection"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 160.

Amendments 86 to 90 agreed.

Clause 180: Power of CMA to investigate suspected infringements

Amendments 91 and 92 not moved.

Clause 203: Information to accompany orders or notices imposing monetary penalties

Amendments 93 and 94

Moved by ***Lord Offord of Garvel***

93: Clause 203, page 137, line 20, leave out "that the respondent has the right" and insert "the rights available to the respondent"

Member's explanatory statement

This is amendment is consequential on my amendments to clause 158.

94: Clause 203, page 137, line 34, at end insert—

"(5) References in subsections (1) and (2) to an order include references to a notice accompanying such an order given under section 158(4).

(6) In the application of this section to Scotland, the references in subsections (1)(e) and (3) to an order being served include service of an extract order in execution of or diligence on the order."

Member's explanatory statement

This amendment is consequential on my amendments to clause 158.

Amendments 93 and 94 agreed.

Schedule 16: Investigatory powers

Amendments 95 to 98

95: Schedule 16, page 338, line 25, after "paragraph" insert ", or a notice accompanying service of the order,"

Member's explanatory statement

This amendment provides that, where an order is made requiring payment of a monetary penalty under new paragraph 16A of Schedule 5 to the Consumer Rights Act 2015 (see Schedule 16 to the Bill), the requirement to provide the information listed in paragraph 16A(7) within the order may instead be met by providing the information in a separate document. This will ensure that if any such information is not known at the time of making the order it can be included instead in that document.

96: Schedule 16, page 339, line 2, leave out "or" and insert "and the rights available to the respondent"

Member's explanatory statement

This amendment is consequential on my first amendment to Schedule 16.

97: Schedule 16, page 339, line 4, leave out "notification date" and insert "date on which an order under this paragraph is served on the respondent"

Member's explanatory statement

This amendment corrects a drafting error.

98: Schedule 16, page 339, line 23, at end insert—

"(12A) In the application of this paragraph to Scotland, the references in sub-paragraphs (7) and (8) to an order being served include service of an extract order in execution of or diligence on the order."

Amendments 95 to 98 agreed.

Amendments 99 to 101 not moved.

Schedule 17: Part 3: minor and consequential amendments

Amendments 102 and 103

Moved by ***Lord Offord of Garvel***

102: Schedule 17, page 349, line 29, leave out "or 163" and insert ", 163 or 185"

Member's explanatory statement

This amendment provides that orders under the Estate Agents Act 1979 prohibiting unfit persons from doing estate agency work can be made in cases where a person has failed to comply with an undertaking given to the CMA under clause 185 of the Bill.

103: Schedule 17, page 349, line 33, at end insert—

"(c) after paragraph (bb) insert—

"(bc) has failed to comply with a requirement imposed by a final infringement notice given under section 182 of that Act in relation to estate agency work; or"

Member's explanatory statement

This amendment provides that orders under the Estate Agents Act 1979 prohibiting unfit persons from doing estate agency work can be made in cases where a person has failed to comply with a final infringement notice given by the CMA under clause 182 of the Bill.

Amendments 102 and 103 agreed.

Clause 223: Overview

Amendment 104

Moved by ***Baroness Hayman***

104: Clause 223, page 149, line 27, at end insert—

"(5A) Section (Right to repair) confers the right to repair on consumers."

Baroness Hayman (CB): My Lords, I rise to move Amendment 104 and speak to Amendment 118, tabled in my name. I declare my interests as chair of Peers for

[Baroness Hayman]
the Planet. I express my gratitude to my supporters, the noble Baronesses, Lady Harding of Winscombe, Lady Ritchie of Downpatrick and Lady Bakewell of Hardington Mandeville. I also thank the external organisations that have supported us with evidence and briefings.

With these amendments, we return to the issue raised in Committee of the suite of consumer rights known as the right to repair. As I explained then, the current lack of such a consumer right to repair means that many of us have experienced intense frustration at non-existent or overpriced spare parts for broken electrical and electronic equipment, which we are repeatedly told will be more expensive to repair than simply to replace. The least well-off households, on tight budgets, therefore get forced into a cycle of regularly replacing cheap equipment rather than being able to repair it and keep it in use for longer. As well as the economic impact on families and consumers, this wastes scarce resources, such as rare metals, while producing large amounts of waste for landfill. The UK now produces the second-highest per capita amount of electrical and electronic waste in the world.

My amendment would task the Government with producing a strategy to enhance the consumer's right of repair for electrical and electronic products, and would put a stop to restrictive practices that undermine consumer efforts to repair and continue to use the products they own. As I said in Committee, there is widespread public support for action. That support was echoed around the Committee when we debated it and is evidenced in the extreme popularity of television's "The Repair Shop". I am grateful for the support of its presenter, Jay Blades, when he said that too often our efforts to repair things

"are blocked by manufacturers' badly designed products or unaffordable spare parts. Extending a right to repair would help us rediscover the joy and skill of restoration, repair and redesign".

I am extremely grateful to the Minister, the noble Lord, Lord Offord, and his team of officials, from both his department and others, for their extensive engagement on this topic since Committee, but I am afraid that I remain unconvinced that everything is well and that there is no need for an overarching strategy. I recognise that a number of limited initiatives are under way, but I am afraid the reality is that the work that is being undertaken falls short of the necessary scale, breadth and urgency if we are to improve the consumer's experience.

In addition, there is no clear point of accountability for this work at the centre of government. Responsibilities are split between at least three departments. The Department for Business and Trade is engaged in relation to post-Brexit product safety standards. Defra ostensibly owns waste and resource management policies across the board, but all responsibility for the repair of electrical and electronic products now rests under the eco-design regulations, which sit at DESNZ. But DESNZ focuses on reducing domestic greenhouse gas emissions, rather than on the repairability of products such as computers, tablets and smartphones.

My decision to return to this issue, with some limited changes in response to criticisms made in Committee, has been influenced by two additional points. First, I discovered that under the Northern Ireland protocol, where the single market in fact includes eco-design, eco-labelling and battery legislation, consumers in Northern Ireland will be able to repair phones, smartphones and tablets, and to see a repair index in the energy label from next year. They will also be able to replace all batteries in consumer products from 2027. These rules come from the EU, which, like many other jurisdictions, is pressing ahead with its own reforms. This leads me to believe that the complexities that the Minister has previously outlined are not insuperable and that the Government, if they can do it in Northern Ireland, could extend similar protections to consumers in England, Scotland and Wales.

The second point that makes me return to the subject is the letter published yesterday by Philip Dunne MP, the chair of the Environmental Audit Committee in the House of Commons. That letter criticised and bemoaned—that is probably fair—the progress that has been made in the three and a half years since the committee's report on electric waste. The letter says that adequate progress is simply not being made. In November 2020, the EAC said that the Government should enshrine the right to repair in law. In February 2021, the Government responded that they

"would explore whether requirements to improve repairability … could be considered for a wider range of products".

More than three years later, they are still exploring but are yet to discover a single additional product for which they might legislate for increased repairability. I fear that the necessary action will simply not happen unless someone in government takes a grip—I can think of no one better than the Minister we have with us today—and we can see a coherent strategy and plan and the accountability for its implementation.

I believe I have responded to most of the points the Minister made in Committee. He also suggested that adding the right to repair to consumer law would oblige retailers to pre-emptively seek information from manufacturers, adding to costs and reducing choice. My amendment would not do that. It would put the obligation on manufacturers to proactively provide the data—it would not put the duty on retailers; nor do I think the amendment could possibly fall foul of WTO rules when so many other WTO members are doing similar things.

I simply do not believe that the progress made already is sufficient or that there are insuperable barriers to doing what needs to be done. The argument that we can rely on progress that is glacial at best simply does not hold water. Everyone seems to think that this is a good idea. No one argues against having better-designed and easier-to-repair products. It is just that no one seems to be willing to grasp the nettle to do anything about it. This amendment would make sure that they did. I beg to move.

The Earl of Lindsay (Con): My Lords, I will speak to Amendments 109 and 115. Once again, I do so with the co-sponsorship of the noble Baronesses, Lady Crawley and Lady Bakewell.

I will address Amendment 109 first. Fake reviews can cause loss, detriment and harm to consumers and law-abiding businesses. The government amendment

that adds fake reviews to the practices in the schedule is therefore welcome. However, that amendment makes the practice an "excluded description", meaning that enforcement action can be taken only through the civil route.

All the other banned practices, except two relating to matters under the remit of the Advertising Standards Authority, allow enforcement officers to take action through either the civil or the criminal courts. That depends on what is most appropriate and proportionate in the circumstances. If it is deemed that 29 out of the current 31 practices should have the option of a criminal penalty, we strongly believe that fake reviews should also be in this category, as the practice is arguably more serious and causes greater detriment to consumers and reputable businesses than a number of the other practices in that list. Making fake reviews either a civil or a criminal breach would send a strong message to those looking to deceive consumers and would give enforcers the opportunity to take stronger action if and when necessary.

I turn to Amendment 115. Invitation to purchase is a complex area of the legislation, and the Bill differentiates between this and "misleading omissions". A commercial practice is a misleading omission if it omits "material information"; in other words, information the average consumer needs to make an informed decision. It can be challenging to decide what is information that consumers want and what is information that consumers need. If a practice is an invitation to purchase, a number of matters are identified as being material information. Therefore, an omission of any of these breaches the legislation and allows enforcement action to be taken.

One of those matters is the trader's name and address. Rogue traders often approach vulnerable consumers offering unnecessary and substandard work, but without giving a price before starting the work. As price is part of the definition of invitation to purchase, in such circumstances the practice is not an invitation to purchase and so the trader's name and address are not specifically material information. This is to the detriment of the consumer. This information is unlikely to be considered material information under misleading omissions, and the Companies Act 2006 does not require the provision of a name and address if a trader has no trading name or is trading under his own name.

6 pm

This clearly is to the harm of consumers, who are unable to pursue their statutory rights if they do not know with whom they are dealing or how to contact them. It should be noted that reputable traders will give the information identified as material information as a matter of course, so this amendment would not impact honest, law-abiding traders.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I put my name to two sets of amendments in this group: Amendments 104 and 118 on the right to repair, and Amendments 109 and 115 on trading standards issues.

I will speak first to the right to repair. The noble Baroness, Lady Hayman, set out clearly the rationale behind these amendments, and I know that she has been working with the Minister and officials to try to get some traction on this issue. Part of my role in the House, for my party, is waste: how to minimise it, how to deal with it when it is created, and how to prevent it being created in the first place.

I was also brought up to repair what was broken and give items a new lease of life; the Screwfix catalogue is always lying around somewhere in our house. If you are going out for the evening and have a full skirt, which is no longer fashionable and can be unpicked, it is relatively easy to sew it back up into something more appealing, ready to wear out and wow your friends in the evening. This is not the case when a washing machine goes wrong and starts to flood the kitchen floor.

The amendment is very detailed and gives plenty of time for manufacturers to adapt their practices and start thinking again about abandoning their wasteful practices, which force the hard-pressed consumer to buy a replacement for an item that, with a little thought, could well have been repaired and lasted much longer, instead of joining the heap of white goods at the local household waste recycling centre and then landfill. The right to be able to repair an electrical or electronic item or household product should be universal.

The noble Earl, Lord Lindsay, set out the arguments for Amendments 109 and 115 extremely well. While I understand that the Government do not believe that fake reviews should be a criminal offence, it is difficult to understand why, if there are currently 31 schedule practices, of which 29 are both civil and criminal breaches of the CPRs, two, including fake reviews, should be subject to civil breaches only. Of the 29, it is up to the judgment of the officer whether they take civil or criminal action. Many of the "fake review" fraudulent claims and activities are deliberately targeted at children and the elderly—the most vulnerable in our society. Civil action does not give the protection they deserve or require.

I have received a contribution from the National Trading Standards eCrime Team; it is a case study. A consumer is looking to buy a dehumidifier, so googles "dehumidifiers"; Google or other search engines show top results at the top of the page, which are usually Google adverts. The advert shows a 5-star-rated product. The consumer clicks on that product link, which takes them to a website that spotlights reviews that look genuine about how amazing the product is. The consumer buys the product and the money is taken from their bank, but it is a totally fake site with fake reviews and the products do not actually exist. There are 600 cases of consumers being tricked by fake reviews on this site and product alone; there is a detriment here of £90,000. There are multiple examples of this with lots of different products. Consumers are being drawn to sites using fake reviews and handing over their money, and the products do not arrive as they do not exist. I am sympathetic to the Minister's wish not to increase the number of activities that come under the "criminal activity" banner but remain convinced that action is needed on this issue.

On invitation to purchase and the subject of price, I am grateful for the Minister's clarification but remain concerned that a rogue trader will make a particularly

[Baroness Bakewell of Hardington Mandeville]
good case that the price being quoted is the total cost to the consumer, only later to add in other costs and taxes. This is not something we are used to in this country. In America I can decide to buy something for $25, having looked at the price label, but when I get to the checkout I find I am charged $27.50, as both local and national tax have been added. All Americans are used to this; it is only the uninformed tourist who gets caught out, but usually only once.

I remain convinced that those targeted by rogue traders are those who may not be aware that VAT or material costs are not always included in the initial price quoted. Will the Minister see whether there is some way in which our request on this issue can be accommodated?

Baroness Crawley (Lab): My Lords, as the third of the consumer protection enforcement team mentioned by the noble Lords, Lord Clement-Jones and Lord Stevenson, I have added my name to Amendments 109 and 115.

Amendment 109 concerns the issue of fake reviews; this has already been well set out by the noble Earl, Lord Lindsay, and the noble Baroness, Lady Bakewell. It is worth looking again at *Hansard* and the example from the noble Baroness, Lady Bakewell, of the live evidence we have received from the National Trading Standards eCrime Team as to the sites where people are handing over their money as we speak, thinking they have read a legitimate review and bought an amazing product, but the product does not exist.

I recognise the move that the Government have made in adding fake reviews to the list of 31 commercial practices that are, in all circumstances, considered unfair and banned practices. However, trading standards sees the practice of giving fake reviews as clearly fraudulent in nature, and therefore it should be a criminal as well as a civil offence, if the circumstances are correct for that judgment to be made. At the moment, we are confined to looking at fake reviews as a civil offence.

Fake reviews are also a growing distortion of the online marketplace. They are unfair to legitimate businesses and completely deceptive of consumers. This amendment is important in making fake reviews a criminal as well as a civil offence. I hope that the Minister understands the seriousness of this—I am sure he does—and will think again about his stance on this amendment.

Lord Moynihan (Con): My Lords, I rise to speak to Amendment 150, which builds on the work undertaken in this House at the time of the Consumer Rights Act 2015. I am fully supported by the indefatigable Sharon Hodgson, the MP for Washington and Sunderland West in another place, who is the co-chair of the APPG on Ticket Abuse; I am the other co-chair. Many leading musicians, sportsmen and sportswomen also support further action, as does FanFair Alliance.

Amendment 156 seeks to protect the many people who buy tickets for popular sport and arts events from the fraudulent abuse provided by a poorly regulated secondary market, a term coined by touts in 2008 to provide their activities with a veneer of respectability. What we are dealing with is a black market that profits from ticket obtained in bulk, illegally. Promoters whose terms and conditions are ignored have, in effect, lost the ability to sell tickets to the public at face value. To see hundreds of thousands of attempts by bots to harvest tickets in bulk for a single event is not uncommon. These amendments simply seek to implement recommendations made by the Competition and Markets Authority and to provide important safeguards for consumers. As evidenced by the security team at the O2, there are daily stories of families travelling to London to go to sold-out events finding on arrival that the tickets they had bought in good faith were fraudulently sold and unsuitable for admission. They have no recourse available to them at the time of the event. They have lost all the costs they incurred for travel and a hotel, to which must be added the bitter disappointment of missing what might be the event of a lifetime for them and their children, and all the incidental costs of the process.

In 2007, when I joined the campaign against modern-day ticket touts, there were approximately 120 full-time ticket touts in the United Kingdom. By 2015, the number had risen to 400, who regularly attacked primary ticketing systems using aggressive software to harvest tickets in bulk—400 too many when we were working on the Bill which resulted in the Government accepting many of our amendments. Today, there are not 400, there are between 3,000 and 4,000 touts, not based only in the UK but attacking ticket systems for UK events. This explosion has been brought about by the advent of mobile and digital ticketing. Whereas touts previously had to wait for paper tickets to arrive by post, they can now harvest tickets and send them out in an instant from mobile devices and apps.

Put simply, this aggressive software takes the form of scalper bots, computer programs which can store the details of hundreds of credit cards, which, at the press of a button, sweep the market for tickets for popular events while the likes of us and, more importantly, many families across the country are filling in all their details online, often waiting a long time for their applications to be processed, only to find that all the tickets have been sold. Within minutes after filling in the forms, the tickets they were seeking appear on secondary ticketing sites, at vastly inflated prices, benefiting only the touts and the secondary platforms. Most ordinary fans do not stand a chance against this. This is particularly true, sadly, at the Royal Albert Hall, where the market provides evidence that board members and trustees can benefit from the corrosive practices of the secondary market, which I address in Amendment 151.

The truth is that tickets are being harvested by today's ticket touts in bulk. To do so, they have perfected their trade to the point that they have become "trusted suppliers" for the likes of viagogo and StubHub and guarantee the delivery of a large number of tickets before they have gone on sale to the public. If, for whatever reason, they fail to deliver their tickets, many resort to printing fraudulent tickets and delivering them to the secondary market to retain their trusted supplier status in the future, to the detriment of consumers who turn up to the concert or sport event to find that they are turned away.

My noble friend the Minister kindly wrote to Members of the Committee and was correct when he said that ticketing is more secure. However, the same technology also enables touts to carry out larger attacks on ticketing

systems than ever before due to the increased portability of digital tickets. Frankly, the ticketing industry is on the cusp of losing the ability to sell tickets to genuine fans at an affordable price, thus depriving the lowest-paid, hardest-working fans of the ability to see their favourite artist or sports team.

In writing to the Members of the Committee, my noble friend the Minister mentioned the trial resulting in the conviction of two touts and the subsequent £6 million forfeiture order. They used dishonest and fraudulent tactics which would have been found out far sooner if the amendments before the House this evening were on the statute book. National Trading Standards, whose budget has been frozen for many years, has stated that it simply does not have the budget to pursue any more cases of this kind. The number of touts now attacking ticketing systems makes it an impossible task for law enforcement to prosecute some, let alone all, of them to the point where it would disrupt their activities and protect consumers.

