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PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF LORDS

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

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

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House of Lords

Monday 25 March 2024

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

Asylum Claims

Question

2.37 pm

Asked by ***Lord Dubs***

To ask His Majesty's Government how many asylum claims are currently waiting to be determined.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, at the end of December 2023, there were 95,252 cases in the asylum system, 28% fewer than at the end of December 2022. Claims lodged on or after 28 June 2022 and before 7 March 2023, when the Illegal Migration Bill was introduced, are being prioritised now that the legacy backlog has been cleared. We continue to review and improve processes to accelerate decision-making while maintaining the integrity of the system.

Lord Dubs (Lab): My Lords, when do the Government expect to process the claims of the 55,000 or more people who arrived since March 2023, especially the 22,000 or so who arrived between March 2023 and July 2023, who are not covered by the possibility of being sent to Rwanda?

Lord Sharpe of Epsom (Con): My Lords, those who arrive illegally and fall into scope of the Act will be banned from obtaining any form of lawful immigration status in the UK. So, since 7 March 2023, anyone who has arrived illegally may be unable to obtain settlement or citizenship or re-enter the UK using a lawful migration route. As we bring more of the powers of the Act into force, those who have arrived illegally will also be unable to obtain any form of temporary permission to stay in the UK, other than in very limited circumstances.

Baroness Eaton (Con): My Lords, in considering measures for sustainably managing waiting times for asylum claims, does my noble friend agree that a balanced approach, which effectively deters economic migrants while prioritising the timely processing of genuine asylum seekers, is essential for maintaining the integrity and efficiency of the asylum system?

Lord Sharpe of Epsom (Con): My noble friend makes a very good point. On the subject of productivity and the processing of claims, the decision output has increased significantly over the past 24 months. In fact, it has more than tripled as we have worked to deliver commitments to process the legacy backlog. For example, in November 2023, the average per decision-maker was about 7.89 initial decisions. The year before, that number was more like 2.6—so efficiency is very much improving.

Baroness Butler-Sloss (CB): My Lords, how many of those already denied asylum are still in the country?

Lord Sharpe of Epsom (Con): I cannot answer that question in its entirety, but I can say that the number of complex legacy cases that remain has declined from about 4,500 to 3,900. Some of those are still in the country, but I do not know precisely how many.

Baroness Brinton (LD): My Lords, the Oxford criminology department's report, *The Criminalisation of People Arriving to the UK on "Small Boats"*, has said:

> "There is no evidence that these prosecutions will have the 'deterrent' effect … Rather than minimising harm to people crossing the Channel, this report has highlighted the significant human impact of the current prosecution strategy".

Will the Government review this report in light of what is happening at the moment?

Lord Sharpe of Epsom (Con): Well, I will certainly commit to read it, but I wonder how on earth it can arrive at a conclusion that they will have no deterrent effect. The Bill has not been operationalised or indeed passed yet.

Lord Alton of Liverpool (CB): My Lords, the Minister will know about the concern expressed last week from all quarters of your Lordships' House about the position of Afghans who had supported our servicemen or translators while they did honourable duty in Afghanistan. The Ministry of Defence said it was going to review their cases. Can the Minister give us any idea how long it is going to take for those to be resolved?

Lord Sharpe of Epsom (Con): I have to say to the noble Lord that his question is best directed to the MoD, but he will know that it is also an ongoing discussion we are still having in the context of the Bill.

Lord Ponsonby of Shulbrede (Lab): My Lords, can the Minister update the House on returns agreements with safe countries? In particular, I am thinking of Egypt, as well as other safe Middle Eastern countries.

Lord Sharpe of Epsom (Con): Again, I am afraid that is rather outside this department's remit, but I will endeavour to find out the current status and come back to the noble Lord.

Lord Lilley (Con): Can my noble friend the Minister explain why British courts and tribunals grant asylum to 75% of those who make applications here on first application, whereas French courts grant asylum to only 25% of those making asylum applications on first application? Given that they are both applying the same international laws and agreements, are the French being unduly harsh or the British unduly lenient?

Lord Sharpe of Epsom (Con): I suspect it is not a particularly binary answer. Obviously, some of the cases we are looking at will involve people from Afghanistan, as the noble Lord will be aware, and we probably had rather more involvement in that particular situation than the French did. I would imagine it depends very much on the circumstances before the courts, but I cannot really answer the question.

Lord Watts (Lab): My Lords, the Minister claims some credit for starting to deal with the backlog. What have the Government been doing for 13 years to make that backlog?

Lord Sharpe of Epsom (Con): The Minister does not claim any credit at all for removing the backlog, but I applaud the department for having done so. The situation, as the noble Lord will be aware, has changed very dramatically in the world over the last 13 years.

Baroness Lister of Burtersett (Lab): My Lords, the sacked chief inspector has expressed concern that clearing the legacy backlog at all costs has led to perverse outcomes. This includes a soaring in the number of claims deemed to have been withdrawn but counted as outcomes without proper quality assurance, which he declared was not acceptable. Will the Government now publish data showing the reasons for this big increase in the number of claims deemed to be withdrawn, as called for by the British Red Cross?

Lord Sharpe of Epsom (Con): I remind the House that the previous inspector was let go because he broke the terms of his contract, so I would argue that he has been somewhat discredited. Withdrawals can happen for a number of reasons, for example where somebody has already left the UK before their claim was concluded or where they fail to comply with the asylum process. There is a large number of reasons why withdrawals are made.

Lord Sahota (Lab): My Lords, India was recently designated a safe country, along with Georgia, Albania and other countries. How many claims have been processed for India and what was the reason for designating India as a safe country?

Lord Sharpe of Epsom (Con): We debated that at some length last week and I will not go over the reasons again. I am afraid that I do not have those statistics.

Lord Laming (CB): My Lords, how many of these asylum seekers are children and what happens to them if their claims fail?

Lord Sharpe of Epsom (Con): My Lords, there were 3,412 asylum applications from unaccompanied children in the year ending December 2023. That was 41% fewer than in 2022. They make up about 5% of total asylum applications. Of those, 2,446 were aged 16 or 17. Noble Lords will be aware that there are commitments in the Bill going through the House, and in the treaty, that unaccompanied asylum seekers will not be removed to Rwanda.

The Lord Bishop of Oxford: My Lords, the National Audit Office published a report on 20 March expressing the view that government plans to relocate asylum seekers from hotels to larger sites are actually proving more expensive than the hotel accommodation. Is this affecting the Government's long-term strategy for offering safe accommodation?

Lord Sharpe of Epsom (Con): My Lords, the Government's long-term strategy is a current subject of discussion via various other Bills. We will be closing all our hotels; we will have closed more than 100 by the end of March. Clearly, having hotels occupied by migrants is not optimal, and of course that goes to inform long-term strategic thinking.

Lord Stirrup (CB): What progress is being made on police co-operation across Europe to target people traffickers, not just at the point of the channel but across the entire continent?

Lord Sharpe of Epsom (Con): My Lords, there has been a considerable amount of progress. In March 2023, we signed a deal with France which, as noble Lords will be aware, has more than doubled the number of French personnel deployed across northern France. Most recently, we signed a working agreement with Frontex, the European Border and Coast Guard Agency. This long-term framework will provide the UK with access to new levers and intelligence to make our and the EU's borders safer and more secure—as well as emphasising a shared commitment to close co-operation to tackle these organised crime gangs.

Lord West of Spithead (Lab): My Lords, does the Minister not agree that possession of identity cards would make the handling of this situation a great deal easier?

Lord Sharpe of Epsom (Con): My Lords, I think the noble Lord has asked that question before—and last time I got myself into a bit of hot water by sort of agreeing with him, so I will not do so again.

Baroness Jones of Moulsecoomb (GP): My Lords, a Member on the Benches opposite recently said that Rwanda was safe as long as one did not oppose the Government. Is that the way that this Government are going—so we are all safe as long as we do not oppose them?

Lord Sharpe of Epsom (Con): I point the noble Baroness to Scotland, where of course the Green Party is propping up the SNP Government. Are we safe there?

Cabinet Manual
Question

2.48 pm

Asked by ***Viscount Stansgate***

To ask His Majesty's Government when the revised version of the Cabinet Manual will be published.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, in 2022 the Government committed to updating the *Cabinet Manual* and continue to consider the approach and timescales. We will provide a full update to the Constitution Committee, which recommended that an update should be made, in due course.

Viscount Stansgate (Lab): My Lords, that is a disappointing reply, because the Government are not living up to their word. The Leader of the House described the *Cabinet Manual* as

"a document of fundamental importance … that sets out the rules, conventions and practices that affect the operation of government".—[*Official Report*, 16/12/22; cols. 935-36.]

Since the last manual was published, major changes have taken place: the referendum in 2016 and our departure from the EU; developments in devolution; and the Prorogation of 2019 that was overturned unanimously by the Supreme Court. Does an updated draft exist? Has the Prime Minister seen and approved it? When will it be made available to not just the Constitution Committee in this House but PACAC in another place? Above all, will the Minister make a solemn promise to the House that the revised edition of the *Cabinet Manual* will be published before the launch of the coming general election?

Baroness Neville-Rolfe (Con): My Lords, previous debates in this House on the *Cabinet Manual*, and indeed on other issues, have demonstrated the importance of the manual, as the noble Viscount suggests, both for those working in government and those outside seeking to get a better understanding. As I said in good faith the last time he asked me this Question, the Government are considering options on timing and content in the light of these debates, but ultimately, this is a matter for the Cabinet Secretary and the Prime Minister of the day.

Lord Young of Cookham (Con): My Lords, my noble friend will know that key elements of the recent Budget appeared in the press long before the Chancellor addressed the other place. Was this because our journalists are fantastic mind-readers, or should we revisit paragraph 5.15 of the *Cabinet Manual*, which says:

"When Parliament is in session the most important announcements of government policy should, in the first instance, be made in Parliament"?

Baroness Neville-Rolfe (Con): My noble friend makes an interesting point.

Noble Lords: Oh!

Baroness Neville-Rolfe (Con): There have been different comments made about the *Cabinet Manual*, and I note the point that he made. We do try, in the main, to make announcements in the House. Indeed, we will be making an announcement on security later today.

Lord O'Donnell (CB): My Lords, I thank the noble Viscount for this important Question. I wrote a lot of this, and one of the things I say in the preface is that it needs updating periodically, for things such as Brexit, war powers—I could name a huge number. I urge Ministers, when they think about the new version, to take account of the excellent recommendations of the Constitution Committee of this House. If it does not appear before the next election, I urge whoever is Prime Minister to make it a high priority, because this is crucial. The Minister might want to talk to her colleague the Foreign Secretary, who in the preface actually says how important the *Cabinet Manual* is.

The *Cabinet Manual* also says a lot about conventions. We in this House need to think quite carefully about conventions, because sometimes they are discarded rather too freely. We will need to think carefully about Salisbury/Addison and others which affect this House a lot.

Baroness Neville-Rolfe (Con): There are a lot of good quotations, both from my noble friend the Foreign Secretary and from the noble Lord, Lord O'Donnell, himself. The existing *Cabinet Manual*, although it needs changes, actually contains a lot of good and enduring material. We need to make sure that the new version is right: it needs to be accurate, up to date and authoritative, and work continues.

Lord Wallace of Saltaire (LD): My Lords, in due course there will be an election. There are probably only four months more of parliamentary sitting before we reach the general election. In saying that these things will be done in due course, are the Government kicking the can down the road until the election reaches us, or do they actually want to ensure that the Cabinet Office contributes to the principle of good government for whichever Government come in after the coming election?

Baroness Neville-Rolfe (Con): As far as the manual is concerned, the Government, as I have said, are considering options on timing and content in the light of the debates that have been had. As far as good government is concerned, we try every day to ensure that we are delivering the right things for the people of Britain and that hard work is rewarded.

Baroness Chapman of Darlington (Lab): My Lords, the Government made a specific promise about making sure that this was done by the end of the Parliament. With that in mind, and given the widespread view that this is an important piece of work that must be completed, will there be some chapters perhaps ready for view by our Constitution Committee very soon? We are all aware that the clock is now ticking.

Baroness Neville-Rolfe (Con): I hear what the noble Baroness says. Indeed, we have made it clear that draft material will be made available to both the Constitution Committee and PACAC in the other place before the second version of the *Cabinet Manual* is finalised.

Lord Foulkes of Cumnock (Lab Co-op): Our Constitution Committee, of which I am a member, in the same report in which we recommended the revision of the *Cabinet Manual*, also welcomed the promise by the Cabinet Secretary to rein in improper expenditure by the Scottish Government. That has still not been done. Will the Minister tell the Cabinet Secretary, Simon Case, that if he does not do it soon, I will find every opportunity to raise the issue again and again?

Baroness Neville-Rolfe (Con): I will make two points. First, I told the noble Lord that we were looking at this issue and that we might issue guidance on the subject, because the *Cabinet Manual* is about bringing conventions and rules together, rather than creating them. Secondly, much of the *Cabinet Manual* is on matters specific to the UK Government and reserved matters. However, my noble friend the Foreign Secretary—to mention him again—has written to the First Minister of Scotland about the importance of a reserved area for foreign affairs and how that should be conducted.

Lord Butler of Brockwell (CB): My Lords, I pay tribute to the noble Lord, Lord O'Donnell, who pioneered the publication of the *Cabinet Manual*—it could never have happened in my day. The Minister will recall that the publication was extremely valuable in the lead-up to the 2010 election and in setting the rules if there was a hung Parliament. Are we to take it that the delay this time means that the Prime Minister does not anticipate a hung Parliament?

Baroness Neville-Rolfe (Con): It is difficult to draw any conclusions of that kind. However, I share the noble Lord's tribute to the noble Lord, Lord O'Donnell, in putting this together. There are many well-thumbed copies around the Civil Service.

Baroness McIntosh of Hudnall (Lab): My Lords, would the Minister care to revisit the answer she gave to her noble friend Lord Young of Cookham? Can she point the House to a single example in the recent past of a major piece of policy or a significant announcement that has not been extensively briefed out to the press before it was given to Parliament?

Baroness Neville-Rolfe (Con): There is a tradition that some material in upcoming policy announcements is sometimes briefed out to engage the great British public, but the substantive announcements are nearly always made to this House while Parliament is sitting.

Lord Reid of Cardowan (Lab): My Lords, the Minister has been good enough to tell us three times that the reason for this prolonged delay in publication is that the Government are "considering options". Apart from the option to publish or not, can she outline what those serious options are that are causing the delay?

Baroness Neville-Rolfe (Con): The content of the *Cabinet Manual* is, as I am sure the noble Lord, Lord O'Donnell, would agree, a matter for the Cabinet Secretary and the Prime Minister of the day. The work being done is to look at everything that has been said, including in debates here and by the committees, and to decide on the content of the various chapters. As has already been said, there have been quite a number of changes—we have left the EU, we have got rid of the Fixed-term Parliaments Act and we have even introduced maternity pay for female Ministers, which was a great step forward—and there are various different things that need to be done. A view needs to be taken on what we put in the *Cabinet Manual* and how we keep it simple and engaging. Indeed, a suggestion was made in the debate led by my noble friend the Leader of the House to do more online in this digital age.

Sodium Valproate and Pelvic Mesh

Question

2.59 pm

Asked by ***Baroness Cumberlege***

To ask His Majesty's Government what are the timescales for, and what progress has been made on, a response to the Patient Safety Commissioner's report on options for redress for those harmed by sodium valproate and pelvic mesh, published on 7 February.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): The Government commissioned the Patient Safety Commissioner to produce a report on redress for those affected by sodium valproate and pelvic mesh. We are grateful to the commissioner and her team for completing this report and our sympathies remain with those affected by sodium valproate and pelvic mesh. The Government are now carefully considering the PSC's recommendations and will respond substantively, hopefully in the coming months.

Baroness Cumberlege (Con): My Lords, I thank my noble friend for that reassuring reply. However, as it has been five months since the Government received the advice from the Patient Safety Commissioner in October 2023, how much more time do patients and families need to wait for the redress that they so desperately need?

Lord Markham (Con): My Lords, I thank my noble friend for her tireless work in this area. It is something which, in the Chancellor's very own words—because it was the Chancellor who, as Health Secretary, first commissioned the report—remains a top priority to both him and the Government. That remains the case.

I spoke to Minister Caulfield about it just this morning, and it is a complicated area, but it is something that we are very keen to redress in the next few months.

Baroness Uddin (Non-Afl): My Lords, I am really grateful to the noble Baroness, Lady Cumberlege, for raising this issue. On previous occasions, I have raised my ongoing concerns about the use of sodium valproate, especially for patients with mental health issues incarcerated in hospital. Do the Government collect information on how many people have been prescribed this terrible medication in some cases, and whether it is being disproportionally applied, particularly to young men from minority communities in the mental health institutions?

Lord Markham (Con): I thank the noble Baroness. I will provide the precise figures, but the incidence has gone down by 34% in terms of the amount that has been prescribed. At the same time—and this is particularly fitting, as tomorrow is National Epilepsy Awareness Day—for some people, this is the only treatment for epilepsy that will work for them. It is therefore important to make sure that protocols are in place for prospective mothers and prospective fathers to make sure that, in those cases, they are not being prescribed sodium valproate, because in other cases it is often the only medicine that works.

Baroness Finlay of Llandaff (CB): My Lords, given that, sadly, errors and problems repeatedly occur in the NHS, how are the Government working with the devolved Administrations to ensure that a redress scheme is designed to be fit for the future as well as fit for the recognition of harm that has occurred? What will they do to ensure that trust in the NHS is maintained by an approach that encapsulates prospective monitoring and listening to patients and relatives for early detection of adverse events and avoids cumulative errors?

Lord Markham (Con): I thank the noble Baroness. I was actually speaking to Minister Caulfield about this just this morning, because she is in regular touch with the affected patient groups. They were talking precisely about some of the things around the Scotland NHS scheme in place in terms of redress. It is fair to say that there are some concerns in patient groups on some aspects of this, but underlying what the noble Baroness says is making sure that, whatever we do, we are trying to do it consistently across the UK because there should be one consistent approach. Likewise, we are learning lessons from these things as well.

Baroness Burt of Solihull (LD): My Lords, an ex-constituent of mine, after years of excruciating pain, the onset of returning cancer and no care plan, finally borrowed $47,000 to have the failed mesh implant removed in America. She now has her life back but is in deep debt. However, we learn that the Government will consider redress only in 2025. Can the Minister hazard a guess as to how many more mesh-induced deaths will have occurred by the time a single penny is paid out in compensation at this rate?

Lord Markham (Con): The 2025 date is the timetable that the Patient Safety Commissioner recommended in terms of financial redress. The point that the noble Baroness makes, quite rightly, is about the non-financial aspect: if you are suffering pain from it all, you want to be treated as quickly as possible. That is why we have set up these nine specialist centres to allow exactly that sort of redress to occur.

Lord Hunt of Kings Heath (Lab): My Lords, can I remind the noble Lord that, of course, it was not a matter of months since this first recommendation came? The noble Baroness, Lady Cumberlege, recommended a redress scheme some years ago. Why was it rejected in the first place, and why are we waiting many more months, as the Minister said, when, as the Patient Safety Commissioner has said, the intention is

> "an initial, fixed sum in recognition of the avoidable harm they have suffered as a result of system-wide healthcare and regulatory failures"?

Why are the Government being so slow to respond?

Lord Markham (Con): That is precisely what I put to Minister Caulfield this morning. She commissioned the review because her feeling was that the period from when my noble friend's initial report came in until when Maria Caulfield was in post was too long. So it was absolutely she who commissioned it last year, and it is absolutely she who very much said that she is determined that there should be a substantive reply from us in the next few months.

Baroness Bennett of Manor Castle (GP): My Lords, at the launch of the Patient Safety Commissioner's report the victims of the Primodos scandal expressed great distress as they felt that they had been airbrushed out. Of course, the noble Baroness, Lady Cumberlege, recommended that they should receive redress, and they were treated the same way in the report as the sodium valproate and vaginal mesh victims. Can the Minister tell me what will be done to provide redress and ensure that there is appropriate treatment for the victims of Primodos?

Lord Markham (Con): Again, these are difficult areas. My understanding is that we are working from the conclusions of the expert working group in 2017, and its review of all the evidence was that it could not find a causal link between Primodos and the impact it had during pregnancy. This was again reviewed by the MHRA when more information was brought up in the last year. So I am afraid that, as we stand today, the evidence is not there that suggests that causal link.

Baroness Wheeler (Lab): My Lords, the Patient Safety Commissioner's report is all the more valuable because it is drawn from patients' experiences, including physical, psychological and emotional impacts and their daily struggle with accessing health and other key services such as social security benefits and special educational needs support for the valproate-harmed children they are raising. What is being done to support

[Baroness Wheeler]
mothers and families as they cope with the indecision and delay over the Government's response to the commissioner and await the vital support they need?

Lord Markham (Con): We have completed four of the initial recommendations in the report of my noble friend Lady Cumberlege, and another three are in process. The most important of those, to answer the noble Baroness's question, is the setting up of these nine specialist centres which can provide the support needed, not just in terms of redress surgically or treatment-wise but in terms of the support that people need to help them cope with the issues.

Baroness Blackwood of North Oxford (Con): My Lords, as important as this report and these findings are, this is part of a wider problem. Some 4,000 babies die due to pregnancy-specific conditions in the UK every year, but 73% of drugs given to pregnant women have no safety information. That is clearly unacceptable. The Minister knows that I have raised this issue with him before; please can he give an update on progress towards putting this right?

Lord Markham (Con): My noble friend is correct on this. Probably the best way to do that is to come back in detail in writing, because it is vitally important.

Baroness Brinton (LD): My Lords, in response to the noble Lord, Lord Hunt, the Minister said that Minister Caulfield had commissioned this report, but he misses out at least three years of work earlier. There was the report of the noble Baroness, Lady Cumberlege, and there was a long debate during the passage of the Health and Care Act when Nadine Dorries said she would look at commissioning something and then refused to do so. This is not recent history. Will the Minister please give this House a date on which the Government will come back to Parliament with a response?