Recently, viagogo has taken to concealing the face value of tickets behind an icon. This is a loophole in consumer protection that needs to be closed. Consumers should be able to see clearly the original price of the ticket they are about to purchase, as well as the ticket tout's details, in order to check that the business they are buying from even exists. That would have helped both the cases that are currently under consideration by the courts.

6.15 pm

Speculative ticketing—the practice of listing for resale tickets that a person does not possess or have title to—is widespread. The only solution is very simple: it is Amendment 150, which would ensure that the responsibility lies with resale websites to have resellers provide proof of purchase of tickets before they are allowed to list them. It is not too difficult. It happens in virtually every market. As the resale platforms control the flow of money from the transactions on their websites and make guarantees to consumers about the validity of the tickets, it seems appropriate that they should also take responsibility for ensuring that tickets listed do in fact exist, something that they currently do not do. Every auction house, every online sale and every market requires such information—why not the ticket touts?

To give some idea of the scale of the problem, which the Minister questioned in his letter to the Committee, one top-flight Premier League football club has cancelled 34,000 tickets acquired by touts using bots this season, so the law criminalising this activity is clearly not working. Technology has overtaken the sanctions on the statute book. These amendments would go a long way to help all sports and arts organisations stop the manipulation of the market which is ruining the experience for true fans and would help the CMA in a way that it has specifically requested this House to consider.

The changes I am asking the House to accept are simple yet vital consumer protection measures. I am not seeking to ban the secondary market, as the Irish Government have done in the face of these market abuses; nor am I seeking to criminalise the secondary market, as my noble friends on this side of the House did when it came to the Olympic and Paralympic Games in 2012. I am simply asking the Government to ensure that there are methods in the legislation to stop touts exploiting consumers with hidden icons on their tickets, to provide proof of legitimate purchase and to stop touts selling thousands of tickets that that they do not have at the time of offering them for sale. Hiding critical details behind icons is disingenuous, at least, and dishonest, at worst. There is adequate room on tickets for this information, as evidenced by many theatre tickets across London.

Baroness Bennett of Manor Castle (GP): My Lords, I rise very briefly. I spoke on these important subjects in Committee, and I am not going to repeat everything I said. I want to speak specifically on Amendment 104 on the right to repair, which the noble Baroness, Lady Hayman, so powerfully introduced, just to make a couple of additional points. She said that we are per capita the second-highest producer of e-waste in the world. It is interesting that we were talking about the security implications of this Bill in an earlier group on media ownership. With the incredible amount of e-waste in the world—53 million tonnes in 2022—and the need for rare earth minerals and the other minerals that go into these replacement products, it is worth saying there is a security implication to this that people may well not have thought of.

The noble Baroness, Lady Hayman, said that the Minister said that things were heading in the right direction. It is worth noting that there are a couple of areas where it very clearly is not. Increasingly, producers of devices, particularly phones, are hard-coding error messages into their product, so that if a third party tries to repair it, there is an error message and the device will not work any more. That has very clearly got worse, not better. There is also an increased amount of parts pairing, in which individual parts are tied to the device they are shipped with using a unique serial number, so you cannot get a replacement part put in. Again, the device will stop working. I think that was a really important point to make.

I have two points to make about how much further other parts of the world have gone. First, it was EU regulations that forced the latest iPhone to include a USB-C charging point rather than a proprietary one. That has both saved resources and saved people money, because the cost is about 1/10th of the proprietary charger, so this is also a cost of living issue. Secondly, I note that Germany and Austria have subsidies for repairs to allow low-income people to get electronic devices repaired when they would not be able to afford to do so otherwise. Please let us get some progress here.

Lord Clement-Jones (LD): My Lords, my noble friend Lady Bakewell has clearly set out our support for Amendment 104 by the noble Baroness, Lady Hayman, and Amendments 109 and 115 by the noble Earl, Lord Lindsay, so I will not repeat what she has said. I shall speak to Amendments 107A and 107B relating to fake reviews, Amendments 105, 106, 110 and 111 regarding electrical safety and Amendment 108 on package travel.

The issue of electronic safety is a relatively new entrant in our discussions on the Bill, for which I apologise, but charities such as Electrical Safety First and Which?

[Lord Clement-Jones]

as well as the Government's own Office for Product Safety and Standards have repeatedly found unsafe goods listed on online marketplaces. For instance, one investigation undertaken by Electrical Safety First found that 93% of products bought from online marketplaces were unsafe.

The Government have made a series of commitments on both online safety and product safety, included committing to ensuring that only safe products could be placed on the market now and in future, ensuring that the product safety framework was fit for purpose and making the UK the safest place in the world to be online. In my view, failing to address the sale of unsafe goods within the Bill means that they will fail to achieve their objectives in protecting consumers and promoting competition, and in addition will continue to fail in achieving their objective of ensuring that the UK is the safest place in the world to be online and that only safe products are placed on the market. By not including the sale of unsafe products within the scope of the Bill, it seems that the Government are allowing the UK to become what has been described as a Wild West for unsafe products.

There is a clear interrelationship between scams and unsafe products. For instance, Electrical Safety First found unsafe devices claiming to save consumers energy being sold on the online marketplace eBay. Not only were these devices ineffective at saving consumers energy, but they were also unsafe, placing consumers and their homes at the risk of electrical shock and fire. By not including unsafe products in the Bill, the Government therefore continue to place consumers at risk on a daily basis.

Consumers shopping on online marketplaces in other jurisdictions are better protected than UK consumers —in the EU, Australia and the USA, to name but three. The UK is clearly not moving at the same pace as comparable countries when it comes to regulating online marketplaces. The Bill is an opportunity to address that, but in its current form it is a missed opportunity to protect consumers.

I turn to Amendments 107A and 107B. In September 2023, as we know, the Government consulted on adding fake reviews to the unfair commercial practices list via Schedule 19 to the digital markets Bill, and now we have the government amendments to the Bill to reflect that. They are welcome so far as they go, but it is perplexing—informed organisations such as Trustpilot are perplexed—as to why the Government are not placing a stronger duty on social media firms and ISPs that host the sale of fake reviews. The wording does not expressly bring social media and internet service provider sites within scope where these are used by review sellers and brokers to offer their services. That seems extremely unsatisfactory, given that the Bill is so far through its scrutiny, and it is only on Report here in the Lords that we are seeing the wording that the Government intend to use to ensure that fake reviews are included in Schedule 19 on commercial practices.

Amendment 107A seeks to ensure that there is no loophole in the application of new paragraph 12A(4) inserted by Amendment 107. The inclusion of the words "for the facilitating of" in paragraph 12A(4)(b) could be read narrowly to suggest that the purpose of the service is relevant. In our view, providers of certain services such as social media sites that host the sale of fake reviews could potentially use that as a technicality through which to avoid liability by claiming that the purpose of the service they offer is not for doing anything covered by sub-paragraphs (1) and (2), and therefore this provision is not applicable in the event of abuse.

Is the Minister of the view that the facilitation of the sale of fake reviews by social media and internet service providers will be in the scope of this legislation under paragraph 12A(4), given the integral role that such services can play in enabling fake reviews to find customers? If not, why is such a gap being left in the legislation? Apparently, the Government are citing the legal scope constraints that act to limit their ability to tackle activity that happens upstream. I do not know what discussions have taken place between Trustpilot and the Government, but that sounds rather extraordinary.

I turn to Amendment 108. Since our discussions in Committee, it seems that Ryanair has started to work with some online travel agents. That definitely sounds like a win for our debates if we can take it as such, but other low-cost airlines are still resisting booking through agents, causing various harms to consumer protection, as we have discussed. The Minister's statement about the package travel restrictions call for evidence is welcome, but the matter under discussion has always been a wider point regarding the use of third-party agents. Hence I have come back with one of the amendments that I tabled in Committee.

The Minister made one or two points in Committee that are worth picking up. He said that

"the contract is between the trader and the consumer, and therefore the consumer benefits from the relevant consumer rights".

He also said that whether the transactional decision

"is carried out by the consumer themselves or a third party is not relevant. The consumer that the contract is with will receive the relevant consumer rights".

Yes, the consumer is entitled to protection, but where an agent is involved this requires either the trader to pay the agent or the agent to stump up the refund themselves. That position also does not reflect the regrettable truth that consumers are being discriminated against because they choose to book through third parties.

The Minister brought up the question of the consumer-to-trader relationship and whether or not traders would

"become consumers in the eyes of the law".

However, the issue is not that the agent becomes the consumer but that consumers who book directly through a third party are equally protected.

The Minister said that

"the Government have ensured that the CMA has significant powers to investigate and act if it finds that businesses are behaving anti- competitively in a market".

It is not the CMA's market powers that are in dispute; the problem is that the CMA is not acting to use those powers to investigate key consumer markets, despite clear evidence that competition is not working well.

The Minister also said:

"The operation of airlines and travel agents is governed by PTRs and ATOL. Those are being reviewed. That is the appropriate way to consider these issues".—[*Official Report*, 31/1/24; cols. GC 394-95.]

Although important, neither of those addresses the misuse of market power and the damage that this is causing to consumer protection and to the viability of the market. Neither the PTR or ATOL regimes protect consumer choice or promote competition. The loss of that is the real threat, which can be addressed only through a CMA market review.

Finally, as regards ticketing, I very strongly support the amendment in the name of the noble Lord, Lord Moynihan. I salute him and Sharon Hodgson MP for their work through the all-party ticketing group throughout the years. In Committee, the noble Lord, Lord Offord, said that the Government do not wish to prevent consumers having choice in respect to secondary ticketing, but surely it should be an informed choice, in the way that the noble Lord outlined in his amendment. The Minister talked about the fact that the Government have legislated to give consumers fuller information on tickets that they are buying on the secondary market, but that is still not full information.

6.30 pm

The noble Lord, Lord Moynihan, pointed out that these were recommendations from the CMA itself. It is quite clear that the Government have not listened to the CMA. It must be pretty unprecedented for a Government to turn down strong recommendations from a regulator, let alone from Professor Waterson, who could not have been clearer in his 225-page report.

The Minister finished in Committee by saying that he did not believe

"that the evidence to date justifies new and"

what he called

"onerous secondary ticketing measures".—[*Official Report*, 7/2/24; col. GC 540.]

The amendments from the noble Lord, Lord Moynihan, are not unduly onerous. They seem eminently reasonable and should be incorporated in the Bill.

Lord Leong (Lab): My Lords, I thank all noble Lords who have spoken in this debate. Once again, I have been extremely impressed by the range of expertise and the depth of insight. Conscious of the time we have all been here, I will address some of the key amendments as briefly as I can.

Amendments 104 and 118, in the names of the noble Baronesses, Lady Hayman, Lady Bakewell, Lady Ritchie and Lady Harding, would require the Secretary of State to publish a strategy conferring the right to access repair. They would also ban practices which prevent repair or prematurely terminate software support. The right to repair is an essential part of the circular economy. Many businesses understand that this is an opportunity for innovation, creating new jobs, saving money, reducing waste and saving scarce resources.

We are sympathetic to the noble Baroness's amendment. The noble Baroness, Lady Hayman, has made strong arguments for her amendment, and she has a lot of support around this House for action to be taken on this issue. We are, in principle, supportive of the right to repair and its contribution to the circular economy, although we recognise that the impact on the sector will be significant. We would, therefore, encourage the Minister, if he cannot accept this amendment today, to make a firm commitment at the Dispatch Box that the Government will work with the noble Baroness, across departments, to ensure that real progress will be made on this issue in the near future.

We support Amendments 105 and 106 from the noble Lord, Lord Clement-Jones. These would make selling goods online, when they do not meet specified safety requirements, constitute an unfair commercial practice. Additionally, we are broadly sympathetic to Amendment 108 in the name of the noble Lord, Lord Clement-Jones, which lists five new unfair commercial practices. However, we would welcome proposals for further discussion.

Moving on to fake reviews, Amendment 109, in the names of the noble Earl, Lord Lindsay, and the noble Baroness, Lady Crawley, would insert provisions around fake reviews of products into Schedule 19. We welcome government Amendment 107, which adds various activities relating to fake reviews directed at consumers to the list of unfair practices in Schedule 19 to the Bill.

However, we would encourage the Government to adopt Amendments 107A and 107B from the noble Lord, Lord Clement-Jones. These propose small improvements to address the role played by internet service providers and social media in promoting fake reviews. If the Minister does not accept these amendments, can he explain why ISPs and social media are not specifically covered within the government amendments?

We must not forget the real-life consequences of the issues at stake among all the technical details. We all remember the awful tragedy of the Grenfell Tower fire in June 2017, which killed 72 people and injured 70 more. The source of this blaze was recently identified as a faulty fridge-freezer. Even one more preventable death from recalled products, where there are known risks to consumers, would be one too many. We urgently need to act to do whatever we can to prevent further tragedy.

The following amendments address this issue directly. Amendment 110, again in the name of the remarkably industrious noble Lord, Lord Clement-Jones, would make it a misleading action to sell goods online without taking reasonable steps to ensure that they have not been subject to a product recall. Amendment 111 would require the Secretary of State to make regulations to define the "reasonable steps" set out in Amendment 110. Amendment 120, in the noble Lord's name, defines the terms "online marketplace" and "safety requirements", which we support.

The Government set up the Working Group on Product Recalls and Safety to bring together experts from fire services, trading standards, consumer groups and industry. They were tasked with identifying the causes of fire from white goods—everyday items such as dishwashers, washing machines, tumble dryers and fridge-freezers—and the actions needed to reduce them. Experts suspect that selling recalled and faulty goods via online stores and social media platforms is common practice. I ask the Minister: when did this working group last meet? Are there are plans for consultations to explore this dangerous behaviour?

Moving on to drip pricing, we thank the Government for listening to our concerns in this area and bringing forward Amendments 112, 113 and 114. We ask the Government specifically to keep the definition of mandatory fees under review.

[LORD LEONG]

Amendment 115, in the name of the noble Earl, Lord Lindsay, is a sensible one, proposing that price should be removed from any invitation to purchase so that it is not an inducement to buy.

The following government amendments are technical, clarificatory and consequential and we are broadly in agreement: Amendments 116, 117, 119, 121, and 141 to 149.

In Committee, I spoke about the UK's secondary ticketing market. It is estimated to be worth £1 billion annually. The industry model is to purchase tickets for sporting and cultural events in bulk, and then resell them at inflated prices, as referred to by the noble Lord, Lord Moynihan. Such practices exclude people who cannot afford artificially high prices and exploit the people who can. Several renowned artists, through their management firms, are implementing measures to ensure that genuine fans secure tickets initially, and to identify and nullify tickets resold for profit.

I am pleased to speak to Amendment 150 in the name of the noble Lord, Lord Moynihan, supported by the noble Lord, Lord Clement-Jones, and my noble friend—and good friend—Lady Jones of Whitchurch. Not only would it prevent bulk-buying of tickets, it would end the fraudulent practice of speculative selling. This is where touts list and sell seats they do not have, bank the proceeds and then hope to secure a ticket later to fulfil an order. This is despicable. I respectfully remind the Minister that these practices most certainly are not good examples of competitive markets, nor do they give consumers genuine choice and flexibility.

Online ticket touts create nothing except misery for fans. They exploit the market and distort it, purely for their own profit. The voices of the creatives, the ones both we and their fans want to support, are calling for the Government to act. We on this side will support the noble Lord, Lord Moynihan, if he seeks to test the opinion of the House on Amendment 150. Of course, we will consider and vote for it in its place on the list.

Finally, we support Amendment 151, which addresses a very specific situation. When a trustee of a charity receives tickets in respect of their role, they must not resell them on a secondary ticketing site for more than face value plus a handling charge.

I hope the Minister has been persuaded by my whistle-stop summary, and as I catch my breath, I will listen with interest to his response.

Lord Offord of Garvel (Con): As ever, I start by thanking noble Lords for their amendments and all who spoke for their important and considered contributions. On Amendment 104 on right to repair, tabled by the noble Baroness, Lady Hayman, it has been a great pleasure to discuss this with her during this process and, indeed, since Committee. I also thank the noble Lord, Lord Leong, and the noble Baronesses, Lady Bakewell and Lady Bennett, for their impassioned contributions on this issue.

Noble Lords may recall from Committee that there is much excellent work under way in this area across government, involving in my department, Defra, the Department for Energy Security and Net Zero and the Department for Science, Innovation and Technology. Waste prevention and eco-design are two key strands of this work. As well as this cross-government work, Defra, which published *Maximising Resources, Minimising Waste* last year, is currently setting up the necessary programme management and governance functions around that work, and will work closely with other government departments, including those with a consumer perspective, to achieve these goals. I appreciate the point that there is a lot to co-ordinate here, and I hope that this governance will reassure noble Lords that the problem is being gripped. The Government will also set out in a future publication how each scheme interacts and adds up into a coherent whole.

I appreciate the point that the noble Baroness made about Northern Ireland, and we will of course consider carefully the implications of new EU regulations in Northern Ireland. Naturally, we will adopt an approach that best suits the UK circumstances when designing our own regulations; we are always open to allowing for more or less any objective that would even improve on the EU's regime.

While I am sympathetic to the intent of these amendments, the Government's view is that there is already a strategic framework in place for supporting right to repair. I greatly appreciate all the work that the noble Baroness, Lady Hayman, is doing in this space. Of course, her continued input would be greatly welcomed as this work progresses. I have said to her before that we are violently agreeing on the need for this to happen, and I am very happy to work with her to move forward.

I turn to Amendment 108, tabled by the noble Lord, Lord Clement-Jones, relating to third-party agents. I would like once again to reassure him that the protections sought in these amendments are mostly provided for elsewhere in consumer law. Clauses 225 and 227 prohibit traders using misleading actions or aggressive practices, including influencing a consumer's decision on whether to use a third party. A particular dispute between an airline and an online travel agent has often been raised, including in Committee, when discussing this issue.

The CMA has significant powers to investigate and act if it finds that businesses are behaving anti-competitively in a particular market. It is right that those matters be determined by the CMA as it sees fit, which means that I cannot comment on its work—but I can assure the noble Lord that it is alive to this issue. More broadly, we have recently consulted on the package travel regulations that govern many of these sectors, and I look forward to sharing the response to the call for evidence.

I turn to the issue of invitation to purchase, and thank my noble friend Lord Lindsay for his Amendment 115, as well as the noble Baroness, Lady Bakewell, for her contribution on this issue. The amendment would remove the requirement that a price is provided before an action is considered an invitation to purchase. Actions that are considered an invitation to purchase attract specific consumer rights. The Government believe that the changes proposed by this amendment would expand the definition too far, rendering the invitation to purchase provisions unworkable in practice. The Government are confident that sufficient legal protection is already in place for circumstances in which vulnerable

customers engage rogue traders to undertake services on their behalf. In the Consumer Rights Act 2015 there are pre-contract information obligations on traders to provide identity and contact details. Nevertheless, I draw your Lordships' attention to my commitment for officials to continue to work with noble Lords to identify practical measures to support trading standards officers.

The noble Baroness, Lady Bakewell, raised an important point about VAT. I can provide an assurance that pricing information must already include any relevant taxes, including VAT, and VAT and pricing information is also subject to the Price Marking Order that the Government consulted on last year. We will introduce secondary legislation to improve transparency, including on all taxes.

6.45 pm

I turn to government Amendments 107 and 119 on the topic of fake reviews, and shall also respond to Amendments 107B and 109 tabled by the noble Lord, Lord Clement-Jones, and my noble friend Lord Lindsay. I am grateful to them for their amendments, and to the noble Baroness, Lady Crawley, and the noble Lord, Lord Leong, for their input on this important matter.

Government Amendment 107 adds commercial practices related to fake reviews to the list of banned practices in Schedule 19. These prohibit the submitting and commissioning of fake reviews and require traders that publish consumer reviews to take reasonable steps to prevent the publication of fake reviews. On Amendment 107A tabled by the noble Lord, Lord Clement-Jones, having engaged with platforms such as Trustpilot, we understand concerns about platforms allowing fake review bartering to happen on their sites. When intermediary platforms are aware of fake review banned practices being offered on their sites and do not take action, they may already be liable for a breach of the professional diligence unfair commercial practice in the Consumer Protection from Unfair Trading Regulations, which are being restated in this Bill. The Government have held a round-table meeting with online platforms to make sure that these responsibilities are understood, and we will continue to do so.

As regards Amendment 107B, the Government's amendment provides a non-exhaustive list of what publishing reviews in a misleading way may involve. This list will be expanded on in guidance produced by the CMA, including how businesses that may want to highlight their most positive consumer reviews can do so in ways that do not mislead consumers.

The noble Baroness, Lady Crawley, raised the important issue of criminal liability. Government Amendment 119 excludes the new banned practices from criminal liability, as misrepresenting reviews and publishing fake reviews are already covered through the prohibitions on misleading actions and omissions in the Consumer Protection from Unfair Trading Regulations. These are being restated in this Bill and carry criminal liability. Further criminal sanctions may be available under the Fraud Act and other legislation when the relevant requirements are met. It is not the Government's intention to proliferate new criminal sanctions. I hope that the reassurance that existing criminal sanctions are already available helps the noble Lord to understand our approach.

The noble Baroness, Lady Bakewell, raised the issue of websites selling products that do not arrive or even exist. This is a case of fraud or misleading trading under consumer law, and of course the Fraud Act already deals with it. Further measures on fake reviews are therefore not necessary. These government amendments build on extensive consultation and the clear view expressed in Committee.

Government Amendments 112 to 114 add provisions to address drip pricing. These amendments will require traders to present consumers with the total price of a product, including all unavoidable fees, taxes and charges that must be paid by all consumers, rather than drip-feeding such charges through the purchasing process. They also clarify that when unavoidable fees cannot be reasonably calculated in advance, such as delivery fees, traders must set out the existence of such fees and how they are calculated with the total price. These amendments build on much-appreciated and widespread input from this House, and I hope they will be supported.

I turn now to product safety in online marketplaces and Amendments 105, 106, 110, 111 and 120 from the noble Lord, Lord Clement-Jones. Existing UK product safety law is clear: all products must be safe, including those sold online. However, we recognise the challenge that the growth of e-commerce poses to product safety. The Government recently consulted on proposals as part of the product safety review. We are analysing consultation responses and considering feedback from extensive engagement with organisations and stakeholders. These will inform policy development ahead of the government response later this year. I will confirm in writing to the noble Lord, Lord Leong, when the working group on product safety last met. Product safety legislation already covers a range of product safety issues in detail and includes product categories broader than those linked to the supply of products to consumers in this Bill.

I now turn to secondary ticketing and Amendment 150 on ticketing and Amendment 151 on trustees from my noble friend Lord Moynihan. I also thank the noble Lord, Lord Leong, for his contribution on this issue. It is already a criminal offence for traders to offer for sale a product that cannot be legally sold. Therefore, we do not see these measures adding significantly to existing protection against fraud or mis-selling. I can assure noble Lords that the Government are committed to protecting consumers from fraudulent activity in the secondary ticketing market. In fact, even in the last few hours, four touts have been found guilty by a court in Leeds, using the existing powers and legislation. As I hope noble Lords would agree, we want the focus to be on consumer choice and using powers to enforce existing law, rather than creating further legislation for uncertain gain.

The Government's analysis is that it is the gift of the primary market to limit, or stop entirely, the secondary market, if that is what it wishes to do. Some event organisers have successfully managed their sales and marketing to inhibit resale of their tickets. To give an example, as an avid sports fan, I go to Murrayfield and my ticket is a personal ticket with my name and seat number on it. If I am found to have sold it on to someone else at a higher price, I will lose any right to further tickets. In contrast, I am going to Munich on 14 June for the opening match of Euro 2024, where

[Lord Offord of Garvel]
I hope Scotland will turn over Germany, and in that particular case I do not have a named ticket. Indeed, I was not able to get a ticket and I have in fact accessed the secondary market—and I will not be able to tell your Lordships' House until the day before whether those tickets are legal or not.

I also observe that a large number of the promoters of pop concerts—for example, for Ed Sheeran, Mumford & Sons, Iron Maiden and Glastonbury—are now putting in place restrictions on primary market sales, which can be done using technology, ID, mobile phones, et cetera. I would therefore submit to this House that the legislation is currently in place and we should focus our attention on putting pressure on the organisers of these events to use existing legislation to prevent the unfair secondary market. In the meantime, however, we also have consumer choice, and I exercise my right to try to get to the match on 14 June.

I turn to consumer savings schemes and Amendment 141. I shall also briefly address the remaining government amendments in this group. Government Amendment 141 extends protections for users of consumer savings schemes to include bankruptcy orders, winding-up orders, and the appointment of liquidators and administrative receivers. This ensures that consumers are safeguarded across a more comprehensive range of insolvency events, as originally intended.

Government Amendments 142 to 149 are minor and technical amendments to Clause 297 on alternative dispute resolution—ADR. They clarify that any variation made by the Secretary of State to an ADR provider's accreditation must be considered necessary to return the ADR provider to compliance and must be kept under review.

Finally, government Amendments 116 and 117 implement the recommendation of the Delegated Powers and Regulatory Reform Committee that the affirmative procedure be applied to all exercises of the power in Clause 232, not just the first. We are grateful for the committee's scrutiny and agree that the higher level of parliamentary scrutiny is appropriate for changes to consumer redress rights.

In conclusion, I am extremely grateful to the noble Lord, Lord Clement-Jones, the noble Baronesses, Lady Hayman, Lady Crawley and Lady Bakewell, and my noble friends Lord Moynihan and Lord Lindsay for their amendments and contributions. I hope, however, that they feel satisfied by my responses and will not feel the need to press their amendments.

Baroness Hayman (CB): My Lords, I am extremely grateful to everyone who has taken part in this debate. I have to say that I have never really experienced such violent agreement—as the Minister put it—from both Front Benches, and such little appetite for doing anything about it, or for any action. So I have to say that I think we are missing a legislative opportunity to do something that would have enormous support both in the country and, I believe, among individuals around the House. However, I really do not want to be churlish. I am genuinely grateful to the Minister, because he has spent a lot of time and thought on this issue and I recognise that he is confident that progress will be made without legislation.

I will just say that I think it would be prudent if I put a note in my diary, for maybe nine months' time, to put down an Oral Question to see exactly what progress we have made. At the same time, I might remind myself to look very carefully at the Labour Party manifesto to see what its policy on waste actually is. On that note, I beg to leave to withdraw my amendment.

Amendment 104 withdrawn.

Clause 224: Prohibition of unfair commercial practices

Amendments 105 and 106 not moved.

Schedule 19: Commercial practices which are in all circumstances considered unfair

Amendment 107

Moved by ***Lord Offord of Garvel***

107: Schedule 19, page 362, line 10, at end insert—

"12A "(1) Submitting, or commissioning another person to submit or write—

(a) a fake consumer review, or

(b) a consumer review that conceals the fact it has been incentivised.

(2) Publishing consumer reviews, or consumer review information, in a misleading way.

(3) Publishing consumer reviews, or consumer review information, without taking such reasonable and proportionate steps as are necessary for the purposes of—

(a) preventing the publication of—

(i) fake consumer reviews,

(ii) consumer reviews that conceal the fact they have been incentivised, or

(iii) consumer review information that is false or misleading, and

(b) removing any such reviews or information from publication.

(4) Offering services to traders—

(a) for the doing of anything covered by sub-paragraph (1) or (2);

(b) for the facilitating of anything covered by sub-paragraph (1) or (2) to be done.

(5) For the purposes of this paragraph—

(a) "consumer review" means a review of a product, a trader or any other matter relevant to a transactional decision;

(b) "fake consumer review" means a consumer review that purports to be, but is not, based on a person's genuine experience;

(c) a consumer review conceals the fact it has been incentivised if—

(i) a person has been commissioned to submit or write the review, and

(ii) that fact is not made apparent (whether through the contents of the review or otherwise);

(d) "consumer review information" means information that is derived from, or is influenced by, consumer reviews;

(e) a person "submits" a review or information if they supply it with a view to publication;

(f) "writing" includes creating by any means;

(g) "commissioning" includes incentivising by any means (and "commissioned" is to be read accordingly);

(h) "publishing" includes disseminating, or otherwise making available, by any means;

(i) publishing in a "misleading way" includes (for example)—

(i) failing to publish, or removing from publication, negative consumer reviews whilst publishing positive ones (or vice versa);

(ii) giving greater prominence to positive consumer reviews over negative ones (or vice versa);

(iii) omitting information that is relevant to the circumstances in which a consumer review has been written (including that a person has been commissioned to write the review)."

Member's explanatory statement

This amendment adds various activities relating to fake reviews directed at consumers to the list of unfair commercial practices in Schedule 19 to the Bill.

Amendments 107A and 107B (to Amendment 107) not moved.

Amendment 107 agreed.

Amendments 108 and 109 not moved.

Clause 225: Misleading actions

Amendments 110 and 111 not moved.

Clause 229: Omission of material information from invitation to purchase

Amendments 112 to 114

Moved by ***Lord Offord of Garvel***

112: Clause 229, page 153, line 12, leave out paragraph (b) and insert—

"(b) the total price of the product (so far as paragraph (ba) does not apply);

(ba) if, owing to the nature of the product, the whole or any part of the total price cannot reasonably be calculated in advance, how the price (or that part of it) will be calculated;"

Member's explanatory statement

This amendment, along with my amendment to insert new subsections (3A) and (3B) into clause 229, requires a trader to set out in an invitation to purchase the total price of a product including any mandatory fees, taxes and charges that apply to the purchase of a product rather than "drip-feeding" such amounts during the transaction process.

113: Clause 229, page 153, line 24, leave out "additional to the price of the product" and insert "not included in the total price of the product but which the consumer may choose to incur"

Member's explanatory statement

This amendment is consequential on my other amendments to clause 229.

114: Clause 229, page 153, line 40, at end insert—

"(3A) For the purposes of subsection (2)(b) the total price of a product includes any fees, taxes, charges or other payments that the consumer will necessarily incur if the consumer purchases the product.

(3B) For the purposes of subsection (2)(ba) (and subject to the matters mentioned in subsection (6)) the information given must—

(a) be such that it enables the consumer to calculate the total price, and

(b) be set out with as much prominence as any information that is set out in compliance with subsection (2)(b)."

Member's explanatory statement

See the explanatory statement for my amendment to clause 229(2) (on page 153, at line 12).

Amendments 112 to 114 agreed.

Amendment 115 not moved.

Clause 232: Rights of redress: further provision

Amendments 116 and 117

Moved by ***Lord Offord of Garvel***

116: Clause 232, page 157, line 6, leave out "The first regulations made" and insert "Regulations"

Member's explanatory statement

This amendment, and my other amendment to clause 232, changes the parliamentary procedure for regulations under clause 232 so that any regulations made under the clause (not just the first) are subject to the affirmative procedure.

117: Clause 232, page 157, line 8, leave out subsection (6)

Member's explanatory statement

See the explanatory statement to my other amendment to clause 232.

Amendments 116 and 117 agreed.

Amendment 118 not moved.

Clause 236: Offences

Amendment 119

Moved by ***Lord Offord of Garvel***

119: Clause 236, page 159, line 8, at end insert—

"(aa) the descriptions of practices mentioned in paragraph 12A of that Schedule;"

Member's explanatory statement

This amendment provides that the new unfair commercial practice relating to fake reviews provided for by my amendment to Schedule 19 will be an excluded description of practice for the purposes of clause 236(7) (and accordingly will not be subject to criminal liability).

Amendment 119 agreed.

Clause 248: General interpretation

Amendment 120 not moved.

Schedule 20: Chapter 1 of Part 4: consequential amendments

Amendment 121

Moved by ***Lord Offord of Garvel***

121: Schedule 20, page 367, line 3, at end insert—

"(2A) In section 74(3) (interpretation of Chapter)—

(a) in paragraph (b) for "the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277)" substitute "Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024";

(b) in paragraph (c) for "those Regulations (see regulation 19 of those Regulations)" substitute "that Chapter (see section 230 of that Act)."

Member's explanatory statement

This amendment makes a further amendment to the Online Safety Act 2023 that is consequential on the revocation of the Consumer Protection from Unfair Trading Regulations 2008 and the commencement of Chapter 1 of Part 4 of the Bill.

Amendment 121 agreed.

Clause 254: Excluded contracts

Amendment 122

Moved by ***Lord Offord of Garvel***

122: Clause 254, page 167, line 37, at end insert—

"(5) See section 274(4) to (8) for how this Chapter applies in relation to a contract that—

(a) was an excluded contract at the time it was entered into, and

(b) on subsequently ceasing to be an excluded contract, becomes a subscription contract."

Member's explanatory statement

This amendment is consequential on my second amendment to clause 274.

Lord Offord of Garvel (Con): My Lords, I am delighted to speak to this group of amendments, and I thank the noble Lord, Lord Clement-Jones, and my noble friends Lord Lucas and Lord Mendoza for their amendments. I will first address the government amendments.

Amendments 122 to 125, 138 and 139 aim to address the concerns raised by my noble friend Lord Mott about certain microbusinesses, such as small local farm shops, being unintentionally captured by the new subscriptions rules simply because they are incorporated. Together, these amendments alter the requirement for a business to be unincorporated in order to benefit from the exclusion. Instead, a business will benefit from this exclusion so long as it meets the "micro-entity" thresholds in the Companies Act 2006. The other requirements of the exclusion, which require a business to deliver foodstuffs to the home or workplace without the use of couriers, remain unchanged. This ensures that the exclusion remains well targeted and captures only the smallest of businesses. I am grateful to my noble friend for highlighting this issue, and I hope he is reassured by these amendments.

7 pm

I turn to gift aid. Government Amendments 154 to 156 address the concerns raised in Committee by my noble friend Lord Mendoza, and many other noble Lords, about the Bill's impact on the ability of charities to claim gift aid. The Government's intention is that charities can continue to claim gift aid and comply with the subscription measures, where they apply. Our amendments achieve this by amending the consequential power in Clause 335. This will enable the Treasury to amend the gift aid rules in the Income Tax Act 2007.

The Treasury has committed to introduce secondary legislation to do this, and I am pleased to point noble Lords to the statement to this effect made by the Chancellor in last week's Budget. It is our firm intention that this will be in place by the time the subscription regime commences, and the Government will of course continue to engage with the charity sector through this period. I hope this reassures your Lordships of the Government's commitment to resolve this issue. I know that my noble friend Lord Mendoza and the noble Lord, Lord Clement-Jones, have tabled their own amendments on this matter, and I look forward to hearing from them.

I turn now to a package of amendments—Amendments 128 to 130, 132, 136 and 137—which are intended to provide greater assurance and clarity for businesses in relation to the subscription measures. Government Amendment 128 removes the requirement that consumers can exit their contract "in a single communication". Instead, traders must ensure that consumers can exit

"in a way which is straightforward".

The purpose of the amendment is to make it absolutely clear that businesses are not prevented from engaging with their customers during the exit process, and to replace prescriptive language with a principle-based approach. I stress that traders will not be prohibited from requesting feedback or from volunteering counter-offers to consumers who want to end their subscription, so long as this does not unreasonably hinder a consumer from ending their contract if they so wish.

Government Amendments 129, 130 and 132 also relate to how a consumer can cancel or end a contract. These amendments remove the phrase "by any means" and replace it with language from the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. This simply means that a consumer can exercise a right to exit their contract by making a clear statement to this effect. The intention of these amendments is to bring greater clarity, particularly to businesses, by aligning the language with that of familiar consumer law provisions. I ask noble Lords to support these amendments, and I hope that, alongside government Amendment 128, they put to rest the notion that consumers will be able to end their contract via unconventional means.

Government Amendments 136 and 137 relate to the cooling-off period, an area in which the noble Lord, Lord Clement-Jones, has also tabled amendments. Noble Lords raised concerns in Committee about consumers binge-watching services then cancelling for free. The Government wholeheartedly agree that consumers should not be able to sign up, use a service or digital content and then cancel for free. The rules governing what happens when a consumer cancels in the cooling-off period will be set out in secondary legislation. The Government will consult on these rules by the end of this year. Crucially, this consultation will include a proposal to introduce a "use it and lose it" rule, whereby consumers lose their right to a full refund if they use a product during the cooling-off period. Our amendments now make it clear that regulations can apply such rules.

Amendment 136 states explicitly that the regulatory power can be used to introduce a waiver from cooling-off rights, including for digital content. Amendment 137 makes it clear that a consumer may lose their right to a full refund if they cancel during a cooling-off period, particularly if they have received digital content or services during that period.