Lord Markham (Con): The point I was making was that Minister Caulfield absolutely agreed with the point the noble Baroness makes that the delay had been too long, and so it was she who came forward and said that she wanted to commission the Patient Safety Commissioner to report exactly in this area. So that was her being proactive on all this. In the same way, she says that she is determined to get a response back in the next few months. I cannot give a specific date yet, because it is a complicated area which involves industry, many government departments and the devolved authorities. However, as the Chancellor said, this remains a top priority area for both the Chancellor personally and the Government.

Train Operating Company Contracts
Question

3.09 pm

*Asked by **Baroness Randerson***

To ask His Majesty's Government whether they are taking steps to change train operating company contracts to achieve planned improvements to rail services.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, in 2021, the Government began introducing national rail contracts, which have now replaced all the emergency contracts signed during the pandemic. These are flexible contracts, allowing services to be adjusted as passenger demand recovers. They include incentives on punctuality, reliability, service quality and customer satisfaction. Last autumn, we introduced a new incentive to drive recovery in demand and revenue. We are actively developing further improvements for inclusion in future contracts.

Baroness Randerson (LD): My Lords, I want to shine a light on Great Western Railway, at whose hands the Minister and I suffer on a regular basis. As well as cancellations and lateness, we have shortened trains, with 10 carriages frequently being reduced to five, and yet Great Western Railway's notifications of disruption do not always cover this. Why are we not always told in advance about shortened trains? Is it because, as some people have assured me, the department has changed the contract with Great Western, specifically requiring it to run shorter trains for a certain proportion of its journeys? Does the Minister accept that it is important to have transparency on this? People need to know when they will be faced with a five-carriage train. He referred to recovering passenger numbers, and we frequently have intense overcrowding on Great Western trains.

Lord Davies of Gower (Con): I have to declare that I am a regular traveller on Great Western Railway services and appreciate much of what the noble Baroness says. Cancellations, especially those made close to the time of travel, can be very inconvenient, preventing passengers travelling with confidence. When trains are regularly cancelled, this can disrupt people's lives. That is why the department holds operators to account for cancellations. The scrutiny and penalties depend on the reasons for these cancellations, as well as on how close they are to the planned time of travel and therefore how much they inconvenience passengers. However, I am not aware of any arrangement that the department has with GWR in relation to cancellations.

Lord Birt (CB): My Lords, last year, my wife and I spent a delightful three weeks in Japan visiting the ancient cities and gardens, travelling extensively by bullet, regional and local trains. We laughed increasingly loudly as every train, without exception, arrived on time, exactly to the minute. By contrast, almost every wait at a UK train station—including my journey here today—is punctuated by computer-generated announcements of delay and cancellation. In the last 12 months, 33% of UK trains have failed to arrive on time. One in 30 trains has been cancelled. Why can we not run a railway as well as the Japanese?

Lord Davies of Gower (Con): I take the noble Lord's point. The Secretary of State visited Japan recently and looked closely at its operating systems. Let us hope that we see an improvement to the extent that we can operate our service equally well.

Lord Liddle (Lab): My Lords, it is almost six years now since the chaotic introduction of changed rail timetables demonstrated that the present system of train operating contracts is completely broken. Since then, we have had the Williams Rail Review, the *Williams-Shapps Plan for Rail*, and a lecture by the Secretary of State last year backing fully the case for reform. But all there is to show for this is a rather sketchy framework rail reform Bill, which the Government have put out for legislative scrutiny, despite the fact that the legislative programme is so light that the House of Commons is rising at 4 pm. What explains this dither and delay? I suggest to the Minister that the Government introduce this rail reform Bill into this House, where it could have lots of detailed scrutiny from informed people and be improved.

Lord Davies of Gower (Con): As the noble Lord knows, the rail reform Bill is being scrutinised by the Transport Committee. That was an agreement by the usual channels. From May 2021, national rail contracts were introduced to bridge the gap between Covid-19 emergency agreements and future competed contracts. The last two national rail contracts began in October 2023. Under the national rail contracts, the Government cover the operators' reasonable costs, receive revenues and bear the financial risks. The national rail contracts are flexible by design, allowing service levels to be adjusted as passengers return to the railways.

Lord Swire (Con): If my noble friend the Minister is genuinely looking at improving customer experience on the railways, can I return again to the issue of the provision of wifi, which is variable on some railways and non-existent on others? Surely in 2024 the basic provision of wifi, which is technologically achievable, to encourage people to work—after all, we are trying to increase productivity—should be something we accept as the norm and not something we continually have to argue for? Increasingly, you can get wifi on aeroplanes in the middle of nowhere; surely you should be able to get it on the GWR from Exeter to London.

Lord Davies of Gower (Con): My noble friend is absolutely right, and I quite agree with him. It is very annoying; I suffer from it myself when I travel on GWR. I really do not understand, technically, why we should not be able to do it. It is something I will perhaps take a personal look at when I go back to the department.

Lord Anderson of Swansea (Lab): My Lords, how are the Government addressing that, fearing the non-renewal of their contracts, companies seek to find ways and means of reducing investments as they near the end of their contracts?

Lord Davies of Gower (Con): My Lords, train operators are required to work to an annual business plan agreed with the department, allowing more agility for both parties to respond to change as it arises throughout the contract term. Train operators are incentivised to deliver for passengers by earning a fee based on their performance.

Baroness Grey-Thompson (CB): My Lords, in the light of the draft rail reform Bill, will His Majesty's Government commit to primary legislation to deliver level boarding and accessible step-free station deadlines? By the Government's own figures, it will take 100 years for stations to be step-free at the current rate of Access for All funding.

Lord Davies of Gower (Con): I accept what the noble Baroness says. We have discussed this outside the Chamber, and it is something that the Government are working hard to improve.

Lord Pickles (Con): My Lords—

Lord Snape (Lab): My Lords—

Lord Goddard of Stockport (LD): My Lords—

Baroness Williams of Trafford (Con): My Lords, we will hear from the Liberal Democrats and then the Conservative Benches.

Lord Goddard of Stockport (LD): From this side, we might rename the noble Baroness, Lady Randerson, Baroness Mystic Meg. We are talking about contracts and railways, and, out of the hat, two days ago, Avanti has now decided to pay overtime premiums of £600 a day for drivers. Clearly, this is a last desperate act of the Government and Avanti trains to keep the contract. Last week, Transport for the North—chaired by a Conservative Peer—unanimously agreed with Burnham and Rotheram, the mayors from the north, that that contract should be taken away. This is clearly unacceptable. We talk about the NHS, care workers, firefighters and the police, and, as a last desperate act, Avanti is offering £600 a shift for driving a train at weekends—it is absolutely scandalous.

Lord Davies of Gower (Con): I can only repeat what I have said before in the House to noble Lords. The decision to award a contract to First Trenitalia was contingent on the operator continuing to win back the confidence of passengers. The Minister with responsibility for rail and officials regularly meet with FirstGroup and Avanti senior management to understand the challenges and to hold them to account for issues within their control. However, I hear what the noble Lord says.

Victims and Prisoners Bill

Committee (8th Day)

Welsh Legislative Consent sought.

3.20 pm

Clause 53: Parole Board rules

Debate on whether Clause 53 should stand part of the Bill.

Lord Bach (Lab): My Lords, I speak having taken some advice from the Clerks—I am grateful to them. The first two items in this group are notices of my intention to oppose Clauses 53 and 54. We debated the amendments in both clauses in our previous Committee sitting on 12 March and the Minister, whom I have spoken to this afternoon before coming to Committee, gave certain undertakings following that debate about discussing further the issues raised with his fellow Minister, who sits by his side, and with the Ministry of Justice. In all the circumstances, I will not press the stand part notices in my name on either Clause 53 or Clause 54. That is why I have got to my feet at this stage.

Clause 53 agreed.

Clause 54: Parole Board membership

Amendments 170 and 171 not moved.

Clause 54 agreed.

Amendment 171A

Moved by ***Baroness Lawlor***

171A: After Clause 54, insert the following new Clause—

"Parole Board proceedings: enabling public scrutiny

(1) The Secretary of State has a statutory duty to improve the openness and transparency of the work of the Parole Board and to facilitate a greater public understanding of its statutory framework, procedures and proceedings.

(2) The Secretary of State must exercise their powers under section 239(5) of the Criminal Justice Act 2003, to require that Parole Board hearings should normally be open to the public unless there are exceptional circumstances for not doing so, as outlined in subsection (5).

(3) The Secretary of State has the power to formally direct the Chair of the Parole Board to make arrangements for all Parole Board hearings to be heard in public, as set out in Parole Board (Amendment) Rules 2022 (SI 2022/717).

(4) The Chair of the Parole Board may exercise their right to decline this request and direction from the Secretary of State and must outline their reasons for so doing in writing to the Secretary of State, within 28 days of a written direction being lodged with the Parole Board.

(5) Such reasons in respect of subsection (4) must be evidence-based and include—

(a) where the Chair of the Parole Board believes that such a request and direction would, on the balance of probability and based on evidential information, indicate that the integrity of evidence presented to the Parole Board may be compromised and prevent a true and accurate assessment of the prisoner's risk being provided by witnesses;

(b) that the presence of strong and valid objections from participants, including victims, their families or legal representatives, could jeopardise the cooperation of witnesses, should the hearing be in public; or

(c) that to hold a meeting in public might create an unacceptable risk of mental or physical harm to any of the participants.

(6) The Secretary of State must formally consider any representations from the Chair of the Parole Board in a timely manner and if they choose to disregard the advice of the Chair of the Parole Board, they must outline their reasons within 28 days of receipt of such advice, taking into account all available evidence, including that provided by law enforcement, victims, their families or legal and other representatives.

(7) The Secretary of State must, in exercising their powers, balance the need for openness, transparency and maintaining public faith in the efficacy of the criminal justice system with a commitment to the operational independence of the Parole Board and its members' deliberations, and with an obligation to reduce recidivism and support rehabilitation and the prisoner's ability to resettle in the community upon release from a custodial sentence.

(8) This section applies only to offences as relevant to public protection decisions and outlined in Schedule 18B Parts 1 and 2 of the Criminal Justice Act 2003.

(9) The Secretary of State must, within six months of the passing of this Act, and annually thereafter, publish an assessment of the efficacy of the policy of open Parole Board hearings and its impact upon openness, accountability, transparency and public support and whether it meets the interests of the justice test."

Member's explanatory statement

This amendment seeks to consolidate the statutory instrument laid before Parliament on 30 June 2022 (SI 2022/717) to improve openness, accountability and transparency and public trust in the Parole Board by giving the Secretary of State powers to direct the Board to work to a presumption that such meetings should be routinely open to the public, with exceptions; whilst also safeguarding the Board's independence and the requirement to ensure rehabilitation and resettlement of those prisoners likely to be released from a custodial sentence.

Baroness Lawlor (Con): My Lords, I support and move this amendment for my noble friend Lord Jackson of Peterborough, who is absent attending the Inter-Parliamentary Union's 148th assembly in Geneva. He had hoped to move his amendment on 12 March, but Committee proceedings were concluded before he was able to do so.

Amendment 171A seeks to establish the presumption that Parole Board hearings would be open to the public—with exceptions, of course. It seeks, more generally, to improve public faith and trust in the criminal justice system. This is both a probing and permissive amendment, and a natural progression to and consolidation of the reforms undertaken by Ministers over the last six years arising from the public disquiet over the proposed release of serial rapist John Worboys in 2018. That resulted in a review of the parole system and a public consultation published in 2022, and a finding in the High Court in March 2018 that the Parole Board's Rule 25—a blanket ban on transparency and details of the board's deliberations—was unlawful.

The Government have moved to address the very serious failings identified by the Worboys case, by allowing summaries of Parole Board decisions to be provided to victims and other interested parties, and to provide for a reconsideration mechanism, introduced in 2019, which allows a prisoner and/or the Secretary of State for Justice to seek reconsideration of a number of decisions taken by the board within 21 days. Victims may now also seek a judicial review on the grounds that decisions are procedurally unfair or irrational.

Significantly, the Parole Board's 2019 Rule 15 was amended by secondary legislation in 2022 to enable public hearings to be facilitated on request to the chair of the Parole Board, in the "interests of justice". This test is already used by the Mental Health Tribunal.

This amendment is cautious, circumspect, and with caveats in its proposed new subsections (5) and (7). It presumes no absolute right to open the Parole Board hearings to the most serious cases, but presents a balance between the interests of the victim, prisoners and the wider criminal justice system, and imposes a statutory duty on Ministers to take note of the importance of rehabilitation, reducing recidivism, fairness and due process.

Finally, I hope that my noble friend the Minister will articulate the Government's current thinking on, and rationale for, limited reform envisaged in this matter. I urge that they allow for public hearings to become the default position, and I look forward to his reply.

Lord German (LD): My Lords, at the request of my noble friend Lord Marks, I will speak to his amendment in this group, which is Amendment 171B about the hearing timeframes for the Parole Board to have some flexibility in this matter. I apologise; I would have said, in relation to the two stand part notices, that there were a number of questions that I asked of the noble Earl. I know it has been only a short period of time—I am sure they are on their way—but I just wanted to remind him. I am sure that his smile tells me that there are going to be satisfactory replies shortly.

I come back to Amendment 171B. The current rules are that the release of prisoners serving a life sentence is determined by the Parole Board on or after they have served their minimum tariff. The first parole review to consider a prisoner for release will usually begin six months prior to their tariff expiry and, if a prisoner is not released at their on-tariff review, they will have a further post-tariff review at least every two years. The Parole Board process is lengthy and can take upwards of six months for the whole process to be dealt with. Their victims are asked whether they wish to submit a personal statement; although the Parole Board does not have direct contact with victims, the victim liaison officer will contact them about submitting a personal statement. We know that there has recently been an opportunity for victims to appear and observe some Parole Board hearings as part of the latest pilot.

For victims and family members, going through the Parole Board process can be a highly traumatic experience, forcing them to relive the original offence and the impact it has on them. While victims and families welcome having a voice in the process through being able to submit an impact statement, many feel trapped and unable to move on when their offender is repeatedly coming up for parole, even when it is clear that the circumstances have not changed.

3.30 pm

The current system is a drain not only on victims and family members but on the Parole Board itself. The time and financial cost of parole hearings are significant. John Worboys, for example, received more than £166,000 in legal aid following his arrest, paying for legal representation at Parole Board hearings. The average cost of an oral Parole Board hearing, according to the Parole Board's annual report, is £1,876.

The requirement for the Parole Board to hear cases at least every two years, even when aware that there are no material changes to a prisoner's circumstances—crucially, of course, to the risk faced by the public if they were to be released—means that prisoners are arbitrarily brought before the Parole Board at great expense. This amendment aims to give the Parole Board the discretion to set the period until a prisoner can reapply for parole, meaning that families will be spared being repeatedly dragged into the process when it is clear that nothing has changed. This approach is adopted in other jurisdictions internationally, such as California, where the parole board is able to direct that a subsequent parole hearing be deferred—in its case, it can defer for up to 15 years; I am not suggesting that that is part of this amendment.

The amendment does not seek to take away an offender's rights. It would introduce a mechanism through which the offender could request that a Parole Board's decision to defer a hearing by more than two years be reviewed and, crucially, any reconsideration by the Parole Board of its decision would not involve the victim or family, who would be spared from being trapped in the process. With that, I support the amendment in the name of my noble friend Lord Marks. I hope that the Committee will consider it well.

Baroness Prashar (CB): My Lords, I rise to support the amendment so admirably spoken to by the noble Lord, Lord German, to which I have put my name. I do not wish to add anything—as he has made all the points that I would have made—other than to emphasise that it would give the Parole Board discretion to decide when to have a review. It would minimise the revictimization of the victims and would also be cost-effective.

I am aware that Article 5.4 of the European Convention on Human Rights says that reviews must be at reasonable intervals. I think a limit of two years was set, but, in domestic cases, the courts have declined to be prescriptive about what a reasonable interval is. It is important to recognise that these are fact-specific cases and therefore it is important to reinforce the discretion given to the Parole Board. I support this amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, it has been a short and interesting debate. The noble Baroness, Lady Lawlor, introduced the amendment from the noble Lord, Lord Jackson. On this side of the House, we will listen to the Minister's response very carefully. I agreed with the sentiments that she expressed to the extent that the Parole Board should be cautious and fair, and that there needs to be a balance between victims, the process and the prisoners.

The point where I depart from her—which is really the substance of her amendment—is that it should be by default that parole hearings are conducted in public. I am not sure that I would go as far as that but, nevertheless, I agreed with a lot the points that she made. As I said, I look forward to the Minister's response.

I move on to Amendment 171B in the name of the noble Lord, Lord Marks, which was spoken to by the noble Lord, Lord German. I think the noble Baroness,

[Lord Ponsonby of Shulbrede]
Lady Prashar, summed up the points succinctly: that giving the Parole Board discretion is desirable. Each case is different and, if the Parole Board has more discretion, it can reduce the potential impact on victims—I understood that point. It can also reduce the number of repeated applications, which have a cost to the public purse, where there may be no real change in circumstances. If one were to give the Parole Board more discretion, it might reduce that impact on victims. Again, this is an interesting amendment, and I look forward to listening to the Minister's response.

Earl Howe (Con): My Lords, in their respective absences, I am grateful to the noble Lord, Lord Marks of Henley-on-Thames, and my noble friend Lord Jackson for their amendments, which have been so ably spoken to by my noble friend Lady Lawlor and the noble Lord, Lord German.

I will turn first to Amendment 174A, tabled by my noble friend Lord Jackson. This would create a presumption for parole hearings to be conducted in public and a power for the Secretary of State, in effect, to direct a public hearing, contrary to any opposing view from the chair of the Parole Board.

The provision for public parole hearings was introduced by the Government in 2022 in amendments to the Parole Board Rules statutory instrument. This allows any hearing to be conducted in public if the chair of the Parole Board decides that it is in the interests of justice to do so. Prior to this, the rules required that all hearings be held in private.

Hearings are private by default, but applications for public hearings can be made by anyone directly to the Parole Board. The criteria used by the chair to decide applications have been published by the Parole Board on its website. The individual decisions are also published. Since the provisions were introduced in 2022, three public hearings have been held and a further five have been agreed by the Parole Board, which will be heard in the coming months.

The provisions are operating as intended, because the rule changes were made with the understanding that most hearings would continue to be held in private and only a small number of public hearings would be held. This amendment would, in effect, reverse that position, so that all hearings were public by default and a private hearing would take place only with the agreement of the Secretary of State in response to any representations made by the chair of the board.

The amendment also proposes that the Secretary of State should be the person to decide whether a hearing takes place in public. I am afraid I must push back on that idea. Noble Lords will be aware that the board is a quasi-judicial body which makes court-like judicial decisions. As part of its consideration of case, the board will decide whether an oral hearing is necessary or whether a case can be completed on the papers alone. If, having decided that a hearing is necessary, the board is then responsible for the arrangements, conduct and management of that hearing.

It would be out of step with the rest of the process if we gave the Secretary of State a power, in effect, to force the board to hold a public hearing against its wishes. As the body responsible for the hearing, the Government believe that it is right that the board has the final decision on whether the hearing should be public or private.

I hope the Committee will accept that not all cases will be suitable to be heard in public; for example, because of particularly sensitive evidence or the concerns of the victims. It is vital that the risk assessment is not compromised, and witnesses are able to provide full and frank evidence to the board.

The current provisions in the Parole Board Rules mean that the board and the Secretary of State have to consider these issues only in response to an application. The amendment would require them to consider the merits and contact the victims in every single hearing—more than 8,000 cases a year. It would be an enormous administrative burden with very little obvious benefit to the parole system or to the individuals affected by it.

In conclusion, I recognise the disappointment and frustration that may be caused when a public hearing application is rejected, especially where the victim is the applicant. Public hearings are a comparatively new element of the parole system. The Government are committed to improving further the openness and transparency of parole. However, we submit that a complete reversal of the current approach is not merited at this time. On this basis, I hope that Amendment 171A can be withdrawn.

I turn to Amendment 171B, tabled by the noble Lord, Lord Marks of Henley-on-Thames, and spoken to by the noble Lord, Lord German. This seeks to allow the Parole Board to direct the period of time which should elapse before a subsequent application to be considered for release can be made. As things stand, under the Crime (Sentences) Act 1997, the Secretary of State has ultimate responsibility for referring a prisoner's case to the Parole Board within two years of the previous review.

This amendment would transfer this responsibility to the board and allow them to set the interval between reviews of anywhere between 12 months and five years. The current system already provides for flexibility in the time set for the prisoner's next parole review. His Majesty's Prison and Probation Service—HMPPS—considers a range of factors in deciding when to refer the prisoner to the Parole Board on behalf of the Secretary of State. Reasons must be given for the length of the interval between reviews. These include the Parole Board's reasons for declining to direct the prisoner's release at the conclusion of the last review and the interventions required to allow them to progress.

Giving responsibility for setting the period between parole reviews to the Parole Board could potentially result in hearings being set too soon, before interventions have been able to take effect, increasing the number of adjournments and causing further distress for victims. This is not to say that the board does not play an important role. Its insights provide valuable information for HMPPS staff, but HMPPS is best placed to make these decisions.

There is then the question of what the period between hearings ought to be. This amendment aims to increase the maximum interval from two to five years. I fully understand why this is being proposed,

but it might be helpful if I outline why it would not be lawful; the noble Baroness, Lady Prashar, has already referred to this. Where indeterminate sentence prisoners have served their tariff—that is the minimum term set by the judge at sentencing—they are then eligible for a parole hearing. Unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined, they will remain in prison. If they are not released, my advice is that subsequent reviews must be conducted speedily and at reasonable intervals to satisfy the requirement of Article 5(4) of the convention. I note and take on board the comments of the noble Baroness, Lady Prashar, in this connection.

I appreciate the motivations at play here. Parole reviews can be difficult for victims. I sympathise with the desire for a longer interval between reviews. I stress to the Committee that the Government always consider victims where the parole system is concerned. I hope we have demonstrated this principle in other measures we have taken. We understand the points raised by the noble Lord, Lord German, that, in essence, greater transparency of the parole system is inextricably linked to the involvement of victims.

Since October 2022, victims have been able to observe Parole Board hearings, as part of a testing phase currently running in the south-west. The testing has now progressed to include the Greater Manchester probation region. During the hearings, victims are supported by a Probation Service victim representative, who discusses the parole process with them. Their VLO will ensure that, if appropriate, they are signposted to relevant support following the hearing.