Finally, I am sure noble Lords will be pleased to hear that, further to assurances provided in Committee, the Government have decided that the subscription contract measures will come into force no earlier than spring 2026. This will guarantee that businesses have sufficient time to adapt their operations, while ensuring that consumers benefit from the protections in a reasonable timeframe. I hope these amendments demonstrate that the Government have listened to concerns expressed across the House and in Committee, and that noble Lords agree that they will provide businesses the assurance they have been seeking. I beg to move.

Lord Mendoza (Con): My Lords, Amendment 126 is in my name. I declare my interests as set out in the register, particularly as chairman of Historic England, which also has oversight of English Heritage. I want to talk about the very narrow point the amendment tries to cover, which is the specific treatment of contracts relating to charity membership subscriptions. I am sure that many in this House have purses and wallets bulging with membership cards for museums and wonderful organisations such as the National Trust, English Heritage, the Woodland Trust, and so on, and this issue is causing great concern across the charity sector. I am sure many noble Lords' inboxes have been filled with briefings and pleas from charities. The point is a very narrow one: according to the Income Tax Act 2007, if a subscription is refundable, it will become no longer eligible for gift aid, which is a very large number for charities up and down the land.

I have been grateful over the last weeks for the assiduous attention of my noble friend the Minister and the Bill team. I am also grateful to organisations we have probably all heard from, such as the NCVO, the National Trust and English Heritage, for helping with the background on this. I was even more impressed, as my noble friend the Minister has set out, that the issue was directly referred to with its own lines in the Budget, and that the Treasury has committed to amending gift aid legislation by SI before this part of the Bill comes into force.

As the Minister has said previously, there is no intention to change the status quo on the eligibility of gift aid on these membership subscription contracts. However, I will make three points. No specific changes are being proposed for the provisions in the Bill so there will be a contradiction, before it is sorted out, between this primary legislation and the Income Tax Act 2007, which creates uncertainty. I know it creates uncertainty because we talk to charities, and they need security and confidence and the ability to plan and budget their operations. I know that the noble Lord, Lord Clement-Jones, has put a lot of work into this and I look forward to hearing him present his mechanism for the timing of how this might be helped.

In a way, despite the lines in the Budget, the Government's amendments have conferred only a general power on the Treasury to make secondary legislation: there is no statutory commitment to get around to actually doing so before these measures come into force. This raises a risk that the provisions of the Bill could be enacted by this or a future Parliament without the issue actually being resolved. The Government's amendments do not address the concerns raised regarding the application of consumer protections to charity memberships, which are treated as donations for tax purposes. We are certainly not asking for charities to be exempted from consumer protections, and I agree with my noble friend the Minister that many parts of a charity's operations should not be—its shops, restaurants, cafés, and so on.

However, it cannot be right that we apply a cooling-off period to a form of charitable donation in the same way that you would to a TV subscription service. If I put £5 in the tin for the Royal British Legion, I do not expect to be able to claim it back the following week, saying "I made a mistake". Membership subscriptions are accepted as donations under the Income Tax Act, and have been for a long time; donations are not refundable, so how can you have a cooling-off period? You have circular contradiction going on. Naturally, I prefer that these contracts might be protected by the amendment as I have set it out; it simply puts this very specific narrow bit of a charity's operation—membership subscription contracts—into Schedule 21. I am very grateful to the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Jones of Whitchurch, for helping get these points across.

Charities are concerned, and perhaps while the Government are in a giving vein during the Third Reading of the Bill, they might reconsider putting in this very small amendment, which would provide huge relief for charities, and the certainty and reassurance they need, because they do such incredible work right across the country, and they are deeply concerned.

Lord Lucas (Con): My Lords, I will speak briefly to Amendment 127 in this group. I do not hold, in any particular way, to my choice of wording, but I am fairly sure the Government's choice of wording is not right. We all receive a huge quantity of emails; we do not want multiplicity—we want effectiveness—and to demand that these emails come separately is a mistake. I hope the Government will see this as an opportunity to rationalise and reduce the size of my inbox and everybody else's inbox. If we allow more than one thing to be in the message, then the prominent message must be the statutory one. To have it in the subject line and in the first sentence, so that it comes up in the summary when you look at what the email is about, would be a better way of putting it than my amendment, but I am sure the Government can improve on that.

Lord Black of Brentwood (Con): My Lords, I refer to my earlier declarations of interest.

I raised a significant number of issues relating to subscription contracts in Committee. I am very grateful to both my noble friends on the Front Bench for listening to those arguments, and for bringing forward amendments to deal with them, and I strongly support them. They help fulfil the Government's aims without placing unacceptable burdens on business.

There is only one remaining issue that we dealt with in Committee, and that is why I am supporting the amendment in the name of my noble friend Lord Lucas. His amendment would remove the prescriptive wording that is currently in the Bill and allow for traders to provide notices

"in a clear and prominent manner:"

[Lord Black of Brentwood]
His wording simply recognises that the prescribed renewal information is at the heart of the notice and must not be skewed out of view, while allowing for other beneficial information to be included, if desired. I am sure all noble Lords will be very happy that it ensures notices do not become a GDPR-style irritant, but something which is actually helpful to consumers. It would certainly be counterproductive if consumers experienced information fatigue and stopped opening communications from traders or simply opted out of them all together.

Equally, it will alleviate the burdens on traders, who may feel obliged to send emails around the time of renewal notices, to provide information on alternative deals, packages and so on, which could otherwise be dealt with in one communication. As my noble friend said, there may be other ways of dealing with it, or other wording, and I look forward to hearing what the Minister has to say about this amendment, which I support.

Lord Clement-Jones (LD): My Lords, I am going to be extremely brief as I think we are all anxious to move towards seeing whether the noble Lord, Lord Moynihan, will move his previous amendment to a vote.

There is a common factor here; all these amendments were designed to flush out the Minister to give more assurance and information, and in large part that has been successful. There are still some outliers in terms of reminder notices; the Minister is well aware that there are some players, like Adobe, who will find, when they work it out, that they are going to have to give five notices for an annual contract. I do not know whether the Minister has looked at that and has answers to it.

7.15 pm

There are still issues at the moment about the lack of clarity on what kind of cooling-off periods would be appropriate for digital services; perhaps the Minister can give more detail on that.

We also come, of course, to the gift aid issues, which the noble Lord, Lord Mendoza, has been so brilliant at raising, and at getting government assurances on. But there is still a big lack of clarity, and that is why I put down Amendment 140, because it would be extremely helpful for the Minister to explain exactly how it is all going to work, in terms of consultation, timing and so on and so forth. There is a lot of concern out there from the charities, particularly in relation to donations and how they fit in relation to subscriptions, because they raise funds in different ways and they want to preserve the benefits they get through the tax system. There is also the question of what kind of consumer protection is appropriate, so that they are not just caught up into a net when they ask for donations.

The amendments I put down are pretty self-explanatory, and I hope the Minister will respond.

Baroness Jones of Whitchurch (Lab): My Lords, I hope that I too can be brief. When we discussed the provisions on subscription contracts in Committee, there were a number of concerns raised about the original wording. There was, at the time, a recognition that some consumers were being trapped into subscription contracts from which they could not easily withdraw. There was a further issue of subscription auto-renewing without people realising, which cost individuals an estimated £500 million a year.

However, against that, there was a strong case made for the many regular subscriptions for the goods and services which were genuinely wanted and loved, and for the many other subscriptions to good causes and charities on which those organisations depended. There was a growing consensus among noble Lords that we had not got that balance right, so I am very pleased that the Minister has listened and engaged with these concerns and we are pleased with the Government's amendments now tabled.

First, we welcome the decision to exclude micro-entities, such as milkmen and farm shops, from the provisions.

Secondly, it is helpful that the new amendments clarify the way that consumers should notify the business that they wish to end a contract. We would have welcomed a clearer provision for a simple on/off toggle button to end subscriptions; we hope that the Government will keep that option under review.

Thirdly, we welcome the new government proposals to prevent binge-watching of digital content for free during the cooling-off period. The noble Lord, Lord Clement-Jones, has further amendments on this issue which provide helpful clarification on those outstanding issues. I hope the Minister can provide some reassurance that these issues will be kept under review.

We are pleased that the Government have addressed the very real concerns from the charity sector that gift aid claims would be lost under the new regulations. The Government have explained that this requires a change to the Treasury regulations and have given an assurance that these changes will be implemented before this section of the Bill comes into force in October 2025. I pay tribute to the persistence shown by the noble Lord, Lord Mendoza, in trying to resolve this issue, which we have been pleased to support. His Amendment 126 pursues this issue, and I know that there are many in the charity sector who would like further clarity and certainty on how those assurances can be delivered in practice. I was pleased to hear from the Minister that they will be subject to further engagement with stakeholders to get this right, and I think that is the way forward.

The amendments proposed by the noble Lord, Lord Clement-Jones, helpfully set out a route that could be taken to bring about a successful resolution, and I hope the Minister can confirm that those principles will underlie any ongoing discussions.

Finally, Amendment 127 from the noble Lord, Lord Lucas, raises the need for reminder notices to be prominent in any correspondence, and we very much support the intent behind his amendment. We hope the Minister will feel able to give the reassurances that the noble Lord, Lord Lucas, seeks, that these issues will be addressed.

Overall, the provision in the Bill has made good progress, but it is not the end of the matter. I hope the Minister can assure us that the operation of these changes will be kept under review and, if necessary, brought back to the House for further attention. I look forward to the Minister's response.

Lord Offord of Garvel (Con): Once again, I thank all noble Lords for their passionate and eloquent speeches. I turn to Amendments 126A, 126B and 127A in the name of the noble Lord, Lord Clement-Jones, and Amendment 127 in the name of the noble Lord, Lord Lucas, relating to reminder notices.

The purpose of these notices is to give consumers essential information about their next renewal payment, and how to end their subscription if they no longer want it. That is why they are only required ahead of certain payments being taken, where the consumer could alternatively avoid paying by exercising their right to end the contract. We believe reminder notices are particularly important for 12-month contracts that automatically renew, given that a consumer may commit to another full year of payments if they miss the opportunity to end their contract.

For such contracts, businesses will only need to send two reminder notices per year, with one other reminder required if the contract starts with a free trial. We believe this is reasonable and strikes the right balance between ensuring consumers are prompted to consider their ongoing subscription and ensuring businesses are not overburdened.

I turn now to Amendment 127, tabled by my noble friend Lord Lucas, and I thank my noble friend Lord Black for his contribution, also relating to reminder notices. I am grateful to my noble friend for his amendment and I agree with him that businesses must be able to provide other information in these notices, such as promotional or advertising material. It is, after all, a key means of engaging with customers. However, as drafted, this amendment would mean that, while the reminder notice must be clearly given, the essential information that must be contained in the notice could get lost in marketing material. Therefore, while the Government cannot accept the amendment in its current form, I commit to bringing forward government amendments at Third Reading which will seek to strike the right balance on this topic.

Our amendments will allow businesses to provide other material—as they choose—in a reminder notice, but they will also ensure that the required information remains the most prominent information in the notice. This approach will ensure consumers receive clear and timely information about their current subscription, while allowing businesses the opportunity to provide promotional offers or other information in a reminder notice.

I turn to Amendments 131, 133 and 134, tabled by the noble Lord, Lord Clement-Jones, on cooling-off periods. I share the noble Lord's intent to ensure the cooling-off rules work for digital content providers. As I explained in my earlier remarks, before introducing the relevant secondary legislation for how refunds work during cooling-off periods, the Government will consult on a "use it and lose it" proposal. It is essential that we consult on this proposal, as the proposal, or a version of it, may well apply to other services or products, such as personalised goods.

We have focused mostly on the digital sector today, but many other sectors, with different circumstances, may also be relevant. In light of this, we do not agree that detailed arrangements just for digital content should be in the Bill. The full range of sectors should be considered in consultation, and such detail is better suited to secondary legislation, which can be updated when required. That is why we have made it very clear, through our Amendments 136 and 137, that secondary legislation can take account of different products and circumstances. That is also why the noble Lord's Amendment 135 is not necessary. Its objective is already achieved with the existing drafting and has been explicitly clarified through the Government's own amendments.

I now turn to Amendments 126 and 140 on gift aid, tabled by my noble friend Lord Mendoza and the noble Lord, Lord Clement-Jones, respectively. I also thank the noble Baroness, Lady Jones of Whitchurch, for her contribution on this topic. For the reasons set out earlier, we do not consider excluding memberships which qualify for gift aid to be the best way to address this issue. Instead, the Treasury will amend the gift aid regime to ensure that it is compatible with the subscriptions chapter. As I have already said, the Treasury has shown its firm intention to lay the necessary legislation with the statement recently made in last week's Budget.

On the points raised by the noble Lord, Lord Clement-Jones, we do not consider placing such conditions for the commencement of the chapter as the best way to achieve these aims. Noble Lords rightly point out that charities will need clarity on how consumer and gift aid regimes work together. I assure your Lordships that we will work closely with the Treasury, HMRC and the charity sector to provide guidance where needed before the regime commences.

For the reasons stated earlier, we do not consider that there should be specific detail about the cooling-off period in the Bill for particular products or services. However, we will consult before the end of the year and will be sure to engage closely with the charitable sector to understand issues specific to it.

As I emphasised earlier, the purpose of consultation is to develop rules which are fair and workable for traders and consumers and take account of circumstances such as those set out by the noble Lord. This will inform the secondary legislation that will be needed for the regime to be operable, and therefore we do not think a specific requirement that the regime cannot commence without it is necessary. As I mentioned before, the law is clear that, where a consumer donates regularly to a charity without receiving goods, services or digital content in return, this will not meet the definition of a subscription contract. Such donations are therefore out of scope of the chapter.

I hope this reassures noble Lords of the Government's intent and that therefore they will not feel the need to press their amendments.

Amendment 122 agreed.

Schedule 21: Excluded contracts

Amendments 123 to 125

Moved by ***Lord Offord of Garvel***

123: Schedule 21, page 371, line 16, leave out "who is not a body corporate" and insert "whose business is a micro-entity"

Member's explanatory statement

This amendment, along with my other amendments to Schedule 21, provides that a contract for the supply of foodstuffs etc delivered to the consumer's home is excluded from the subscription contracts regime if the trader's business is a "micro-entity", which is assessed on the basis of the business' turnover, balance sheet and number of staff, regardless of whether the business is incorporated or not.

124: Schedule 21, page 371, line 26, at end insert—

"(3A) For the purposes of sub-paragraph (1), a business is a micro-entity in each financial year, other than its first financial year, that the condition in sub-paragraph (3B) or (3C) is met in relation to the business.

(3B) The condition in this sub-paragraph is met if—

(a) the business is carried on by a company, and

(b) the company qualified as a micro-entity in accordance with section 384A of the Companies Act 2006 in relation to the preceding financial year.

(3C) The condition in this sub-paragraph is met if—

(a) the business is not carried on by a company, but

(b) if the business had been carried on by a company, the company would have qualified as a micro-entity in accordance with that section in relation to the preceding financial year.

(3D) In the first financial year of a business, the business is a micro-entity for the purposes of sub-paragraph (1) if (and for so long as) the person carrying on the business believes on reasonable grounds that the person will qualify as a micro-entity in accordance with section 384A of the Companies Act 2006 in relation to that financial year (or would do so if the person were a company)."

Member's explanatory statement

See the explanatory statement for my other amendment to Schedule 21.

125: Schedule 21, page 371, line 29, at end insert—

"(5) In this paragraph—

"company" has the same meaning as in the Companies Act 2006 (see section 1 of that Act);

"financial year" —

(a) in relation to a business which is carried on by a company, means the company's financial year in accordance with sections 390 to 392 of that Act;

(b) in relation to a business which is not carried on by a company, means a year, beginning on 6 April and ending on the following 5 April;

"first financial year" —

(a) in relation to a business which is carried on by a company, means the company's first financial year in accordance with sections 390 to 392 of the Companies Act 2006;

(b) in relation to a business which is not carried on by a company, means the first financial year in which the business begins trading."

Member's explanatory statement

This amendment is consequential on my other amendments to Schedule 21.

Amendments 123 to 125 agreed.

Amendment 126 not moved.

Clause 257: Reminder notices

Amendments 126A and 126B not moved.

Clause 258: Content and timing etc of reminder notices

Amendments 127 to 127A not moved.

Clause 259: Arrangements for consumers to exercise right to end contract

Amendments 128 and 129

Moved by ***Lord Offord of Garvel***

128: Clause 259, page 172, line 18, leave out paragraph (a) and insert—

"(a) in a way which is straightforward, and"

Member's explanatory statement

This amendment sets out the principle that must inform the way in which a trader enables a consumer to bring a subscription contract to an end.

129: Clause 259, page 172, line 35, leave out paragraphs (a) and (b) and insert "may be given by the consumer making a clear statement setting out their decision to bring the contract to an end."

Member's explanatory statement

This amendment enables a consumer to exercise a right to bring a subscription contract to an end by notifying the trader by any clear statement of their decision to bring the contract to an end. The concept of a consumer ending a contract by making a clear statement of their decision to do so is already in use in consumer law.

Amendments 128 and 129 agreed.

Clause 262: Right to cancel for breach of implied term

Amendment 130

Moved by ***Lord Offord of Garvel***

130: Clause 262, page 174, line 15, leave out paragraphs (a) and (b) and insert "may be given by the consumer making a clear statement setting out their decision to cancel the contract."

Member's explanatory statement

This amendment enables a consumer to exercise a right to cancel a subscription contract for breach of an implied term under the Chapter by notifying the trader by any clear statement of their decision to cancel the contract. The concept of a consumer ending a contract by making a clear statement of their decision to do so is already in use in consumer law.

Amendment 130 agreed.

Clause 263: Right to cancel during cooling-off periods

Amendment 131 not moved.

Amendment 132

Moved by ***Lord Offord of Garvel***

132: Clause 263, page 175, line 9, leave out paragraphs (a) and (b) and insert "may be given by the consumer making a clear statement setting out their decision to cancel the contract."

Member's explanatory statement

This amendment enables a consumer to exercise a right to cancel a subscription contract during a cooling-off period by notifying the trader by any clear statement of their decision to cancel the contract. The concept of a consumer ending a contract by making a clear statement of their decision to do so is already in use in consumer law.

Amendment 132 agreed.

Amendment 133 not moved.

Clause 265: Cooling-off notice

Amendment 134 not moved.