3.45 pm

We completely recognise that it can be traumatising for a victim to hear evidence that is explored during a parole hearing. That is one reason why we are conducting a small-scale testing phase, to make sure that we get the processes and support arrangements right. Our priority is to ensure that victims can observe the hearing in a way that is safe and comfortable for them, while not compromising the Parole Board's ability to conduct a fair and rigorous assessment of risk.

I hope that those comments are of help. For the reasons that I have outlined, I hope that my noble friend, on reflection, will not feel compelled to press the amendment.

Baroness Lawlor (Con): I thank my noble friend the Minister for his very thoughtful reply. I should like to reflect, on behalf of my noble friend Lord Jackson, on the very important points that he makes about the sensitivity and the costs, as well as the practicality and the question of time, along with the fact that the Government are working towards greater openness of the Parole Board proceedings. On behalf of my noble friend Lord Jackson, I shall withdraw the amendment, and give further reflection to what my noble friend says.

Amendment 171A withdrawn.

Amendment 171B not moved.

Clause 55: Whole life prisoners prohibited from forming a marriage

Debate on whether Clause 55 should stand part of the Bill.

Lord Bach (Lab): My Lords, I put my name to this clause stand part notice, which was originally in the name of the noble Lord, Lord Pannick. He, alas, cannot be here this afternoon as he is on parliamentary business abroad, and he has asked me to open this short debate. I do not think that the Committee will be that surprised to hear me say that what I am about to say owes much to the noble Lord.

Clauses 55 and 56 prohibit a prisoner serving a whole-life tariff from entering into a marriage or civil partnership with another person, without the written permission of the Secretary of State, to be granted only if the Secretary of State is satisfied that there are exceptional circumstances. At Second Reading, on 18 December, the noble and learned Lord, Lord Bellamy, referred to

"a recent case in which surviving families of the victim of a most serious murder were openly mocked by the convicted offender, who trumpeted his right to marry, causing distress to many".—[*Official Report*, 18/12/23; col. 2056.]

It is my view, and I suspect the view of many on the Committee, that it is deeply unsatisfactory to legislate on the basis of one such incident, however upsetting it was for the victim's family, as it undoubtedly must have been. That point was made at Second Reading by the noble Baroness, Lady Hamwee, and my noble friend Lord Ponsonby. Is this one incident, serious though it was, the only basis for seeking to legislate in this context?

Beyond that, there is a question of principle. However repellent their crimes, whole-life prisoners are allowed to eat, exercise, read books, watch television and send and receive letters, so why are they to be denied the basic right to marry a consenting adult? I say "basic right" because Article 12 of the European Convention on Human Rights states:

"Men and women of marriageable age have the right to marry".

What the state cannot do, consistent with human rights, is impose restrictions so extreme that they impair the very essence of the right to marry. That is the test stated in the consistent case law of the European Court of Human Rights, which considered how this applies to prisoners, in particular in the case of Frasik v Poland in 2010. The court stated in its judgment that an effective bar on any exercise of a prisoner's right to marry is a breach of Article 12. The court added:

"Imprisonment deprives a person of his liberty and … of some civil rights and privileges".

The authorities are, of course, permitted to impose restrictions on civil rights to protect the security of the prison regime, but:

"This does not, however, mean that persons in detention cannot, or can only very exceptionally, exercise their right to marry".

The court added that the state cannot prevent a prisoner enjoying the right to marry because of the authorities' views as to what

"might be acceptable to or what might offend public opinion".

[LORD BACH]

That is the basis, it seems, of Clauses 55 and 56. It is very doubtful whether these clauses are wise in any event. My noble friend Lord Ponsonby made the important point at Second Reading that if we are to lock people up for very lengthy periods, perhaps the whole of their lives, we must surely give them some positive purpose in life: some hope, some encouragement to maintain relationships with the outside world, not just for their own self-respect or mental health but because it will help those who have to manage the prison regime and prevent the inevitable frustrations of long-term prisoners erupting in violence against prison officers or other prisoners.

Clauses 55 and 56 have, in my view, no sensible justification. They are objectionable in principle and they will impede good management of the prison system. They seem to have more to do with populism than with any sensible policy. I submit that if these clauses become law, this is an example of bad legislation that an experienced Parliament such as this should not pass. I invite the Minister, when he replies to this debate, to say that the Government will think again about this issue and, I hope, come to the conclusion that it is not worthy of this important Bill.

Lord German (LD): My Lords, I have added my name to both stand part notices. The first question I asked myself way back before Second Reading, and I still need to ask myself, is why on earth the Government put these two clauses in the Bill. They do not seem to do anything to make the prison regime any better or to make the work that goes on in supporting people in prison any easier. In fact, they appear to be cruel in a variety of ways.

The Secretary of State being able to approve a marriage or civil partnership only based on exceptional circumstances, even if you felt there was a rationale or a reason, is surely the wrong way around. Surely, the Secretary of State should be able to deny them only if there are exceptional circumstances. This measure will apply regardless of the way in which anybody in future seeks a partnership or marriage.

It worries me, as I am sure it does many others in this Committee, how much placing people in prison for their lives will add to—or detract from—what happens inside the prison. It is going beyond punishment. Whatever anybody feels about what happens in a prison establishment, providing some hope for the future of their lives, understanding how their lives work and making sure they feel a sense of purpose in remaining alive is part of the job of the state, which must retain that ability.

These clauses, once again, chip away at those fundamental human rights, disapplying human rights to a specific cohort of people. The universality of human rights in this circumstance is doubly important because, of course, the state is totally responsible for whatever rights and purposes prisoners have. It has to manage them. It is precisely in custodial institutions such as prisons that human rights protections are most vital, because the individuals are under the control of the state.

It would appear, as in the Illegal Migration Act and the safety of Rwanda Bill, that we are beginning to see a testing period for making controversial changes to our human rights framework. It seems to me and those on these Benches that this particular measure is offensive to that spirit of how the state should manage the lives of people in this circumstance. If there were to be a case for saying that somebody cannot get married or have a civil partnership, that is surely by exception rather than by practice.

It appears to me that these clauses do not really fit into this Bill, because of that sense of things being done in the wrong direction. More than anything else, I seek to understand from the Government why they have put this in place. If it is because of a single case, as we have just heard, to write law on the basis of a single case is surely not the correct way to go about it.

Baroness Thornton (Lab): My Lords, I wondered why this was in the Bill; it is because this is a victims Bill. My honourable friend Jess Phillips MP is familiar with victims of the crimes of Bellfield, so I looked at what she had to say about this issue. She is a great champion for victims of crime. What she said was quite interesting. She was reflecting on what had been said by Sarah Champion MP, who had put a point reflecting what my noble friend Lord Bach has just said.

Jess Phillips said:

"I truly appreciate my hon. Friend's fundamental point: everybody hopes for rehabilitation. With this, the only case we have to debate is that of Levi Bellfield, as mentioned. Having worked with some of his direct victims and the families of those victims, while I do not disagree that we sometimes chase headlines and make bad legislation in doing so, with his case I am not sure, from previous behaviour, that I would categorise it as rehabilitation. I would categorise it as behaviour to get headlines. The desire in Levi Bellfield's case, as has been put to me by many of his victims, is that these schemes keep him constantly in the media, and that is incredibly painful for them. There is a bit from both sides of the argument in this debate: trying to stop the headlines and allowing rehabilitation".—[*Official Report*, Commons, Victims and Prisoners Bill Committee, 11/7/23; col. 480.]

My noble friend Lord Bach raises some very important questions about the legality of this proposal. It is important that the Government explain why only one case has led to this being in the Bill.

4 pm

Lord Roborough (Con): My Lords, I thank noble Lords for their comments in this short debate. I thank the noble Lord, Lord Pannick, for setting out his intention to oppose that Clauses 55 and 56 stand part of the Bill, and the noble Lord, Lord Bach, for his comments in support of that.

It is important that the Committee examines the rationale behind these clauses. Clauses 55 and 56 will prohibit prisoners in England and Wales who are subject to a whole-life order from marrying or forming a civil partnership while in prison or another place of detention. The Secretary of State may grant an exemption in truly exceptional circumstances. A whole-life order is the most severe punishment in the criminal law of England and Wales. It is reserved for exceptionally serious offences, such as serial or child murders which

involve a substantial degree of premeditation or sexual or sadistic conduct. Unlike other life sentences, offenders subject to a whole-life order can expect never to be released. Their tariff will never expire and they will not be considered for parole at any point.

As the law stands, a prison governor cannot reject a prisoner's application to marry or form a civil partnership unless the ceremony creates a security risk for the prison. This includes whole-life prisoners. Those subject to whole-life orders can expect never to be released. As they are not working towards life on the outside and the prospect of being able to enjoy married life, any rehabilitative effect of a potential marriage is likely to be significantly reduced. Being married or in a civil partnership does not have any practical impact on an individual's ability to maintain a relationship with a prisoner. Prisoners are not entitled to conjugal visits and rights to access fertility treatment do not require the prisoner to be married to or in a civil partnership with their partner. Neither do spouses, civil partners or their children have any additional right to visits, telephone calls or video calls. Whole-life prisoners can therefore benefit from supportive relationships while in custody in the same way as other prisoners. In answer to the noble Lord, Lord German, this is not cruel—they can maintain relationships.

While the right is protected under Article 12 of the ECHR, the convention allows states to impose restrictions in a proportionate way for a legitimate purpose. In line with the opinion of the European Court of Human Rights in Draper v the United Kingdom, we consider that a restriction on whole-life prisoners' right to marry can be justified on the basis of public interest. The public set great store by our response to the most heinous crimes. The current position undermines confidence in our criminal justice system and its ability to deliver justice and protect the public. These clauses allow the Secretary of State to make exemptions on a case-by-case basis in exceptional circumstances. Any discretion available to a Secretary of State would itself be exercised compatibly with ECHR obligations.

We have taken a proportionate approach in applying these measures to only a small cohort of offenders who are already singled out in our domestic framework due to the exceptionally serious nature of their offences. As of December 2023, there were only 67 whole-life prisoners in England and Wales, representing less than 0.1% of the total prison population—less than one in 1,000.

To answer the question from all noble Lords, this is not about a single case. While it was a particular case that brought this issue to the Government's attention, this is not about any individual; it is a broader point of principle. The justice system must be able to deal appropriately with the worst offenders, to drive up public confidence in the justice system. We consider that these measures are justified on the basis of that public interest. This is not just due to the distress that such an event may cause to the families of victims, whose lives these prisoners have cut short in heinous ways, but, more fundamentally, because of the real risk of damage to public confidence in the criminal justice system if it cannot deal appropriately with the most serious offenders. The Government are resolved that this is an appropriate measure. I therefore propose that Clauses 55 and 56 stand part of the Bill.

Lord Bach (Lab): I thank the Minister for his response, and the noble Lord, Lord German, for his support in this matter.