Clause 266: Cancellation of subscription contract: further provision

Amendment 135 not moved.

Amendments 136 and 137

Moved by ***Lord Offord of Garvel***

136: Clause 266, page 177, line 25, at end insert "(for example, provision that a consumer may lose the right to cancel a subscription contract during a cooling-off period if they choose to be supplied with digital content or services under the contract during that period)"

Member's explanatory statement

This amendment makes clear that the power under clause 266(1)(a) may be exercised to provide that a consumer may lose the right to cancel during a cooling-off period if the consumer chooses to receive digital content or services during that period.

137: Clause 266, page 178, line 3, at end insert—

"(3A) Provision under subsection (3)(a) and (b) may secure the result (for example, in cases where a consumer has been supplied with digital content or services under a contract before it is cancelled during a cooling-off period) that—

(a) the consumer remains liable (partly or fully) for payments falling due before the cancellation of the contract, and

(b) the consumer is entitled to a reduced or no refund."

Member's explanatory statement

This amendment makes clear that the power under clause 266(1)(b) may be exercised to provide that a consumer remains fully or partly liable, and so is not entitled to a refund or a full refund, in respect of payments they have made under a subscription contract before cancelling it during a cooling-off period, for example where the consumer has received digital content or services during that period.

Amendments 136 and 137 agreed.

Clause 274: Application of this Chapter

Amendments 138 and 139

Moved by ***Lord Offord of Garvel***

138: Clause 274, page 182, line 25, leave out "subscription"

Member's explanatory statement

This amendment clarifies that the Chapter does not apply in relation to any contract that was entered into before clause 253 comes into force. This is to ensure that it does not apply to a contract that was not a subscription contract when it was entered into before that clause comes into force (e.g. because it was an excluded contract) but then becomes a subscription contract after that clause comes into force.

139: Clause 274, page 182, line 26, at end insert—

"(4) Subsections (5) and (6) apply where—

(a) a trader enters into a contract that is an excluded contract,

(b) but for it being an excluded contract, the contract would have been a subscription contract, and

(c) on a later day (the "relevant day"), the contract ceases to be an excluded contract and, accordingly, becomes a subscription contract.

(5) This Chapter applies to the contract with the following modifications—

(a) sections 255 and 256 (pre-contract information) do not apply;

(b) section 257 (reminder notices) applies as if—

(i) in subsection (1), the reference to a trader entering into a subscription contract with a consumer that does not involve a concessionary period were a reference to a trader entering into the contract,

(ii) the reference in subsection (2)(a) to the day that the contract was entered into were a reference to the relevant day, and

(iii) subsections (3), (4) and (6) were omitted;

(c) section 258 (content and timing etc of reminder notices) applies as if, in subsections (3) and (4), references to the period specified by the trader in pre-contract information were references to the period specified by the trader in information given under subsection (6) of this section;

(d) section 261 (terms implied into contracts) applies as if—

(i) in paragraph (a), the reference to the duty set out in section 255(1)(a) were a reference to the duty set out in subsection (6) of this section;

(ii) paragraph (b) was omitted;

(iii) in paragraph (d), the reference to pre-contract information were a reference to the information given under subsection (6) of this section;

(e) section 263 (right to cancel during cooling-off periods) applies as if subsection (1)(a) were omitted.

(6) As soon as reasonably practicable after the relevant day, and in any event before the end of 12 months beginning with that day, the trader must give to the consumer key pre-contract information and full pre-contract information in relation to the contract, other than any such information that is excluded by subsection (7).

(7) Information is excluded by this subsection if—

(a) it relates to the initial cooling-off period under the contract;

(b) it relates to a period mentioned under section 253(3)(a) (initial concessionary period) and the relevant day falls after the end of that period.

(8) For the purposes of the duty under subsection (6)—

(a) it is irrelevant whether any of the information required has already been given to the consumer before the relevant day,

(b) section 255(5) applies as it applies for the purposes of the duty under section 255(1)(b), and

(c) paragraph 13 of Schedule 22 is to be ignored."

Member's explanatory statement

This amendment provides for how the subscription contract regime applies to a subscription contract that was initially excluded from the regime as a result of being a contract of a kind listed in Schedule 21 but later falls to be included in the regime as a result of no longer being a contract excluded under that Schedule.

Amendments 138 and 139 agreed.

Amendment 140 not moved.

Clause 284: Insolvency protection requirement

Amendment 141

Moved by ***Lord Offord of Garvel***

141: Clause 284, page 189, line 4, leave out from second "to" to end of line 11 and insert—

"(a) a bankruptcy order having been made in relation to the trader (or, in Scotland, the trader's estate having been sequestrated),

(b) a winding up order having been made in relation to the trader as a result of the trader's insolvency,

(c) an appointment of a liquidator (otherwise than following the making of a winding up order) as a result of the trader's insolvency,

(d) the trader being in administration,

(e) the appointment of an administrative receiver (or, in Scotland, a receiver) in relation to the trader, or

(f) in any jurisdiction, the trader being subject to an order or procedure that corresponds to any order or procedure mentioned in paragraphs (a) to (e)."

Member's explanatory statement

This amendment broadens the definition of insolvency for the purposes of the Chapter.

Amendment 141 agreed.

Clause 297: Revocation or suspension of accreditations etc

Amendments 142 to 149

Moved by ***Lord Offord of Garvel***

142: Clause 297, page 201, line 25, at end insert—

"(4A) In subsection (4)(a)(i) the reference to limiting (or further limiting) the accreditation to particular descriptions of ADR or of special ADR arrangements includes, in particular, limiting it to ADR relating to consumer contract disputes that have already been referred for ADR or to special ADR arrangements that already exist (as the case may be), whether for a limited period or otherwise."

Member's explanatory statement

The amendment clarifies that the powers of the Secretary of State under clause 297 to limit or further limit the scope of an accreditation includes limiting it to finishing off subsisting referrals of disputes for ADR and/or operating existing special ADR arrangements.

143: Clause 297, page 201, line 32, leave out from "Any" to second "the" and insert "variations made under subsection (4)(a) must be variations"

Member's explanatory statement

This amendment ensures that the requirement that new conditions imposed on an ADR provider's accreditation must be ones that the Secretary of State considers necessary to secure compliance with prohibitions applies also to other variations made by the Secretary of State to the accreditation.

144: Clause 297, page 201, line 35, at end insert—

"(6A) In subsection (6) "existing conditions" means the existing conditions disregarding any previous variations made under subsection (4)(a) or (7)(b)."

Member's explanatory statement

This amendment clarifies which existing conditions are being referred to in clause 297(6).

145: Clause 297, page 201, line 36, leave out from "Where" to second "the" and insert "variations of the accreditation are made under subsection (4)(a),"

Member's explanatory statement

This amendment provides that the duty to keep new conditions imposed on an ADR provider's accreditation under review, and to revoke such conditions if no longer necessary, extends also to other variations made in respect of the accreditation.

146: Clause 297, page 201, line 38, leave out "conditions" and insert "variations"

Member's explanatory statement

This amendment is consequential on my amendment to clause 297 at page 201, line 36.

147: Clause 297, page 201, line 39, leave out from beginning to "no" in line 40 and insert—

"(b) by notice to the ADR provider vary the accreditation for the purpose of revoking or reversing the effect of all or any of the variations, to the extent that the Secretary of State considers that they are"

Member's explanatory statement

This amendment is consequential on my amendment to clause 297 at page 201, line 36.

148: Clause 297, page 202, line 1, leave out "altered" and insert "varied"

Member's explanatory statement

The amendment would bring the language in line with references elsewhere to the variation of an accreditation

149: Clause 297, page 202, line 2, leave out "alterations" and insert "variations"

Member's explanatory statement

The amendment would bring the language in line with references elsewhere to the variation of an accreditation

Amendments 142 to 149 agreed.

Amendment 150

Moved by ***Lord Moynihan***

150: After Clause 309, insert the following new Clause—

"Requirements on secondary ticketing facilities

After section 92 of the Consumer Rights Act 2015 insert—

"92A Requirements on secondary ticketing facilities

(1) A secondary ticketing facility must not permit a trader or business to list tickets for resale unless the trader or business has provided evidence of proof of purchase to the ticketing facility, or evidence of title to the tickets offered for resale.

(2) A secondary ticketing facility must not permit a reseller to sell more tickets to an event that they can legally purchase from the primary market.

(3) A secondary ticketing facility must ensure that the face value of any ticket listed for resale, and the trader or business's name and trading address are clearly visible, in full, on the first page the ticket is viewable on.

(4) The information required by subsection (3) must be unabbreviated, and must not be hidden behind an icon, drop down menu or other device.

(5) A secondary ticketing facility must make it clear to traders and businesses based overseas that sell tickets to UK consumers and target UK consumers through paid or sponsored advertisements or paid infomercials that they are subject to UK legislation.""

Member's explanatory statement

This amendment imposes requirements on secondary tickets sites regarding proof of purchase, ticket number limits and the provision of information, with the aim of reducing fraud. These requirements are in line with recommendations made by the CMA.

Lord Moynihan (Con): My Lords, I am very grateful to the noble Lord, Lord Leong, who highlighted that we should listen not solely to the musicians—the Arctic Monkeys, Mumford & Sons, Little Mix, Radiohead

and many others—who called for these changes but to the true fans who are being scalped. It was interesting that my noble friend the Minister, to whom I listened carefully, totally avoided recognising that it is the Competition and Markets Authority that knows the scale of this problem better than anyone else and that has proposed these changes. As the noble Lord, Lord Clement-Jones, stated, it is very rare for the Government both to ignore and to reject the clear recommendations made by the CMA.

Amendment 150 is a simple and effective way to protect true sports and music fans at the big-ticket concerts across the UK. If it is right for the French, the Irish and in New York City—and if it was right for every Member on this side of the House during the build-up to the Olympic and Paralympic Games in 2012, when we voted unanimously for far more onerous measures—it is right today for this House to help true fans.

It is with great sadness that I was not persuaded by my noble friend the Minister when he sought to apply to that point. Therefore, I seek to test the will of the House.

7.30 pm

Division on Amendment 150

Contents 165; Not-Contents 154.

Amendment 150 agreed.

Division No. 1

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Ahmad of Wimbledon, L.
Altrincham, L.
Ashcombe, L.
Ashton of Hyde, L.
Attlee, E.
Bailey of Paddington, L.
Barran, B.
Bellingham, L.
Berridge, B.
Bew, L.
Black of Brentwood, L.
Blackwood of North Oxford, B.
Blencathra, L.
Booth, L.
Borwick, L.
Bourne of Aberystwyth, L.
Brady, B.
Bray of Coln, B.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Lochiel, L.
Camoys, L.
Camrose, V.
Carrington of Fulham, L.
Chadlington, L.
Colgrain, L.
Courtown, E. [Teller]
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
Dodds of Duncairn, L.
Douglas-Miller, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Effingham, E.
Evans of Bowes Park, B.
Evans of Rainow, L.
Fairfax of Cameron, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.

Frost, L.
Fuller, L.
Garnier, L.
Gascoigne, L.
Glenarthur, L.
Godson, L.
Gold, L.
Goldie, B.
Goschen, V.
Greenway, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harlech, L.
Haselhurst, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
Jackson of Peterborough, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Johnson of Marylebone, L.
Kempsell, L.
Kerr of Kinlochard, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lawlor, B.
Lea of Lymm, B.
Leigh of Hurley, L.
Lucas, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marks of Hale, L.
Maude of Horsham, L.
McInnes of Kilwinning, L.
Mendoza, L.
Meyer, B.
Minto, E.
Mobarik, B.
Morgan of Cotes, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan of Chelsea, L.
Murray of Blidworth, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Owen of Alderley Edge, B.
Parkinson of Whitley Bay, L.
Patel, L.
Petitgas, L.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Ranger of Northwood, L.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Roborough, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Scott of Bybrook, B.
Seccombe, B.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Swinburne, B.
Swire, L.
Taylor of Warwick, L.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wrottesley, L.
Young of Cookham, L.
Younger of Leckie, V.

7.42 pm

Amendment 151 not moved.

Amendments 152 and 153 not moved.

Clause 335: Power to make further consequential provision

Amendments 154 and 155

Moved by ***Lord Offord of Garvel***

154: Clause 335, page 235, line 2, leave out "Secretary of State" and insert "appropriate authority"

Member's explanatory statement

This amendment, together with my other amendment to clause 335, ensures that the power to make regulations containing consequential amendments is conferred on the Treasury rather than the Secretary of State if the regulations only contain amendments to tax legislation, in compliance with the usual approach. This would, for example, enable the Treasury to make amendments to the Income Tax Act 2007 so as to ensure that gift aid can continue to be claimed in the case of payments made under subscription contracts between consumers and charities.

155: Clause 335, page 235, line 11, after "section" insert "—

"appropriate authority" means—

(a) in the case of regulations under this section that contain amendments only in relation to tax, the Treasury;

(b) in any other case, the Secretary of State;"

Member's explanatory statement

See the explanatory statement for my amendment to this clause at line 2.

Amendments 154 and 155 agreed.

Clause 336: Regulations

Amendment 156

Moved by ***Lord Offord of Garvel***

156: Clause 336, page 235, line 29, at end insert—

"(4A) In the case of regulations under section 335 made by the Treasury, the references in subsections (3) and (4) to each or either House of Parliament are to be read as references to the House of Commons only."

Member's explanatory statement

This amendment secures that the power to make regulations under clause 335 containing only amendments to tax legislation are subject to procedure in the House of Commons alone, in compliance with the usual approach for such powers in recognition of the financial privilege of the Commons. See also my amendments to that clause providing for the power to be exercisable by the Treasury.

Amendment 156 agreed.

Clause 338: Commencement

Amendment 157

Moved by ***Lord Offord of Garvel***

157: Clause 338, page 236, line 8, leave out paragraph (a)

Member's explanatory statement

This amendment is consequential on my amendment leaving out Clause 127.

Amendment 157 agreed.

Amendment 158 not moved.

Schedule 29: Minor and consequential amendments

Amendments 159 to 161

Moved by ***Lord Offord of Garvel***

159: Schedule 29, page 407, line 23, at end insert—

"(ai) Part 1;"

Member's explanatory statement

This amendment to section 393 of the Communications Act 2003 relocates the previous amendment to that section made by clause 109(3) (which is omitted by my other amendment to that clause).

160: Schedule 29, page 407, line 33, at end insert—

"(ai) Part 1;"

Member's explanatory statement

This amendment would add Part 1 of the Bill to the provisions listed in section 111(6) of the Wireless Telegraphy Act 2006 (information sharing by OFCOM).

161: Schedule 29, page 412, line 5, at end insert—

"(aa) Part 1;"

Member's explanatory statement

This amendment would add Part 1 of the Bill to the provisions listed in Article 4 of the Postal Services Act 2011 (Disclosure of Information) Order 2012 (information sharing by OFCOM).

Amendments 159 to 161 agreed.

National Insurance Contributions (Reduction in Rates) (No. 2) Bill

First Reading

7.44 pm

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

West Midlands Combined Authority (Transfer of Police and Crime Commissioner Functions) Order 2024

Motion to Approve

7.45 pm

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

That the draft Order laid before the House on 7 February be approved.

Special attention drawn to the instrument by the Secondary Legislation Scrutiny Committee, 15th Report, 17th Report from the Secondary Legislation Scrutiny Committee.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, if approved by both Houses, this order will transfer police and crime commissioner—PCC—functions from the West Midlands PCC to the Mayor of the West Midlands. The first mayor to exercise PCC functions in the West Midlands would do so following the next mayoral election, which is scheduled for Thursday 2 May 2024. This maintains the direct democratic accountability for policing and crime in the West Midlands, as the mayor will be elected by the people of the West Midlands on the basis that they are to exercise the functions of the PCC for that area.

The incumbent PCC for the West Midlands will continue to exercise the functions until the end of his elected term of office. The person elected as mayor, from the point of taking office on Tuesday 7 May following the mayoral election, will act as the single, directly elected individual responsible for holding the chief constable and police force to account. The mayor will be accountable to the people of the West Midlands for this responsibility. Their functions would include issuing a police and crime plan; setting the police budget, including the PCC council tax precept requirements; appointing and, if necessary, suspending or dismissing the chief constable; addressing complaints about policing services; providing and commissioning services for victims and vulnerable people; and working in partnership to ensure that the local criminal justice system is efficient and effective.

Part 1 of the Government's review into the role of PCCs cemented government's view that bringing public safety functions together under the leadership of a combined authority mayor has the potential to offer wider levers and a more joined-up approach to preventing crime. The Government's levelling up White Paper, published on 2 February 2022, sets out our aspiration to have combined authority mayors take on the PCC role where feasible. By working in partnership across a range of agencies at local and national level, mayors can ensure that there is a more holistic, unified approach to public safety.

As is required by Section 113 of the Local Democracy, Economic Development and Construction Act 2009, the Home Secretary launched a public consultation on the proposed West Midlands police and crime commissioner functions transfer on 20 December 2023, which ran for six weeks to 31 January. Over 7,000 responses were received to this consultation, and the Home Secretary considered the views gathered when deciding whether to lay this order enabling the transfer of PCC functions to the Mayor of the West Midlands.

It is the Government's view that incorporating PCC functions into the role of the Mayor of the West Midlands, who is elected to deliver across a range of other functions, will bolster their mandate to bring greater joined-up access across the responsibilities they are accountable for and will help to facilitate a whole-system approach to crime reduction.

Lord Grocott (Lab): While the Minister is on the consultation, could he conclude it by telling us the number of consultees and the responses that they gave, and can he give us some numerical attachment to that so that we get some idea of how the consultation went?

Lord Sharpe of Epsom (Con): I can and will do so shortly.

Incorporating the PCC functions into the role of the Mayor of the West Midlands preserves the democratic accountability that underpins the PCC model and at the same time reduces the risk of competing democratic mandates within the West Midlands Combined Authority area, providing greater clarity for the electorate on who is responsible for public service functions in their area.

The exercise of PCC functions by the Mayor of the West Midlands is a significant step to realising our ambition for more combined authority mayors to take on PCC functions, as is already the case in Greater Manchester and West Yorkshire. It will mean that people in the West Midlands will be served by a mayor who will have a range of functions and levers comparable to those of the mayors of Greater Manchester, West Yorkshire and London, and they will be able to hold their mayor to account for this enhanced range of responsibilities.

[Lord Sharpe of Epsom]

The Government have also laid a similar order which, if approved by both Houses, would see PCC functions exercised by the Mayor of South Yorkshire, following the rescheduled mayoral election in May.

I turn briefly to the amendment tabled by the noble Lord, Lord Bach. The noble Lord states that the transfer of functions is taking place without the consent of the other relevant local authorities. When PCC functions are transferred to be exercised by an existing combined authority mayor, Section 107F of the Local Democracy, Economic Development and Construction Act 2009 requires the consent of that mayor to enable the making of the order. The Mayor of the West Midlands provided his formal consent to the Home Secretary on 7 February. The consent of any other local leader is not required by statute. This reflects the fact that it is the mayor themselves and not the combined authority or the leaders of the constituent authorities who will exercise the PCC functions, as it is a central tenet of the PCC model that only the individual elected to exercise the PCC functions may do so, whether that individual is a PCC or a mayor.

The noble Lord also states that the functions are being transferred without the consent of the people of the West Midlands through a vote, but the incumbent Mayor of the West Midlands was elected to office by the people of the West Midlands in May 2021. Arguably, this means that the mayor has a clear democratic mandate in the region, and, as indicated, he has consented to this order. Should the House pass this order, it will then be directly in the control of the people of the West Midlands to elect the individual they wish to see exercise the functions of the PCC at the May election. The Government are doing nothing to take that ability away from the electorate with this order; we are simply transferring the exercise of policing governance functions from one directly elected role to another.

Finally, the noble Lord has highlighted the Secondary Legislation Scrutiny Committee's report on this order, and specifically its finding that an initial decision was made by the Home Secretary to transfer the functions before a public consultation had been conducted. It is true that the Home Secretary communicated an initial decision to the mayor and the PCC for the West Midlands on 6 December. The Permanent Secretary's response to the committee's letter has addressed this concern, but for the benefit of the noble Lord and the House, I will also address it.

At the time of the Home Secretary's decision, the requirement of Section 113 of the 2009 Act to conduct a public consultation was not known to him. It had not been the Government's intention for the levelling-up Act to place a new statutory test and a consultation requirement on the power to transfer PCC functions to combined authority mayors. However, as soon as the Home Secretary was made aware of this requirement, he launched the six-week public consultation on the proposed transfer and agreed to retake his decision only after he had given due regard to the responses to the public consultation and he was satisfied that the statutory requirements of Section 113 had been met. The decision to make this order was taken on 6 February and supersedes the decision that was communicated on 6 December.

If noble Lords will bear with me a second, I will try to find the relevant statistics, as asked for by the noble Lord, Lord Grocott. I know I have them in my winding-up notes—I will find them in a second.

It is unfortunate that the initial decision was made without knowledge of the statutory requirements, but the appropriate steps were taken to ensure that the decision to make this order was not made until the requirements had been met. I am satisfied that the Home Secretary acted well within the legislation as soon as he became aware of this initial oversight. I call on Members of your Lordships' House to reject the amendment tabled by the noble Lord. I hope that what I have said provides some reassurance and clarity.

I thank the House for its indulgence; I have found the numbers, with thanks to the noble Lord, Lord Gascoigne. The public consultation ran from 20 December 2023 to 31 January 2024. The Government's response to the consultation was published when this order was laid before Parliament. The total number of responses received was 7,103—a good deal more than those received by other consultations relating to devolution proposals. Of those responses, 46% agreed with the proposal, 50% disagreed and 4% said that they did not know. I beg to move.

Amendment to the Motion

Moved by ***Lord Bach***

At end to insert "but this House regrets that the draft Order entails the transfer of power being completed without the consent of other relevant local authorities; and notes that the Secondary Legislation Scrutiny Committee concluded that the public consultation required by law was not commenced before an initial decision was made."

Lord Bach (Lab): My Lords, in short, my amendment is based on two separate but interlocked criticisms of the Government and their conduct. First, I argue that the Government, in their desire to see the current Mayor of the West Midlands add the role of police and crime commissioner to his already extensive portfolio, have deliberately subverted the principle that they themselves put into earlier legislation: that there should be real democratic support before such a fundamental change. In other words, proper consent for such a course was considered essential before such a transfer of power could take place. That has not happened here, as a deliberate part of the Government's strategy.

Secondly—and here the Home Office is the main culprit—the timing of and background to this statutory instrument have been rightly criticised by the Secondary Legislation Scrutiny Committee. In an extremely critical report, the committee points out what can only be described as incompetence by the department. The headline of a release put out by the committee to accompany its 15th report put it like this: "Elections potentially undermined by poor process, says Lords Committee". The release said that:

"The Committee expressed concern that both Orders have been laid before Parliament close to the intended date of the next election (2 May 2024), less than the minimum six months in advance that is regarded as good practice".

These two points combined will, I hope, persuade the House to say that this behaviour all round should be deprecated.

I will give a little more detail. In exactly 50 days, on 2 May, there will definitely be an election for the Mayor of the West Midlands. The present incumbent is a Conservative. On the same day, and with the same electorate, covering exactly the same area of Britain, there may be an election for the stand-alone role of the police and crime commissioner for the West Midlands. The present police and crime commissioner, elected some years ago, is Labour.

I put it like that because, yesterday, the Administrative Court heard a judicial review brought by the police and crime commissioner for the West Midlands against the Home Office. At the end of the day, the judge reserved judgment until 18 or 20 March. I am not going to say any more about that court case, which has nothing to do with us—we are Parliament, and it is the judge who will make up his mind—but that is why the matter is not resolved legally yet, and I am here to argue that what has happened in the past means that we should regret this statutory instrument.

The mayoral election will be on 2 May but the election period, as far as electoral administrators are concerned, runs not from 2 May but from 21 March—literally eight days' time. I am advised that electoral administrators in the West Midlands just do not know where they stand, and one can imagine their frustration.

It is obviously beyond argument that all this arises from a deal cooked up some time ago between the Government and the mayor. The mayor wants to be the police and crime commissioner and the Government want it too. Up until the Levelling-up and Regeneration Act, he could have had that role if the local authorities that make up the combined authority, and the other local authorities in the West Midlands region, had given their consent. That is what happened in Greater Manchester and West Yorkshire, and that is what is going to happen in South Yorkshire. In these areas the combined authorities were in favour, as in fact were the police and crime commissioners, but that was not so in the West Midlands. The combined local authorities, on every occasion that they have been asked, have been opposed. So the mayor gets the Government to change the law, in a very short clause in a very large Bill—now Section 62 of the levelling-up Act.

8 pm

Forget the general, region-wide consent that was part of the devolution deal when the West Midlands came under the auspices of a mayor; part of that deal was that there should be broad democratic support. Now all that is required is the consent of the mayor—yes, really, the only person who has to consent is the person who wants the job. That is not consent in any real sense; it is the precise opposite—it is Newspeak language. It is not that broad democratic support that the Government once believed in—it is very nice work if you can get it. Many politicians, of the sort that we soundly and gravely criticise in this House, day in and day out, from other countries, would stand up and applaud this achievement; it is what happens in countries where democracy counts for little: it should not be happening here.

As the noble Lord, Lord Kerr of Kinlochard—I am very glad to see him in his place—said on 23 October, when I do not think he was fair on himself:

> "I know very little about the politics and governance practices of the West Midlands, but when I lived in America I was privileged to watch at close hand the governance practices of the Deep South and of Mayor Willie Brown's San Francisco and Mayor Daley's Chicago. As I listened in both the previous debate and this afternoon to the noble Lord, Lord Bach, explaining what looks to me like a rather unusual practice developing in the West Midlands, I was strongly reminded of the practices of state governments in the Deep South of the United States. I do not think that is a road we should go down".—[*Official Report*, 23/10/23; cols. 416-17.]

Why has it taken so long to bring this statutory instrument before Parliament? After all, as the Government Minister said during ping-pong on 23 October:

> "Commencement at Royal Assent enables the Government to adhere as closely as they can to the Gould principle of electoral management, whereby any changes to elections should aim to be made with at least six months' notice".—[*Official Report*, 23/10/23; col. 418.]

This section of the new Act came into being immediately on Royal Assent, and the Home Secretary agreed to the mayor's proposals and publicly said that the statutory instrument would be provided very soon. However, that statutory instrument never emerged: why? Simply because the Government failed to read its own Act of Parliament, which received Royal Assent less than six weeks after it had been passed. They had not noticed that there was a section that made it clear there needed to be a consultation before Section 62 could be implemented. Thus, the Home Secretary's decision was invalid and had to be scrapped.

That was an extraordinary mistake, particularly for a statutory instrument that was already tight up against the date of the election. Only this morning, our scrutiny committee in this House published an additional short report, following an exchange of letters with Home Office officials and Ministers, and it repeated its description of what had taken place as "extraordinary". Consultation was rustled up at short notice to last between 20 December and 31 of January—just think of those dates. It started almost as our Christmas holiday began and went right through the New Year break, so it was not surprising—here I disagree with the Minister—that the response was hardly heavy. To add insult to injury, as has been found out this evening, the result was against this change, although of course I do not make too much of that point.

Predictably, the Home Secretary gave permission again for the transfer of power. This statutory instrument followed, and the Government are up against this very tight timetable that is entirely of their own making. Those who have read the scrutiny committee's report will know there were other issues that concerned it, but the most concerning is that the Act of Parliament was not properly read by the Government, and thus this situation arises.

I agree and argue that the House should regret this statutory instrument on two grounds. I believe the throwing out of democratic norms in order to give your mate a job that he wants is the most grievous ground for the regret amendment. We should regret this statutory instrument both for the liberties it is taking with our democratic arrangements and for the mismanagement that means no one in the West Midlands

[LORD BACH]
knows, just 50 days before the election, how many elections there will be and who the candidates are. The House should surely say, "This is just not good enough". I beg to move.

Lord Shipley (LD): My Lords, I thank the noble Lord, Lord Bach, for his devastating critique of this draft order. I have spoken many times in this Chamber on the need for combined authorities to have the consent of the public for what they do and for the decisions that they make. This includes appropriate and effective consultation and proper management of scrutiny, audit and risk of those combined authorities. As the noble Lord, Lord Bach, said, this draft order entails the transfer of power being completed without the consent of the other relevant local authorities and notes that the Secondary Legislation Scrutiny Committee concluded that the public consultation required by law was not commenced before an initial decision was made.

As the noble Lord, Lord Bach, drew our attention to, in the 17th report of the Secondary Legislation Scrutiny Committee, it is very clear that the Government have not understood the implications of their own legislation in the levelling-up Act. Secondly, it is very surprising that, when the consultation was done, the changes were opposed by a majority of residents expressing a view in public consultations and by other prominent figures in the West Midlands. This is simply unacceptable behaviour and, if the noble Lord decides to press his amendment to a vote, this side will support him.

Baroness Butler-Sloss (CB): My Lords, I come entirely fresh to this issue, but I would like to ask the Minister: what on earth is the point of a consultation if the majority says one way and the Government take no notice?

Lord Hunt of Kings Heath (Lab): My Lords, the noble and learned Baroness has put an important question to the Minister, and I thank my noble friend Lord Bach for fighting on with this case with such determination for over a year.

I want to make three points. First, the original legislation required that the consent of the local authorities within the combined authority was given for such a move to be made. Mr Street made a number of efforts to persuade the local authorities in the West Midlands to give their consent, but they did not do so. The Government then came along and said, "Oh, we'll just change the law then", and determined that if Mr Street wants to do it then they would let him do it.

Of course, the Government have form. At the same time, they also connived with Mr Street to try adding Warwickshire into the boundaries of the West Midlands Combined Authority for the election coming up on 2 May. Mr Street, knowing that he is staring defeat in the face, was desperate to increase the electorate from the shire county. Fortunately, and understandably, opposition within Warwickshire meant that this had to be withdrawn.

But Mr Street is determined to get something out of the wreckage of those proposals. If the Government have their way, he will be the police and crime commissioner. No evidence whatsoever has been given, apart from the holistic approach that the Minister talked about, to support why the police and crime commissioner role should be abolished in the West Midlands—no metrics, no data, no evidence base.

The irony is that the Minister talked about us having greater accountability. That is absolute nonsense. We all know what happens. When a mayor becomes a police and crime commissioner, they appoint a deputy to oversee the policing. The deputy deals with 99% of the policing issues and is accountable only to one person —the mayor—not to the people of the West Midlands. This is what is happening here.

I pay great tribute to the scrutiny committee, chaired by the noble Lord, Lord Hunt of Wirral, for its assiduous work in this area. The committee has given the Government and the Minister's department one of the most excoriating criticisms that I have seen for how this has been handled. The Government did not even know the implications of their own legislation that they passed only a short time ago, yet the excuse from the Home Office Permanent Secretary—talk about a collective corporate government response—was to blame the local government department. It is extraordinary behaviour, including executive arrogance and executive incompetence. I hope that noble Lords will thoroughly support the amendment moved by my noble friend Lord Bach.

Lord Scriven (LD): My Lords, the arguments about local democracy being completely ignored have been very professionally made by previous speakers. I follow the noble and learned Baroness, Lady Butler-Sloss, in her assessment. What is the point of consultation if the Government ignore it?

The Government's argument, in their response to the local consultation, was that

"mayors who exercise PCC functions have wider levers"

to join up delivery in tackling crime and securing public safety. If that were the case, West Yorkshire and Greater Manchester would have lower levels of crime than the West Midlands and those areas without combined mayors and PCCs, but if you look at the figures, it is exactly the opposite. Last year, the average crime rate per 1,000 population in England and Wales was 93.6 crimes per 1,000 population; Greater Manchester's was 129.7 per 1,000 population, and West Yorkshire's was even higher at 138.8; the West Midlands was below both of them. Therefore, the Government's response, that having these roles combined makes places safer with less crime, is shot by the Government's own statistics. What metrics are the Government using to say that these combined roles create less crime and make people safer?

Baroness Jones of Moulsecoomb (GP): My Lords, I support the noble Lord, Lord Bach, despite not liking regret amendments, which are a legislative equivalent of saying "tut-tut". What is the point? I also do not like the police and crime commissioner system. It is not as well overseen as the previous system of local police committees and was yet another government mistake. However, I will vote for the regret amendment.

The Green Party was opposed to police and crime commissioners because we feel that police forces should be supervised and accountable to elected local government. It is more immediate and more responsive with councillors.

However, it could be said of most police and crime commissioners at the moment that, although it is an elected position, as far as politics is concerned, they are semi-skimmed—they are rather thin milk. They are independent—often former police officers, even a priest—and they have used their expertise to serve their communities. Transferring those powers to an elected mayor, especially over such a large, combined pair of authorities will turn these functions into the hands of one single full-fat politician. That is simply too much power in one pair of hands. The move towards directly elected mayors and these mega-authorities is already combining too many powers into one executive who is subject to very little scrutiny. That is one of the really big problems with this.

8.15 pm

As the noble Lord, Lord Hunt, mentioned, there will be a diluted focus on the police and what they get up to because we will almost certainly have a deputy mayor who has no public mandate at all and might not have the relevant skills. The policy is rubbish, the process is even worse and the timing is—I nearly swore—pretty rubbish as well. The Government are rushing through legislation.

This should force your Lordships' House to think about our role. What other things might this Government force through? If your Lordships' House and, in particular, the Official Opposition, decide not to stop any legislation from the Government, at what point could we say that while we might be unelected we are the only people left who can actually defend democracy?

Lord Snape (Lab): My Lords, as a resident of Birmingham, a few weeks ago a publication called the *Birmingham Champion* came through my front door. My noble friend Lord Bach referred to the Mayor of the West Midlands as a Conservative. He and I know that he is a Conservative because we take an interest in these matters. The *Birmingham Champion* is all about the mayor. The one word that is missing from it is "Conservative", except for one mention—I must be frank about this. With my best spectacles on and under a bright light, I find that the printer's imprint says, "On behalf of the West Midlands Conservative Association", but there is no other mention of the Conservative Party. There are no less than seven pictures of the mayor and six stories where he claims the credit for saving the European championship, a training revolution with 100,000 new jobs, bus passenger numbers rising and routes protected. I used to be chairman of the bus company. I had not realised that the mayor had so much power.

Lord Gascoigne (Con): I hate to have to do this, but I ask the noble Lord to pay attention to what is in the *Companion* about the use of props when giving speeches. It is not advised. With respect, can he please give his speech—

Noble Lords: Oh!

Lord Gascoigne (Con): Order. I am quoting what is in the *Companion*.

Lord Snape (Lab): I need no lectures from the party opposite about propriety. I have been in this Chamber for a lot longer than the noble Lord. Can he sit down and hear me?

Lord Gascoigne (Con): With respect, order. I am not giving a lecture from the Conservative Party Benches but about what is in this book—which is not written by the Conservative Party. Please, bear with me. In chapter 4 of the *Companion*, which is not written by any political party, paragraph 4.19 says:

> "Members should not bring into the Chamber … books and newspapers".

I do not mind the noble Lord making his points but, with respect, please do not do this.

Lord Snape (Lab): The noble Lord has wasted quite a few minutes telling me that. It is not a newspaper; it is a publication on behalf of the Conservative Party, but I will cite it from memory: seven different pictures of the mayor and six stories for which he claims credit—over which the mayor has little power, but that has not stopped him. Now he wants to take on the police and crime commissioner's role. I ask noble Lords how he can fit that role in given all his other duties.

I remind the party opposite, particularly the Minister, that the Labour police and crime commissioner was elected in a democratic election in 2021. The proposals from the Government to merge the two jobs are typical of their attitude towards democracy. When it comes to national elections, the Government insist, with no evidence to back it up, that identification must be provided. When it comes to elections in this city, they change the system. They cannot win in a PR system, so they insist on first past the post. This, in the West Midlands, is just another example of their cavalier behaviour regarding democracy.

I repeat that I do not believe that the mayor and the crime commissioner are roles that should be combined. The mayor insists that the West Midlands Police being in special measures is somehow the fault of the police and crime commissioner. Both sides of this House know full well that the police and crime commissioner has no operational control over the police force. That the police force is in special measures is in no way related to the capabilities of the police and crime commissioner anyway.

What worries me about this power grab on behalf of the Conservative Party is where we will go as far as the West Midlands is concerned if the jobs are combined and the police and crime commissioner finds that he does not have the time or space to do the mayoral role as well. Obviously, given that the Government have already overthrown—or intend to overthrow—the result of an election, the answer is not very far.