I have two points for the Minister, if I may. Is it really considered proportionate as an answer to Article 12 to say that these measures would be allowed only in exceptional circumstances? That seems not very proportionate at all. Secondly, I personally do not see the relevance, when we are talking about a matter of principle such as this, of what percentage of prisoners are in this category. It does not matter what percentage are. If it is right, it is right, and if it is wrong, it is wrong. In my view, it is a matter of some principle that this should not be imposed upon people who have done absolutely terrible things and are paying the price for it. This is a step too far and, as I say, not worthy of Parliament. Having said that, I am not going to take this matter any further today.

Clause 55 agreed.

Clause 56 agreed.

Amendment 172

Moved by ***The Lord Bishop of Gloucester***

172: After Clause 56, insert the following new Clause—

"Data collection in relation to children of prisoners

The Secretary of State must collect and publish annual data identifying—

(a) how many prisoners are the primary carers of a child,

(b) how many children have a primary carer who is a prisoner, and

(c) the ages of those children."

The Lord Bishop of Gloucester: My Lords, the noble Lord, Lord Farmer, tabled this amendment, to which I am very pleased to add my name in support and to move it today in this final stage of Committee on the Bill. In his absence, I take this opportunity to pay tribute to the noble Lord for his commitment to the families of prisoners. This is also an issue which I know my right reverend friend the Archbishop of Canterbury cares deeply about, as well.

This amendment was selected for Report stage in the other place but not discussed. Introduced by Harriet Harman, it is an important progress chaser to the Government's response to the 2019 report from the Joint Committee on Human Rights, which she then chaired. This proposed new clause would require the Secretary of State to collect and publish annual data, identifying how many prisoners are primary carers of a child or children, how many children have a primary carer in prison, and the ages of those children. Its inclusion would be highly appropriate for this Bill, which focuses on both victims and prisoners.

When a parent is committed to custody, their child should not also receive a sentence; they should not be punished or overlooked as a result of their parent's crime.

[The Lord Bishop of Gloucester]

When a primary carer, or indeed any parent, is removed from the home, children and other family members are deprived of a provider of care and income. Often a shadow world of shame and stigma begins, which can haunt them throughout life and put them at risk of getting caught up in the criminal justice system themselves. If we are to prevent offending and anti-social behaviour then we need to be serious about looking upstream to support those at risk. This includes children with a parent in prison.

Charities working with prisoners' families, such as Children Heard and Seen and the Prison Advice and Care Trust, have repeatedly highlighted the gap in our understanding of the scale of parental imprisonment. I commend to noble Lords two short films released by both those charities that show the heartbreaking realities of this issue and the impact on a child when their parent is sent to prison. It also shows the remarkable work done by both charities alongside families.

The 2019 Joint Committee report highlighted the

"complete lack of reliable quantitative data on the number of mothers in prison"

and

"the number of children whose mothers are in prison".

It argued that

"without improved data collection, collation and publication"

it is both

"impossible to fully understand the scale and nature of this issue and to properly address it".

It continued:

"Mandatory data collection and publication must be urgently prioritised by the Ministry of Justice".

A few months before that was published, Crest Advisory's report on the children of prisoners found that

"during a parent's journey through the criminal justice system there are numerous points which children of prisoners could be identified—on arrest, at sentencing, on entry to prison, and under probation supervision. But at the moment, at no point does the system ask: 'If this is a parent in custody, where is their child?'"

The point of doing this would be to ensure the welfare of the children and to establish whether help is needed for the family or friends now caring for them. As that report said:

"Instead it is left up to the offender or the parent left behind to seek help—something which we know is problematic because of stigma and fear about children being taken into care".

That is echoed again and again by the charity Children Heard and Seen, which does such fantastic work with children with a parent in prison, including a ground-breaking initiative across the Thames Valley region.

Rightly, the Government broadened their response to the Joint Committee to all primary carers, not just mothers. Many men are also in this position—albeit with a very different proportion of the male prison population compared with the female estate. Again, we are hampered by the lack of reliable data. However, the Farmer review on women in the criminal justice system, the Ministry of Justice, His Majesty's Inspectorate of Prisons and many others highlight that relatively more women than men report being parents and, likely, primary carers.

The Government's position in 2019 was that their aim was to establish more accurate metrics to measure the number of prisoners with primary carer responsibilities. However, they also acknowledged that gathering information about dependent children is a sensitive matter and committed to exploring the most accurate way to collect and then collate and publish that data,

"provided an accurate method can be found to estimate it, and provided it can be done in a way that protects the rights of vulnerable individuals".

Given the significant body of evidence showing that the children of prisoners are at risk of markedly worse outcomes in areas such as mental health, underachievement at school and becoming offenders themselves, we should, at the very least, know how many children there are and their age and stage of childhood. The amendment is limited to quantitative data collection, given the inherent problems of collecting identifiers in such a delicate and sensitive area and given that a key aim at this stage is to progress-chase the Government on behalf of these particularly neglected children. I beg to move.

Baroness Brinton (LD): My Lords, I thank the right reverend Prelate the Bishop of Gloucester for her introduction and Harriet Harman for her amendment in another place; even though it did not progress, it was very important. I am very sorry that the noble Lord, Lord Farmer, cannot be in his place today, because his report, which pre-dates the Select Committee report in the Commons—it was published in 2017 and was called *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*—sparked a lot of this work.

That report emphasised throughout that data was needed on prisoners, their families and their children, particularly the age of the children, because that then enables the right sorts of services to be available inside a prison to support those family links that are so important. The noble Lord is so right that data is critical for ensuring that we—that is, the court system, prison, probation and other services, including Parliament and civil society—understand the impact on both prisoners and their children.

4.15 pm

If engaging with families can reduce reoffending by 39%—the premise on which the report by the noble Lord, Lord Farmer, was commissioned—that is an important lesson, but so is the quality of that engagement. I hope that that would be enabled by this amendment.

I hope there is another benefit too: that this data can strengthen specifically the support for children of prisoners. Both Spurgeons and Clink are clear that their lives are turned upside-down by their parents' imprisonment. We know that the experience of vulnerable groups of children has improved significantly since data was properly collected and shared with multi-disciplinary teams. The examples that I am going to give are not in the Ministry of Justice system.

The first example is that of looked-after children. I know that the right reverend Prelate the Bishop of Gloucester mentioned it and families are rightly very concerned about it because they do not want their

children to go into care. Prior to better collection of data and the disseminating of that data, however, the service offered to looked-after children was haphazard at best and shameful to our country at worst. Things have improved and continue to improve.

The second group is under the Armed Forces covenant, where that data is now provided to schools and local health services, not just for service men and women or veterans but for their children, because their lives, too, are often turned upside-down.

The third group is young carers. Their rights were significantly strengthened in the Children and Families Act 2014. Through those rights, data needed to be collected and shared in order for them to receive the support that they needed, whether from their council, school, doctor or any other agency. I say that because, when you work with young carers, you understand that before data collection, quite often a child's doctor was the only person who knew anything about them being a young carer. Schools did not understand and, very sadly, that went on right through society. Again, as with the other two examples that I have cited, it is not perfect but it is much better than it used to be.

I hope that the Government will accept that this data must be collected and published, but I also hope that they will ensure that the benefits of disseminating that information will not just help to reduce reoffending, nor just improve the quality of life between prisoners and their families while they are in prison, but will actually make a substantial difference to these children in their broader lives.

Baroness Thornton (Lab): My Lords, I thank the right reverend Prelate the Bishop of Gloucester, because I could not possibly better her introduction to this amendment. Indeed, my noble friend Lord Ponsonby and I were very pleased to put our names to it. I absolutely agree with the noble Baroness, Lady Brinton, that you cannot create robust policy if you do not have the data. She has helpfully illustrated to the House that it can be done and that, therefore, it should be done.

When I first saw these amendments—I have said this several times in the course of this Bill—I could not quite believe that it was not already happening, but it is not happening. I ask the Minister to seriously consider that this needs to be done for those children.

Baroness Sanderson of Welton (Con): My Lords, I do not pretend to be an expert on prisons, as some noble Lords are who have put forward this amendment. However, I also wanted to speak briefly to it, and for the very same reason, which is that I just could not believe that we did not collect the numbers on children who have a parent or a primary carer in custody. I know that the noble Lord, Lord Farmer, put down a Written Question and that the Government said that they do use a figure, which is 200,000. But that is from a survey from 2009—a pretty long time ago—and that is very different from the 312,000 figure that Crest Advisory has claimed.

We should say that the Government recognise that this is a problem. In that same Written Answer, the Government said they had made changes to the basic custody screening tool. In other words, this means that, when people go into prison, they are asked how many children they have back home. We know that they will not always say, not least because they will be worried about children being taken into care, and again, the Government recognise this. So in that Written Answer they talked about using a linked data programme called BOLD. They said the results should be published this spring and that that should be able to give us a better estimate. So can my noble friend the Minister explain, not necessarily today but perhaps in writing, how this programme works in practice and whether it will provide a permanent solution to the problem, as this amendment would do? If it will not, I ask the Government to consider making this change. Otherwise, as others have said, we will be letting down a group of very vulnerable children.

Finally, the Government's own statutory guidance, *Keeping Children Safe in Education*, says that children and young people will be impacted by having a parent or relative in prison. I am a little confused as to how, on the one hand, in guidance we can state that we know this is a problem and that children will be affected, but on the other we can say that we do not know how many children are affected because we do not gather the numbers. How can we provide the support if we do not know how many children there are or where they are?

Lord Roborough (Con): I thank all noble Lords for their contributions to this short debate. I am particularly grateful to my noble friend Lord Farmer for tabling this amendment and to the right reverend Prelate the Bishop of Gloucester for moving it. It would require the Secretary of State to collect data centrally about prisoners who are primary carers of children and the numbers of dependent children who have a primary carer in prison, and to publish the data annually, including the ages of the children. My noble friend, who is not in his place today, knows that the Government fully support the intention behind this amendment. The Government echo the right reverend Prelate in paying tribute to his work and ongoing contribution towards this issue.

Understanding the personal circumstances of those in custody, including responsibilities for dependent children, is essential if we are to provide effective support for those prisoners to help them maintain contact with those children. Strengthening family ties is an integral aspect of the work of HM Prison and Probation Service. We recognise the importance of maintaining a prisoner's relationship with family, friends and their wider community, particularly where the best interest of the child is served through maintaining a strong relationship with their parent. Prisons across England and Wales offer a range of services to maintain family relationships, including social visits, family days, secure video calling and Storybook Mums and Dads, an award-winning, charity-led initiative that enables parents in prison to record bedtime stories for their children.

In answer to the right reverend Prelate's comments on supporting children impacted by parental imprisonment, ministerial responsibility for supporting children who

[LORD ROBOROUGH]

might be vulnerable due to parental incarceration sits with the Department for Education in England and the Welsh Government, and the Ministry of Justice is actively committed to joined-up working across government to better understand the nature of this issue. The Female Offender Strategy, published in 2018, encouraged a partnership-focused approach to addressing the needs of both imprisoned mothers and children affected by maternal imprisonment. We published the female offender strategy delivery plan in January 2023, with a progress report, the *Farmer Review for Women*, in 2019. Outstanding commitments from the Farmer review are being taken forward under the delivery plan.

Understanding how many children are impacted by parental imprisonment is just as important, because having a parent in prison is a recognised adverse childhood experience that can impact a child's mental health and lead some to feel they are being judged for the actions of their parents. From the perspective of the criminal justice system and echoing the number that has been mentioned a couple of times in this debate, evidence has shown that over 60% of boys who had a father in prison went on to offend themselves. Therefore, identifying and supporting those individuals at an early stage has the potential to divert them away from the criminal justice system, preventing future victims of crime.

While we are fully supportive of the amendment's intention, we do not believe that legislation as proposed here is necessary. Our prison strategy White Paper. published in 2021, outlined our intention to address this issue through engagement with other government departments, and to commission updated research to improve our collective understanding of the overall number of children affected by parental imprisonment.

As my noble friend mentioned, we are delivering this commitment through our Better Outcomes through Linked Data project, known as BOLD. It is an almost £20 million cross-government shared outcomes fund that will link data to enable better evidence and more joined-up cross-government services. Through BOLD, we will be publishing a report that will estimate the number of children with parents in prison. We expect findings from the project to be published by spring 2024. This should provide some of the critical data that the noble Baroness, Lady Brinton, called for. We are working to collect and improve data. We have previously made changes to the internal management—

Baroness Thornton (Lab): Why are the Government aiming to have an estimate? We need to know the actual number of these children.

Lord Roborough (Con): I am grateful to the noble Baroness for her intervention and appreciate that this debate has focused very much on the wish of many noble Lords to have very accurate data. I am very aware that BOLD will be an estimate. We expect it to be a reasonably accurate estimate, which will be very good information for forming policy. The extent to which more detailed data could be required in future we will keep under review. If it is helpful, I can offer a further meeting on that outside this Committee.

Baroness Brinton (LD): The issue that I raised about young carers was in the legislation—not just in the Children and Families Act 2014 but the Care Act 2014 —because Edward Timpson, the Education Minister at the time, felt that it was so important that there was some mechanism to join up all the different departments. Why are the Government now saying that it is no longer necessary for this to be in legislation and absolutely clear?

Lord Roborough (Con): I am grateful to the noble Baroness for her question. I am afraid I do not have a detailed answer and propose to write to her, if that is acceptable.

The basic custody screening tool ensures that we identify prisoners with primary care responsibilities on entry into prison. That means that we can access this information centrally. While we recognise that the self-declared nature of the information collected through the basic custody screening tool means that it is—as many noble Lords have mentioned—fraught with concerns of prisoners about how much information they are willing to give and so brings with it certain levels of inaccuracy. Our intention is that this data will be reflected in the BOLD publication. I hope that, in the circumstances, the right reverend Prelate will agree that this amendment is not necessary and will withdraw it.

The Lord Bishop of Gloucester: I thank the Minister and all other noble Lords who have spoken. I am interested in his answer, because in one way he is saying, "Yes, we need this and recognise this", but in another is saying "But we do not actually need this amendment". I look forward to hearing more on that. As has been pointed out, the basic custody screening tool is very basic, and many parents do not want to declare on entry to prison that they have children. I will be watching with interest the BOLD programme and what comes out of that.

It is really important that the progress the Government are making in this area is now put on public record. It is nearly five years since the Joint Committee published its report. Also, I stress that it has been important to touch on family relationships and prisoners having those family relationships, but I do not want to lose sight of the fact that this is about the child. Not all children want to have contact with the parent who is in prison. So we need to be looking through the eyes of the child here.

As has been said, when children are given support, through charities such as Children Heard and Seen, we know that the results are remarkable. If, as the noble Lord says, education and other people are going to have this data, we need the data in the first place. That is where we need to start.

Many remain very concerned about these children who are invisible and that we are not able to support them, but I will not delay the Committee any longer now. I will take the comments back to the noble Lord, Lord Farmer; we will discuss it together and look at how to proceed on Report. Given all that, I beg leave to withdraw the amendment.

Amendment 172 withdrawn.

Clauses 57 to 59 agreed.

Clause 60: Extent

Amendment 173 not moved.

Clause 60 agreed.

Clause 61: Commencement

Amendments 174 and 175 not moved.

Clause 61 agreed.

Clause 62 agreed.

House resumed.

Bill reported with an amendment.

Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024

Motion to Approve

4.33 pm

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

That the draft Regulations laid before the House on 19 February be approved.

The Parliamentary Under-Secretary of State, Department for Business and Trade (Lord Offord of Garvel) (Con): My Lords, before I begin, I draw noble Lords' attention to my interests as set out in the register of interests, including as a person with significant control and shareholder of Cashmaster (Holdings) Ltd, Badenoch Investments, Badenoch & Co, Badenoch Partners, Badenoch Advisors, and the Badenoch Trust, as well as a shareholder of several other companies.

These regulations were laid before the House on 19 February under the Economic Crime and Corporate Transparency Act 2023, which I will refer to hereafter as the 2023 Act. This Act is a prime example of the Government's continued investment in tackling economic crime. The 2023 Act's reforms will enable us to bear down on the kleptocrats, criminals and terrorists who abuse our open economy, strengthening the UK's reputation as a place where legitimate business thrives and dirty money is unwelcome.

A substantial secondary legislation programme is now needed to make these reforms a reality. The instrument before us today, as well as some 50 other statutory instruments, will facilitate the necessary changes, including new processes and procedures at Companies House. I am glad to say that the first set of regulations in the programme was already approved by both Houses. These regulations provided the registrar with enhanced powers to rectify instances where address details for companies and company officers have been fraudulently filed on the register of companies. Since 4 March, Companies House has started to make use of these new powers, meaning that it has started to cleanse its register and quickly remove people's names and addresses where they were used without their consent.

I turn now to the details of this instrument, which applies across the whole of the United Kingdom. At the moment, obligations under the Companies Act 2006 are enforced primarily through the criminal justice system. There is currently only one civil penalty regime operating under the Companies Act 2006, namely the accounts late filing penalty regime. Under this regime, a company automatically incurs a penalty for not filing its accounts on time—this regime will not be affected by these regulations.

The 2023 Act sets out that the registrar may impose a financial penalty as an alternative to prosecution, where she is satisfied beyond reasonable doubt that a person has engaged in conduct which amounts to a relevant offence under the Companies Act 2006. In turn, this instrument sets out how financial penalties will be imposed and enforced.

There are a few points here that I consider worth highlighting. First, the penalties will be based on the severity of the offence, and the maximum fine under the criminal law, up to a maximum total of £10,000. The registrar can also impose more than one penalty in certain cases. This provides flexibility to ensure appropriate and effective targeting of offenders.

Secondly, these regulations provide the registrar with the power to revoke or vary the financial penalties she has issued. For example, she could do this in cases where new information comes to light which aggravates or mitigates an offence.

Thirdly, the 2023 Act allows that, where a civil penalty is imposed on a person, it can contribute to that person being disqualified from acting as a UK director.

The registrar will now have the discretion to choose between issuing a financial penalty or passing a case on to law enforcement to consider criminal sanction. Therefore, this new financial penalty regime will be another tool in the registrar's arsenal to promote compliance and maintain the integrity of the companies register. It ensures that we are striking the right balance between deterring non-compliance and not unduly burdening a small business.

The regulations before us today also make minor and technical changes to the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 to ensure consistency between the two financial penalty regimes.

I will now provide an update on the ROE financial penalties regime. As of 19 March, 30,698 overseas entities had registered with Companies House. A further 857 overseas entities had notified Companies House that they had disposed of their interests in land before the register opened. Companies House has taken action against those that have failed to comply with the requirements. As of 19 March, over 400 penalty notices have been issued, with penalties totalling over £20 million. This includes cases where Companies House has received representations and appeals which are ongoing. In the next phase of the compliance process, Companies House will start imposing charges against land held by overseas entities where penalties remain unpaid.

I am of course happy to provide noble Lords with an update on progress when we debate the next set of regulations related to the register of overseas entities—these will be laid before Parliament in the coming months.

In conclusion, let me stress that these regulations are an important part of the effective implementation of the 2023 Act, and I hope noble Lords will support them. I beg to move.

Lord Fox (LD): My Lords, I think, the mantle having passed through several Ministers, that this is an economic crime debut for the noble Lord, Lord Offord, so I welcome him to our world. He is ideally suited to bearing down on economic crime.

We welcome this statutory instrument; it is part of the process of having debated the economic crime Bill. Many of us had high hopes for what the economic crime Bill would and could achieve, but at the centre of what we ended up with was the performance of Companies House and its strength to uphold what we need. This is another important step.

I have a couple of questions on the first part of the statutory instrument: first, the potential for multiple penalties. If we were to use the real-life Knighton example of literally hundreds of companies being registered to an unwitting property owner, in theory could Companies House levy a £10,000 penalty for each and every one of those companies registered? It would, clearly, have discretion over whether do that. My second point is on the right to appeal. If Companies House is levying those penalties on the wrongful registration of a company, what is the right of appeal? Is it judicial review—a long period of review and appeal—or is it a relatively swift action?

The Minister mentioned the opportunity to update us when the next tranche of statutory instruments comes through; this would be good. We had a very useful briefing from the Companies House representatives while we were debating the Bill, and it was clear that there was a tremendous amount of resolve there but also an awful lot to do. A full update on where Companies House is on capability and capacity—for example, on recruitment and on starting to implement these measures; I saw reports that it has taken actions that it was not able to before the passing of the Act—would be very helpful. But with those provisos, we look forward to the next 50 statutory instruments.

Lord McNicol of West Kilbride (Lab): My Lords, I draw the attention of your Lordships' House to my registered interests as director and shareholder of McNicol Consulting Limited, which is registered at Companies House.

I have read the Commons debate on this SI, and I have gone through the Act and the Explanatory Memorandum—the memorandum was very helpful, so I thank the Bill team. We will support this SI on these Benches. I have a few questions for the Minister. Will Companies House require more resources if these cases are to be dealt with internally rather than passed on to the criminal justice system? If more are resources needed, will the Government be fulfilling those needs?

4.45 pm

Paragraph 7.6 in the "Policy background" section of the Explanatory Memorandum says that the

"financial penalty regime will sit alongside possible criminal sanctions".

Is it completely at the discretion of the Registrar of Companies whether a business or an individual is issued with a fine or pursued through the criminal justice system? Perhaps the Minister would like to say a bit more about that difference and what will lead to an internal fine rather than pursuit through the criminal justice system.

Paragraph 7.4 of the Explanatory Memorandum says:

"This instrument confers a power on the Registrar to impose a financial penalty".

The Minister touched on this briefly. How will the Government or the Registrar of Companies ensure consistency in decision-making when deciding whether to issue a civil financial penalty versus criminal prosecution? Is there a specific threshold by which an offence under these obligations becomes criminal rather than civil?

Is there a defined financial penalty for specific offences? On the only other power in respect of the penalties that Companies House can set for late filing, my understanding is that these are at set levels. Is Companies House looking at developing specific levels for specific offences within these categories?

The Minister talked about some of the individuals the Government are hoping to catch through this measure. The maximum fine is £10,000. Given that the profit margins of some organised fraudulent crimes are well in excess of this, will £10,000 be enough of a deterrent, and will it be reviewed?

I have a question about proceeds. Will the proceeds of the fines come back into Companies House? Will they go to the treasurer? I think the Minister talked about £20 million in another case. Will that money be able to be used within Companies House to develop this further?