I have a vision of the future so far as the West Midlands is concerned. I do not know whether the West Midlands Police band is still in existence, but given the propensity for publicity of the outgoing mayor, I can imagine that band, if it exists, marching down Broad Street in Birmingham, led by the mayor and police and crime commissioner in his best uniform banging a big drum to a patriotic tune—"Lillibullero" perhaps—and blowing his own trumpet in the way that only he can.

This is a power grab; it ought to be resisted, and I will be supporting my noble friend's amendment. I am grateful for the reference to the *Companion* from the noble Lord opposite. When he has been here a few more years, he might know better.

Lord Kerr of Kinlochard (CB): My Lords, I was alerted to this strange case by the noble Lord, Lord Bach, when he raised it in our debates in October. I still know very little about it that I have not learned from his speeches, and from the excellent report by the Secondary Legislation Scrutiny Committee under the noble Lord, Lord Hunt of Wirral. It is a very strange story and I worry that I am beginning to think I am getting cynical in my old age.

The Home Office tells us that the purpose of the exercise is to create a joined-up approach. I do not think this is about joining up; it is about stitching up. It seems to me that the purpose of the exercise is to connive at the hostile takeover that the mayor wants to conduct. I am not sure that we should be conniving.

There is another issue as well, which is the role of the Home Office. Thanks to the Secondary Legislation Scrutiny Committee's pursuit of the matter, we have a marvellous "Sir Humphrey" letter from the Permanent Secretary in the Home Office—this is an area in which I do have expertise. It is a wonderful letter that reveals that in the Home Office—how should they know?—they were completely unaware of the requirement for a consultation. They were totally in the dark, because those rotters down the road at the levelling up department failed to tell them—shocking. Did they not read the speech given by the noble Lord, Lord Bach, on 23 October? We voted on the matter, and he spoke particularly on this case—this was the case he drew to our attention. Do they not read *Hansard* in the Home Office?

I think this consultation was a sham. I think that the Home Secretary did not care what it revealed, because as soon as he got the answer and the answer was, on the whole, "No, we'd rather not—forget it", he immediately proceeded to approve the hostile takeover. He just picked up his decision from December and, within days of receiving the outcome of the consultation, he said, "Well, I don't really care what you think; we're going to go ahead and do this". He was conniving at a stitch-up; I do not think that we should connive at a stitch-up, so I shall support the noble Lord's amendment.

Lord Sahota (Lab): My Lords, most of my points have been made, but I will make just one or two. First, when a PCC election happened in 2021, the PCC said clearly in his manifesto that there should be a free-standing PCC and that the PCC should not be taken over by the mayor. He supported that position, but his opponent said that he disagreed and that the role should be taken over by the mayor. He made it quite clear during the last election that this is what he supported.

My second point—most of it has been made—is that, during the public consultation last January, the present PCC asked the mayor for a public debate on this issue, but the mayor chickened out. He would not come out and debate with the present PCC on it.

Thirdly, this decision by the Home Secretary is contrary to the Gould principles and the Electoral Commission that before any changes to the election system there should be at least six months' notice—that is not there. Those are my points, and I will support the amendment put forward by the noble Lord, Lord Bach.

Lord Lexden (Con): My Lords, I came slightly late to the debate—for which I apologise—and, because of that, I shall be extremely brief. I have listened to all that has been said. I have looked very carefully at the excellent report by our all-party Select Committee with the noble Lord, Lord Hunt of Wirral, in the chair, and I find it quite impossible to suppress feelings of deep disquiet and concern about the way the Home Office has conducted itself in this matter.

Baroness Pinnock (LD): My Lords, I am very pleased that the noble Lord, Lord Bach, has again brought the attention of this House to this difficult issue.

I want to emphasise just three points. First, in this country, we have a noble approach to policing, which is policing by consent. It seems to me that policing by consent should also include policing by consent of our elected local representatives. In this case, that is clearly not there. All the constituent authorities agreed to oppose this merger—this amalgamation—of the two roles.

My second point is about local accountability. We know that the police service in the West Midlands spends a great deal of local public money, and there ought to be local accountability. I live in West Yorkshire, so I know how this will operate. The elected Mayor of West Yorkshire has also taken over the role of the police and crime commissioner and has appointed an unelected person to fulfil the role of what was formerly an elected police and crime commissioner, at a considerable salary.

The only way that local people can call to account the policing of their area is through the police and crime panel, which, as the Minister read out, has some quite limited powers to do so, including looking at the policing plan, which is drawn together by the police and crime commissioner or the mayor and the chief constable, and checking whether they are fulfilling it. That is inadequate, when those people are seeking to reduce crime and safeguard the lives of local people. Policing by consent has failed in this instance and accountability is totally inadequate.

8.30 pm

My third point is about process. I am not a great one for process and I admire people who follow it closely. This report from the Secondary Legislation Scrutiny Committee is the most excoriating report that I can remember reading. At every stage of this process, the committee has condemned what happened in the politest way that it can, but we can read between the lines. We know it is saying that it is inadequate that due process has failed. If we are to have a Government on whom we can rely to follow the rules, they have failed. If they have failed and have been found out, which they have, they need to put their hands up, say they are sorry and that they failed, and withdraw this decision to amalgamate the PCC with the elected Mayor of the West Midlands.

All of us on these Benches will support the noble Lord, Lord Bach, if he wishes to test the opinion of the House on this matter, but I urge the Government to listen carefully to what has been said on every side of the House about how this decision has been made and resolve to go back to the Home Office to say, "This will not do; we will have to think again".

Lord Ponsonby of Shulbrede (Lab): My Lords, we on this side of the House consistently support directly elected mayors. We also support them having police and crime powers when boundaries make this appropriate. However, it is not a remarkable point to make that we also believe that, first, the Government should act within the rules set out for them and by them; secondly, that local leaders should be brought along with any proposed changes; and, thirdly, that due and democratic processes should be respected and that consultations should be entered into in good faith, with the intention of listening and reporting back to Parliament in a transparent manner.

It is right that the Government explain not only the initial oversight in terms of the statutory duty but the manner in which the consultation took place. I request that the Government outline how they plan to make this right with local leaders in the region to make it clear to everyone where they now stand, and what will happen to regain the confidence of the people of the West Midlands. Will the Minister commit to further consultation? More widely, and with more regulations to come, I ask the Minister to outline how he will ensure that this approach will not be repeated.

Proper devolution demands that the Government work with local communities and bring on widespread support to produce outcomes that are right for their areas. It also demands that government acts effectively across departments when issues cross Whitehall boundaries. How will the Government ensure that this is done in future?

Of course, we will support my noble friend. He gave a devastating speech when he introduced his amendment. I look forward to the Minister's response.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords for their contributions. I will do my best to address as many of the points that have been raised as possible.

It is worth recognising the support from the Government and the Opposition in the other place for the policy of enabling more directly elected mayors to exercise PCC functions, as the noble Lord, Lord Ponsonby, just noted. As I outlined in my opening remarks, the exercise of PCC functions by the Mayor of the West Midlands will be a significant step forward to realising the Government's ambitions, as set out in the levelling up White Paper, for more combined authority mayors to take on PCC functions, as is already the case in Greater Manchester and West Yorkshire, and will be the case in York and North Yorkshire from this May. We have also introduced a draft order to achieve this outcome in South Yorkshire.

It is the Government's view that bringing public safety functions under the leadership of a combined authority mayor, where it is possible to do so, has the potential to offer wider levers and a more joined-up approach to preventing crime. It places the PCC model and functions at the heart of a wider set of responsibilities for improving public services, exercised by an individual who will be directly answerable to the community that will elect them. It not only preserves the democratic accountability that underpins the PCC model but with an expanded role for the mayor comes a higher public profile, increased visibility and a greater ability to bring about local change.

The fundamental aim of the order is to incorporate the PCC model within the role of the mayor, maintaining the core principles of governance and accountability. The Government want to seize the opportunity to bring together in one elected role the responsibility for public safety and local regeneration for the people of the West Midlands.

In areas where there is a PCC and a mayor, both elected separately by the same constituency, it can confuse democratic mandates and create barriers to joined-up delivery across a range of public services for those communities. The statistics the noble Lord, Lord Scriven, cited do not take into account local circumstances and, therefore, comparisons have limited utility. None of this means that the West Midlands could not still be safer and have less crime under the new proposed system. Incorporating the PCC functions in the office of mayor creates an opportunity to clarify and enhance the mandate of that elected individual to make a greater impact across a range of public services.

As I set out in my introductory speech, the Home Office ran a public consultation on the proposal to transfer the PCC functions. The purpose of the consultation was to provide the Home Secretary with information to help his decision on whether to proceed with the legislation before us now. While the numbers for and against the transfer were taken into account by the Home Secretary, the most helpful aspect of the consultation, for the purposes of making the decision, was the information provided in the responses. The Home Secretary's decision was informed, but not bound by, the responses to the consultation. In making his decision, the Home Secretary also had regard to information concerning the statutory tests and duties relevant to his decision. Ultimately, the Home Secretary is satisfied that the making of this order meets the statutory tests required of him. I say to the noble and learned Baroness, Lady Butler-Sloss, that this was not a referendum. He took note of all the information and made his decision; the information is not binding.

The Levelling-up and Regeneration Act 2023, specifically Section 62, has come up. That amended the consent requirements for the transfer of PCC functions to existing combined authority mayors and, instead of the previously required consent of the mayor, the constituent authorities and the combined authority, only the consent of the existing mayor is required to make an order enabling the transfer of the functions. This was decided by Parliament.

The Government have been clear that the PCC functions may transfer to a mayor only at the point of a mayoral election; this ensures that mayors are elected on the basis that they will be exercising PCC functions, maintaining the democratic principles of the PCC model. If this legislation is approved by both Houses, both the incumbent mayor and the PCC would complete their existing terms of office, and on 2 May the West Midlands electorate will select a mayor on the basis of them exercising PCC functions, providing them with a democratic mandate. The noble Lord, Lord Hunt of Kings Heath, asserted that Mr Street will be the PCC, and I sincerely hope the noble Lord is right, but he will have to make his case to the electorate and they will determine "who is mates with who", to quote—I forget who.

[Lord Sharpe of Epsom]

It may already be known to this House—I think the noble Lord, Lord Bach, referred to it—that the judicial review launched by the West Midlands Police and Crime Commissioner on the public consultation and subsequent decision to transfer the PCC functions to the mayor was heard by the courts yesterday. Judgment will be reserved until next week, so I cannot prejudice those ongoing proceedings, but the Government strongly defended the claim made by the PCC. We are confident that the public consultation was robust and the Home Secretary's decision to enable the transfer was lawful.

Regarding the extent to which this transfer upholds democracy, the Government have always been clear that PCC functions can transfer to a mayor only at the point of the mayoral elections, as I have just said. The way this order enables the transfer is no different; the first mayor to exercise the functions will not do so until the May 2024 elections have taken place and they have taken office—I believe on 7 May. The West Midlands electorate still has the ability to decide who they wish to see exercise these PCC functions. The Mayor of the West Midlands will be elected in May on the basis of exercising those.

A number of noble Lords raised concerns that a mayor may—I use the word "may" carefully—appoint a deputy mayor to support them in the exercise of the PCC functions. It was argued that this might be a dilution of the mandate and accountability of the role. At this point, I note that the current PCC has appointed two assistant PCCs. Mayors who exercise PCC functions can appoint a deputy mayor for policing and crime, but this is something that PCCs may also do, as I have just said. The ability to appoint a deputy does not shield mayors from scrutiny at the ballot box; the mayor will be held to account for the performance of a deputy they may appoint to support them. Also, not all PCC functions can be delegated to the deputy PCC; by statute, certain key strategic functions, such as the issuing of the police and crime plan, the appointment and suspension of a chief constable, and calculation of a budget requirement, may exercised only by the mayor themself.

All noble Lords noted the Secondary Legislation Scrutiny Committee report on this order, and the concerns raised in that report. I know the committee has written to the Policing Minister and the Permanent Secretary to express its concerns. I understand that both the Minister and Permanent Secretary have responded to those letters. The committee raised concerns about what it considered to be the "selective reporting" within the Explanatory Memorandum that accompanies this order, and I know that the Policing Minister has responded to address these concerns directly. But I would like to make it clear that the Explanatory Memorandum did not deliberately withhold information in any sort of attempt to selectively report the responses to the consultation and the views of stakeholders. As is best practice, the documents clearly outline the views raised as part of the consultation process, both in support of the transfer and those that raised concerns. The document also signposts readers to the Government's response to the consultation, which has been published on GOV.UK. It goes into further detail on the concerns raised by respondents to the consultation and the Government's response to those concerns.

As regards to the timing of the order, raised by the noble Lords, Lord Bach and Lord Sahota, I would like to address those points, particularly in relation to the Gould principle of electoral management, as referred to by the noble Lord, Lord Sahota. Where possible, government aims to ensure that any legislative changes to elections are introduced at least six months in advance of those elections, to give all those involved appropriate notice. In the case of the West Midlands, government was not able to lay the order six months in advance of the May 2024 elections. Every step has been taken to lay as early as possible, and I know officials have been closely engaged with partners in the West Midlands Combined Authority and the office of the PCC throughout the process, to keep them informed as much as possible. I hope noble Lords will support the order, so we can get one step closer to providing clarity to the local area, and enable it to deliver orderly elections in May. As the noble Lord, Lord Bach, noted, as long as that is done by 21 March, all is in order.

A question has been raised about why the Home Secretary took the original decision to proceed with the transfer before the statutory requirements were met. As soon as the Home Secretary became aware of the statutory requirements of the 2023 Act, he launched a public consultation and made it clear that he would retake his decision after he had had due regard to the responses and after he had considered whether the making of the order would meet the statutory tests. The order was therefore not laid before Parliament until the Home Secretary was satisfied that the statutory requirements of the 2023 Act had been met. I hope I have dealt with the key points that have been raised. Again, I thank all those who participated. I beg to move.

Lord Bach (Lab): My Lords, I thank all noble Lords who have taken part in this lively and interesting debate. I am very conscious of the time. I particularly thank the Minister, who had a difficult case to put and did it with politeness and good humour. I also thank Members of the House who have been present, as well as those who have spoken. I will not reply to the comments as I think the case has been made. I wish to test the opinion of the House.

8.45 pm

Division on Lord Bach's amendment

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Amendment agreed.

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Motion, as amended, agreed.

Prisons and Probation: Foreign National Offenders

Statement

The following Statement was made in the House of Commons on Tuesday 12 March.

"With permission, Mr Speaker, I shall make a Statement about criminal justice in England and Wales.

Keeping our people safe requires a relentless focus on cutting crime, cutting reoffending, and making sure that those who pose the greatest risk are imprisoned for as long as necessary to protect the public. That is why it is welcome that crime has fallen significantly over the last decade, in particular with falls of over 50% since 2010 for offences of violence and burglary. In addition, the reoffending rate has fallen over the last decade from 31% to 25%. That has happened not by accident, but as a result of prioritising measures ranging from the tagging of acquisitive offenders post-release, to giving the police the powers they need such as stop and search.

At the same time, to take the worst offenders out of society for longer, we have taken action on sentencing, and those committing the most serious crimes are being sentenced to 40% longer behind bars. That is because, first, we acted to end the injustice of automatic release at the halfway point for the worst offenders. Instead of getting out at the 50% mark come what may, serious sexual and violent criminals must now serve at least two-thirds of their sentence in custody. Rapists are now serving nearly three years longer on average than they did in 2010, and we are going even further by legislating to ensure that rapists serve their whole term behind bars.

Secondly, we have increased sentence maximums for the worst offenders, such as those who cause death by dangerous driving or who cause the death of a child; and, as a result of our reforms currently before the House, those who kill in the context of sexual or sadistic behaviour will in future expect to spend the rest of their natural lives behind bars. Life should mean life for those who commit the most heinous crimes.

Thirdly, we have introduced a power to enable the Secretary of State to block the release of offenders such as Robert Brown, where release would pose an unacceptable risk to society.

Meanwhile, we are pushing ahead with the biggest prison building programme since the Victorian era. We are on track to deliver 10,000 new prison places by

the end of 2025 and are committed to building 20,000 places overall. Today I can announce that we are going even further to make sure that we have the prison places we need to continue locking up serious and violent offenders for longer. I want to focus in particular on foreign national offenders, whom I will call FNOs.

The number of FNOs has increased over recent years to 10,500—around 12% of prisoners—in England and Wales, at an average cost to the taxpayer of around £47,000 per prisoner per year. These foreign criminals are not only putting a strain on the public purse but reducing the capacity of the prison system. We believe that they should, wherever possible, be removed back to their countries of origin, and we have made progress: last year the Government returned from prison and the community nearly 4,000 foreign criminals, which is a 27% increase on the year before—and we are going further.

In October, I set out in the House our plan to reduce the FNO population. We have extended the early removal scheme from a maximum period of 12 months to 18 months, so that eligible FNOs can be deported up to six months earlier. Almost 400 have already been removed from the UK through this and similar schemes since January. That is a 61% increase compared with the equivalent period a year earlier. We have also signed a robust new agreement with Albania, which has restarted transfers of Albanian offenders—the largest single cohort in our prisons—and we are legislating in the Criminal Justice Bill to rent prisons overseas, as other European countries have done.

This is important progress, but we must build on it by making sure that even more FNOs are removed from the country and spurious barriers to their removal are quickly removed. I can tell the House that we will radically change the way that FNO cases are processed. We have created a new taskforce across the Home Office and Ministry of Justice, including the Prison Service, Immigration Enforcement, and the asylum and modern slavery teams. We have surged 400 additional caseworkers, who will be in place by the end of March, to prioritise these cases, and we will streamline the end-to-end removal process.

We are also expanding the number of FNOs we can remove—for example, by bringing forward legislation to allow us to remove foreign offenders with limited leave to remain under conditional caution, and amending our deportation policy so that we can remove those on suspended sentences of six months or more. We are making more use of the diplomatic levers we have to remove people back to their home countries, including by expediting prisoner transfers with our priority countries; concluding new transfer agreements with partner countries such as Italy; and being prepared to make use of the powers provided under the Nationality and Borders Act 2022 to restrict visas for any country where no progress on FNO removals can be made. That will allow us to deport more FNOs directly from prison in 2024—more than double the 1,800 we removed last year and more than in any year since 2010.

Let me now turn to the unsustainable growth in our remand population since the pandemic and the Criminal Bar Association action. This is important. When Covid hit, we were confronted with two momentous judgment calls. The first was whether to order mass release of prisoners. Public health advice in this country, as in many others, was to release thousands and thousands of prisoners, given fears that the pandemic would rip through the prison estate and take countless lives. We declined to do that, and in the event—although every death is of course a tragedy—the total number of lives lost in prisons was under 200, thanks to the excellent efforts of His Majesty's Prison and Probation Service officers. Other nations took a different approach. In America, where I discussed the matter recently with my counterparts, tens of thousands were released; in California alone, the figure was 11,000. In France, nearly 13,000 were released. It is for each nation to take their own course, but I am clear that we made the right decision for public safety in our country.

The second judgment call was whether to heed the clamour to end jury trials. I believe that would have been a grave mistake, shattering a fundamental British freedom and dismantling the centrepiece of our justice system. The decisions that we made were right for access to justice, right for public protection and right as a matter of principle, but have contributed to the increase in the number of defendants held on remand while awaiting trial or sentencing by over 6,000 since 2019 to about 16,000 today.

Let me turn to what we are doing. On pre-trial detention, the Lady Chief Justice has confirmed that if bail applications are made to the magistrates' court or renewed before the Crown Court, the courts stand ready to hear them within the short time limits provided in the Criminal Procedure Rules. We are also exploring at pace with the judiciary the rollout of a remote nationwide pilot Crown Court capable of hearing new bail applications. The pilot would monitor whether these additional measures result in an increase in the use of tagging and appropriate support packages in bail applications.

To support that, the Government will invest £53 million of additional funding to expand the bail information service—part of the productivity package announced by the Chancellor at the Budget—which will enable our court system to operate as efficiently as possible by increasing the court-based staff and digital systems that can provide critical information to the judiciary, making the bail process more streamlined. To support that work, a further £22 million of additional funding will be available over the next year to fund community accommodation. We will also increase awareness about the availability of tags—especially high-tech GPS and alcohol monitoring tags—to ensure that offenders can be monitored in the community where appropriate.

We will also extend the existing end-of-custody supervised licence measure to around 35 to 60 days. We will enable that to happen for a time-limited period and work with the police, prisons and probation leaders to make further adjustments as required. That will be only for certain low-level offenders. Where necessary, electronic monitoring will be applied to enhance public protection. Ministers will, of course, continue to keep use of this measure under review. The extension has been requested and supported by leaders in the Prison Service and the police.

All these measures rely on a Probation Service that focuses its resource on the most critical points of the justice system, especially when an offender is first released from prison. In 2021, the Government reunified the Probation Service, which brought together all probation functions into a single national organisation. We have invested £155 million of extra funding each year in the service and onboarded more than 4,000 trainee probation officers since then, and I will be taking steps to refocus probation practice on the points that matter most to public protection and reducing offending.

From April, we will reset probation so that practitioners prioritise early engagement at the point where offenders are most likely to breach their licence conditions. That will allow front-line staff to maximise supervision of the most serious offenders. Similarly, for those managed on community orders and suspended sentence orders, probation practitioners will ensure that intervention and engagement is prioritised towards the first two-thirds of the sentence, as experience shows that that most effectively rehabilitates offenders. To be clear, none of the changes will apply to those convicted of the most serious offences, including those subject to Multi Agency Public Protection Arrangements.

I express my deep gratitude for the efforts of all those working in the criminal justice system: prisons, probation and courts staff, the police, prosecutors, lawyers and the independent judiciary. They are exceptional public servants. The Government will do what is necessary to remove foreign national offenders from our country and we will do whatever it takes to ensure that the British people are kept safe from the most dangerous criminals. I commend this Statement to the House."

8.55 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, prisoners will now be released not 18 days early, but up to 60 days early. No other Government have ever found themselves having to do that on such a scale. It is nearly three times the number of days on licence seen under any previous scheme. I have some questions for the Minister.

How many prisoners have been released early under the scheme to date? Which prisons are using the early release scheme? Which types of offenders are being released early under the scheme? Are domestic abusers and stalkers eligible for release under the scheme? Why has the scheme been expanded to early release of up to 60 days? Why has the scheme been activated indefinitely? Will the Minister commit to publishing all the relevant statistics about the early release scheme on the same basis that prison data is published—that is, on a weekly rather than an annual basis?

The Government tell us that they will free up more spaces in our prisons by cracking down on the number of foreign national offenders taking up space that we can ill afford to spare, when they have no right to be in this country. The Government reported that 4,000 criminals from prison and the community were deported in 2023. This number is significantly lower than the number they inherited in 2010 when the Labour Government left office; 5,383 foreign national offenders were deported back then.

Meanwhile, thousands of foreign national offenders are living in the community post release for several years without being removed. We welcome any improvement the Government intend to make on this poor record. But, if the public are to believe that any of these measures will make the necessary difference, the Secretary of State needs a more credible plan, such as a new returns and enforcement unit with up to 1,000 new staff—more than double the 400 new staff announced.

I turn to the extra spending the Government have announced for the Ministry of Justice in the Budget and in yesterday's Statement. The Budget—I quote from the Red Book—committed

"£170 million to deliver a justice system fit for the modern era. This includes £55 million for the Family Courts … £100 million into prisons to support rehabilitative activities … and £15 million to introduce digital solutions … in the courts".

In yesterday's Statement they mentioned £53 million to extend the bail information service and £22 million for community accommodation. The Statement also mentioned the £155 million per year first mentioned in 2021, three years ago, for the Probation Service. What it did not mention was any extra money for probation, with all this extra work that the Probation Service is likely to inherit as more prisoners are released on licence.

My real question is on the overall budget for justice. The Red Book says in table 2.1 that the department expenditure limits for justice for 2022-23 were £9.3 billion; that is the actual outturn. In 2023-24 it is £10.5 billion, which is the planned outturn, and in 2024-25 it is £10 billion, which means there is £0.5 billion less money for the justice system in the next two-year period. This is a cut. The Government are keen to trumpet their spending increases, but where will these cuts come from in the justice system if the Government are to stick to their budget?

Lord Marks of Henley-on-Thames (LD): My Lords, this 11-page Statement contains a series of self-congratulatory assertions from the MoJ on everything from falling crime, longer sentences, new offences and deporting foreign national offenders to the response to the pandemic. The noble Lord, Lord Ponsonby, has pointed out the weaknesses in some of those assertions. But there is one thing in this Statement that is new. Buried on page 9 is the obscure passage:

"We will also extend the existing end-of-custody supervised licence measure to around 35 to 60 days. We will enable that to happen for a time-limited period and work with the police, prisons and probation leaders to make further adjustments as required".

What a masterpiece of obfuscation.

On 16 October last, the Government announced their plan to allow up to 18 days' early release, for a limited period, to meet what they called "acute and exceptional demand". That period has now been extended indefinitely and, subject to further adjustment in future, to allow for early release between 35 and 60 days before scheduled release dates. This announcement betrays the panic in government that it has simply run out of prison spaces—and the crisis is going to get worse.

We now have a prison population of 88,220 on last Friday's figures, against a maximum operational capacity of around 85,000 men and 3,300 women. The *Daily*

[Lord Marks of Henley-on-Thames]
Telegraph reports that there are just 238 male and 118 women's places unfilled. Those figures exceed a far lower design capacity of 79,507, less than the MoJ's certified normal accommodation of 80,000. Furthermore, the few unfilled places are dotted around the prison estate, so prisoners are shuffled from prison to prison, impacting on education and training, community contacts, family visits and relationships with staff and other prisoners. Can the Minister provide figures for the extra prison transfers caused by place shortages since last October's Statement?

Then we have other harmful measures, such as the use of police cells for holding prisoners in custody. Will the Minister write to us with the statistics for the use of police cells for prisoners since the October Statement? Then there are the temporary prefab extra cells. Will he say what extra facilities for exercise, training, education and even eating have been provided for the increased numbers in the affected prisons? Then there are inevitably unexpected disasters, such as the discovery of radioactive gas at Dartmoor and the enforced closure of 184 cells between November and February.

The 10,000 new places by next year and 20,000 new places long term have been on the table for ages but, even if they all work out, they hardly scratch the surface. Increased sentences and increasing time served, loudly trumpeted in this Statement, serve only to increase the prison population, which is predicted to rise by March 2028 to a central estimate of 105,800, an increase of roughly 17,000. Will the Minister explain the maths?

Five Wells and Fosse Way, with a total capacity of 3,600, are already open and so are included in present capacity. Are they double-counted as part of the 10,000 due this year, mentioned in the Statement? Millsike in Yorkshire will open later this year and will have a capacity of 1,500. As to the remaining 10,000 places, not a brick has been laid and none is likely to be available until some time between 2027 and 2030. Gartree in Leicestershire, with a capacity of 1,700-odd, has outline planning permission but the detail has yet to be approved. Grendon in Buckinghamshire, with a capacity of 1,500-odd, has only just been approved by the Levelling Up Secretary. In Lancashire, the new prison in Chorley for 1,700 is the subject of a planning appeal which has not even commenced.

There was a consultation in 2021 about two possible new prisons at Wethersfield, near Braintree in Essex, but the MoJ says that no decision has yet been taken. Please will the Minister tell us more about the planning progress for these prisons? When is building predicted to commence? When might they open, and with how many places? Where is the budget? Have I left anything out? Again, will he please explain the maths and the figure of 20,000 for the promised new places?

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, in order to respond to the points made by the noble Lords, Lord Ponsonby of Shulbrede and Lord Marks of Henley-on-Thames, it is as well that the House reminds itself of the background against which the Government are acting: the unprecedented circumstances of the Covid pandemic. During that time, extraordinary pressure was placed on our justice system and the Government took certain difficult—but, as it turned out, wise—decisions in relation thereto.

Recognising the importance to our judicial system, to our system of justice, of jury trials, we did not suspend them. Recognising the importance of custody as one of the tools in our penal system, we did not introduce wholesale release of prisoners, as happened in other states, such as France, where 12,000 people were released from prison, I believe. Factor into that the action taken by members of the Bar in relation to their salaries, and we are in a situation where we have unprecedented strain on the system, which the Government are now seeking to work through.

That is the background to the steps that the Government are taking, bearing in mind at all times their principal desire to protect the public and to cut crime by taking dangerous criminals off the streets. That is the Government's intention, and the noble Lord, Lord Marks of Henley-on-Thames, in reference to the Statement, quoted the figure of 20,000 additional prison places. The figures are indeed stark, as both noble Lords pointed out to the House. As a result of the factors that I have mentioned, both the remand population and the recall population in prisons in England and Wales have risen.

The Government's response to this has been to push ahead with a programme amounting to the largest expansion of the prison estate since Victorian times, with 10,000 of the additional places to be delivered by the end of 2025—of which 5,900 have already been delivered. In addition—again, I recognise the questions from the noble Lord, Lord Marks, about facilities for prisoners—short-term measures have been put in place across the prison estate to expand capacity by the equivalent of around 2,000 places since September 2022. That has involved measures that would otherwise be considered undesirable, such as the doubling up of cells and the delay of non-urgent maintenance work, but the point is that these have been taken as temporary measures in relation to these unprecedented circumstances.

Noble Lords from both Front Benches referred to foreign national offenders. As the House has heard, last October, and again with a subsequent announcement this month, a series of measures has been announced to ease the pressure, including deporting more foreign national offenders and moving some lower-level offenders on to supervised licence up to 18 days before their automatic release date. In addition, our Sentencing Bill will help cut reoffending rates by creating a presumption that custodial sentences of less than 12 months will be suspended.

The work the Government will carry out includes tabling an amendment to the Criminal Justice Bill to extend conditional cautions to foreign national offenders with limited leave to remain; amending deportation policy so that foreign national offenders given suspended sentences of six months or more, up from the current 12 months, can be deported; expediting prisoner transfers with priority countries such as Albania, the country with the largest individual component within the 10,000-plus foreign national offenders currently in our prisons; concluding new transfer agreements with partner countries

such as Italy; radically changing the way in which foreign national offenders' cases are processed, creating a new task force and allocating 400 more caseworkers to prioritise these cases and streamline the process of removal.

I think it was the noble Lord, Lord Marks, once again, who referred to the end-of-custody supervised licence provisions. I have a number of observations to make on that. It is clear, in my submission, that further action is needed in the short term, and in order to do that, as the House has heard, there has been a programme to increase the number of days some lower-level offenders could be moved from prison and on to licensed conditions in the community before their automatic release date. As the House has heard, this will be increased to around 35 to 60 days. This will take place for a limited period, again recognising the current extraordinarily acute pressures on the system. We will work with the police, the prisons and probation leaders to made adjustments as they are needed.

I emphasise that this remains a temporary, targeted measure aimed at anyone convicted of serious crimes, such as crimes of a sexual nature. By "serious", I do not necessarily confine myself to seriousness in terms of sentence; there is seriousness in terms of impact. I am looking also at people convicted of stalking offences and at domestic abuse cases, not just their seriousness to individual victims but to the community at large. These will not be affected, and those who break the rules imposed will face a return to jail.

We are conscious also of the impact our changes may have on probation, so on top of the extra £155 million a year being put into the Probation Service, from April we will reset probation so that practitioners prioritise early engagement, at the point at which offenders are most likely to breach their licence conditions, allowing front-line staff to maximise supervision of the most serious offenders. In many ways, this will simply instrumentalise a process that already happens quite naturally: if a person appears to be making good progress and satisfies those responsible for his management that that is the case, it is right and proper, I submit, that their attention should be focused on persons more in need of support, rather than having support spread out across the full period of somebody's licence. That, I submit, will permit the maximisation of supervision and the most effective use of resources and time.

Reference was made to the use of police accommodation under a system known as Operation Safeguard, which is a matter of permitting police cells and other accommodation of that nature to be used in order to address acute capacity pressures caused by the barristers' strike, building upon the pandemic. Across the country, 163 cells were available under Operation Safeguard, and His Majesty's Prison and Probation Service has the authority to activate a further 200. The background to that is in relation to custody of persons being moved from location to location in order to attend court.

Other developments in hand include the rolling out of a national scheme to consider bail applications and to consider the balance as to whether bail or remand is the appropriate disposal in relation to somebody awaiting trial.

A question was posed as to the change in the point of release from 18 days up to between 35 and 60. As the House has heard, a similar scheme was operated in 2007. That scheme was different, and the early ECSL—end-of-custody supervised licence—scheme that is being introduced has a range of safeguards. The scheme operating between 2007 and 2010 released some people straight into the community without any supervision and led to the early release of some prisoners convicted of terror offences. Naturally, it is appropriate that fresh provisions look to such lessons as might be learned from previous schemes, and seek to build upon and correct them. I submit that the ECSL scheme that has been announced is different. Everyone is being moved on to supervised licence with strict conditions, including tags and curfews where necessary. The 2007 to 2010 scheme led to more than 80,000 prisoners being released; by contrast, the ECSL scheme is talking about a small proportion of people who are being moved on to supervised licence. Reflecting the concerns that I know are shared across the House about the impact on victims, complainers in crime who are perhaps affected or concerned by the possibility of release, if they have signed up to the victim contact scheme, they will be notified about an offender's release where that takes place under the ECSL scheme.

In addition, I will say something about the resources being invested. As I think the noble Lord, Lord Marks, said, some 400 probation officers have applied—that exceeds the recruitment target the Government had in place over the years 2020-21 and 2022-23. I submit that that is a significant number. In addition, a sum of £53 million will fund more than 200 new bail information officers who will support the courts in reaching decisions as to bail and remand.

I think mention was made of the bail accommodation scheme, which provides temporary accommodation for individuals released from prison on home detention curfew, and provides a secure community-based alternative to remanding an individual in custody. I can speak from professional experience of the dreadful consequences that can follow from a person being released unexpectedly from custody into liberty where inadequate provisions are made for that person's readmission into society by way of accommodation and support, or where no steps have been taken to prepare that individual, or to provide for him or her the physical needs of accommodation, food and money.

In those circumstances, each of the buildings in the bail estate houses up to four people, and residents are supported by visits to provide support and to address any wider issues. There is female-only accommodation, supported by CCTV, and funding is available that will be expanded across the remainder of the estate over the next six months.

The overall intention of the Government is to address this backlog that has grown up—this increasing strain on the resources of our criminal justice system—by additional cash, an increase in resources and, by that, an increase in the number of prison places to be made available over the next few years. As I say, the ambition is 10,000 new places—of which 5,900 are already in place—by 2025.

[Lord Stewart of Dirleton]

I was asked a number of very specific questions by both noble Lords who have opened for the Front Benches. I am very conscious of the fact that I have not provided detailed, specific, numerical answers to certain of the questions put to me, but officials are in the Box. If noble Lords are content, I will either correspond myself or, more likely, my noble and learned colleague Lord Bellamy, who is the Minister in the Ministry of Justice, will correspond with noble Lords, in an endeavour to give them answers which they will consider satisfactory to the questions they posed.

Lord Ponsonby of Shulbrede (Lab): My Lords, I have two specific questions. The first point is that the early release scheme will put an additional burden on the Probation Service. The noble and learned Lord quoted the £155 million which was first raised in 2021. Can he confirm that there is no specific additional money for this additional work by the Probation Service as a result of yesterday's Statement?

The second question is more wide-ranging. I wrapped up my contribution by pointing to the £0.5 billion cut in next year's justice budget. As I said, the Government are keen to trumpet the extra spending. How are those two numbers reconciled, between the cut in the budget and the extra spending that the Government have just announced?

Lord Stewart of Dirleton (Con): I am grateful to the noble Lord for clarifying certain of the remarks that he made initially and putting them down into two specific questions. I regret to say that they fall within the category of information which I have sought but do not readily have available. So, with the noble Lord's leave, I will correspond with him on that matter.

Lord Marks of Henley-on-Thames (LD): My Lords, may I clarify one point? First, I am very grateful for the indication that we will have in writing the specific answers to the specific questions we asked, but I make it clear that we regard it as of great importance to clarify the numbers of prison places against the projected increase in the prison population, on the Government's own figures and in light of the measures that have been introduced, increasing time served and sentences. The significance of that is to test whether the places on tap will be enough to match the increase in the projected prison population. If those answers could be given specifically, I would be very grateful.

Lord Stewart of Dirleton (Con): I hear what the noble Lord has said. He makes a series of good points and we will write to him on those. I will ensure that those specific matters feature in the letter.

House adjourned at 9.24 pm.