On the numbers, the bar is being reduced from the criminal prosecution level down to some form of automatic fine or fines through the Registrar of Companies. Are we expecting the number of cases being taken to increase due to the lower threshold and that lower bar? Has any modelling been done?

My final question is about speed. As we welcome this SI, the presumption on these Benches is that it will speed up the ability to go after fraudulent individuals and businesses. What will that look like? Have Companies House or the department done any modelling on the imposition of a fine by the Registrar of Companies, as opposed to having to go through a very clogged-up criminal justice system, as it is just now?

With those questions, we on these Benches support the statutory instrument.

Lord Offord of Garvel (Con): I thank noble Lords for their contributions. I reiterate that the Government are firmly committed to the fight against economic crime and, thus, have worked to implement the 2023 Act as quickly and effectively as possible. As we have said, alongside the registrar's new powers, which take effect from 4 March, the new financial penalty regime instigated by the regulations before us today will help to promote compliance and maintain the integrity of the UK's companies register. This will indeed constitute a further step in that journey to transform Companies House from a relatively passive institution to a more active player tackling economic crime.

I turn to some of the points made by the noble Lords, Lord Fox and Lord McNicol. In relation that made by the noble Lord, Lord Fox, on multiple penalties,

where an address is misused—for example, in relation to more than one company—more than one financial penalty can be imposed, of up to £10,000. Appeals—there is an appeals process; of course, there must be an appeals process—will be heard in a county court or in the sheriff court in Scotland.

Regarding an update on implementation and resources, next month a report will be provided to Parliament. The House can be reassured that Companies House will have the resources it needs. For example, the incorporation fee has been increased from £12 to £50. Recruitment is well under way to ensure that Companies House has the right capabilities to deliver on these reforms—that point was raised by the noble Lord, Lord McNicol. To ensure that the teams are in place, recruitment is under way, including new Companies House investigation teams. We are looking at additional staff in the hundreds. By the summer, Companies House will have onboarded over 240 new roles in its intelligence and enforcement teams. This is a new culture for what has previously been a very passive institution. There will be further guidance on this as we work with Companies House to build this capability out.

In relation to the point that the noble Lord, Lord McNicol, made about the discretion of the registrar to impose a financial penalty or to pass the case to law enforcement officers to pursue prosecution, the registrar will soon publish guidance on that enforcement approach. It will provide more detail and clarity on how it will make use of new powers. Obviously, proportionality will come into play. Where there is perhaps more petty behaviour, then fines will be appropriate; where there is more systematic criminal behaviour, clearly that will result in the exercise of criminal sanctions.

The amounts of penalties will be considered on a case by case basis but are capped by the maximum fines able to be imposed under criminal law. Financial penalties are obviously one enforcement measure available to the registrar, alongside criminal prosecution and disqualification. Companies House will work with other agencies where there is evidence of serious and organised crime, as there may be active investigations that the registrar would not want to disrupt.

In terms of where the penalty money goes, it will be paid into the Consolidated Fund held by the Treasury, as required by the 2023 Act.

Having dealt with most of the points, I think there is consensus around the new regime, the devil being in the detail of how it is implemented. This has been a good debate, illustrating the need for a robust financial penalty regime. I hope noble Lords will agree that the regulations provide for just that.

Motion agreed.

Code of Practice on Dismissal and Re-Engagement

Motion to Approve

4.52 pm

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

That the draft Code laid before the House on 19 February be approved.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business and Trade (Lord Offord of Garvel) (Con): My Lords, this code of practice, which I will refer to as "the code" for the remainder of this debate, will give legal force to accepted standards about how employers should act when seeking to change employees' terms and conditions.

The purpose of the code is to ensure that dismissal and re-engagement is only ever used as an option of last resort. The code also seeks to ensure that, where an employer wants to make changes to an employee's terms and conditions, the employer engages in meaningful consultation with a view to reaching agreement with employees or their representatives in good faith. Employment tribunals will have the power to apply an uplift of up to 25% to an employee's compensation if an employer unreasonably fails to comply with the code where it applies.

Between January and April 2023, the Government consulted on a draft code, enabling trade unions, employers and other interested parties to contribute their views. In accordance with the Trade Union and Labour Relations (Consolidation) Act 1992, the Secretary of State also consulted ACAS on a draft statutory code before publishing it. Careful consideration was given to those views and, as a result, changes were made to the draft code. An updated draft code was laid in Parliament on 19 February.

The Government have been clear that threats of dismissal and re-engagement should not be used as a negotiation tactic by employers. When the Covid-19 pandemic led to cases of dismissal and re-engagement, the Government asked ACAS to conduct an evidence-gathering exercise to help us better understand the issue. That report was published in June 2021. The Government then went further and asked ACAS to produce new guidance to ensure that employers were clear on their responsibilities when making changes to employment contracts. That guidance was published in November 2021. ACAS has also published guidance for employees. The Government are now going even further to address the use of dismissal and re-engagement by bringing forward the code, aiming to ensure that this practice is only ever used as a last resort and that employees are properly consulted and fairly treated.

In all these discussions, we must balance protections for employees with business flexibility. There have been calls to ban the practice of dismissal and re-engagement and suggestions to legislate to restrict its use in a manner that amounts to an effective ban. This Government believe that we must preserve companies' flexibility to manage their workforce in times of crisis. It is, therefore, right that we have mechanisms to enable us to save as many jobs as possible. The code is a proportionate response to dealing with controversial "fire and rehire" practices, balancing protections for employees with business flexibility. I know that the vast majority of employers want to do the right thing by their employees. For most employers, decisions to change terms and conditions are not taken lightly, nor is the choice to let members of their workforce go.

The UK is a great place to start and grow a business and has a strong labour market. Its success is underpinned by balancing labour market flexibility and worker

[Lord Offord of Garvel]

protections. It is vital that we continue to strike the right balance, while clamping down on poor practice. If this code is approved by Parliament, it will be issued and brought into effect by the Secretary of State in accordance with the procedure set out in Section 204 of the 1992 Act. The Government intend for the code to be in effect by the summer.

I am aware that a regret amendment has been tabled by the noble Lord, Lord Woodley. I will respond to it later in the debate. I hope that your Lordships will support the code. I beg to move.

Amendment to the Motion

Moved by ***Lord Woodley***

At end to insert "but this House regrets that the draft Code contains no effective measures to restrain unjustified use of fire and rehire; and fails to include any measures (1) contained in the Employment and Trade Union Rights (Dismissal and Re-engagement) Bill [HL], or (2) recommended by the International Labour Organization Committee on Freedom of Association's *Definitive Report 404* published in October 2023 on the matter of dismissals of 786 staff by P&O Ferries Limited".

Lord Woodley (Lab): My Lords, I do not intend to repeat the arguments made earlier this month at the Second Reading of my Private Member's Bill. However, I must again put on record my sincere belief that, irrespective of the comments the Minister has just made, the Government's proposed code of practice is utterly toothless. It will do nothing to end the fire and rehire abuses taking place in this country.

Quite simply, I regret that the code does not impose any new legal duties on exploitative employers. I regret that it does not ensure that fire and rehire is used only as a last resort to prevent a business going bust—that is not the case out there in the field. I also regret that it does not make it any easier for workers or their unions to seek justice at an employment tribunal. My Bill would do all this.

The code imposes a paltry 25% uplift in any compensation which abused workers can claim, and that is only if they can win an unfair dismissal claim. That was hard to do at the best of times, even before the increase in fees.

It is clear that this code of practice is a fig leaf to cover the Government's inaction and lack of any real desire to address the shameful practice of fire and rehire. It simply is not good enough. The working people of our country deserve much better.

I thank the noble Lord, Lord Johnson, for being kind enough to write to me following our Second Reading debate. If I may, I will address some of the points he made in his letter to me.

As the Minister correctly pointed out, my Bill provides that, when an employee has been dismissed because they have refused to agree to a variation in contractual terms, the employer would not be able to rely on some other substantial reason as the reason for dismissal. Some other substantial reason, or SOSR as it is known by employment rights experts, is the gaping loophole I referred to at Second Reading, which allows bad bosses to ride roughshod over workers' rights. Closing this loophole is a key purpose of my Bill, but I do not agree with the Minister in his logic when he writes:

"Almost all the cases of dismissal and re-engagement rely on this ground"—

that is, SOSR—

"as a potentially fair reason, therefore this would in effect ban the use of dismissal and re-engagement".

If it is true that almost all fire and rehire cases rely on SOSR to avoid the judgment of unfair dismissal, this is proof that employment rights have been badly abused in the way that I and other noble Lords have long since warned against.

5 pm

That aside, my Bill makes specific provision for genuine situations of last resort, when a company simply cannot afford not go ahead and cut wages and

"there is a real threat to continued employment"

in the light of

"the economic situation affecting the employer".

I agree with that, and my Bill is clear on that. If an employer does their level best, given the circumstances, to fulfil the two obligations of consultation and disclosure, they have little to fear from using fire and rehire to reduce wages to the extent necessary to ensure economic survival of the company.

This gets us to the heart of the matter. The Government agree that fire and rehire should be used only as a last resort, but the code contains no measures to ensure that that is the case. It is, as I have said once already, utterly toothless. On the other hand, my Bill has teeth and can bite. Instead of the limited awards for unfair dismissal normally available, my Bill would allow for amounts such as the employment tribunal considers just and equitable—that is, it is uncapped, which may make a greedy employer think twice before they unfairly sack people. However, it does not ban fire and rehire in all circumstances, as the Minister suggested. That is an important point, which I do not believe that the Government have fully grasped.

The Minister responded to my question at Second Reading about whether the code would have prevented some of the most notorious examples of fire and rehire. I raise the bitter disputes at British Airways and British Gas, and now at Heathrow Airport, where Border Force staff just last week voted 90% in favour of strike action over enforced roster changes that would mean, effectively, a 20% pay cut for each and every one of them. The Minister replied that he was unable to comment on specific cases, but I suggest that the answer is that the code would not have stopped these abuses, or any similar ones, nor would it have stopped the appalling abuses by P&O Ferries two years ago. A number of sacked seafarers were rehired on worse pay and terms and conditions, although many where not; even today—the Minister may not know this—new hires are on less than £5 an hour. That is scandalous; it is not even the minimum wage, and it is happening right now.

The ILO report referred to in the amendment before noble Lords makes a number of recommendations to the Government, including that we should

"ensure mutual respect for the commitment undertaken in collective agreements … overcome challenges regarding the legislative prohibition on sympathy strikes",

and ensure

"protection against acts of anti-union discrimination",

including effective sanctions. My understanding is that the Government have failed to deliver on any of those measures, but I hope that my noble friend Lord Hendy, who will no doubt speak, will contribute more on this issue.

The Minister wrote back to me and said that the Government

"will be bringing forward legislation so that the 25% compensation uplift will also apply to the protective award".

Can the Minister update the House on that proposed legislation, as I am sure it will be of great interest to your Lordships, or to me at least?

I do not wish to take up any more of your Lordships' time by repeating arguments I have made many times before, so I will end on this point. Fire and rehire is deeply unpopular, with 70% of the Government's own voters wanting to see the back of it. But this new code, if anything, actually legitimises this abusive practice and shows bad bosses how to get away with it, legally. In my opinion, enough is enough; it is time for change. When will this Tory Government finally fight back and stand up for ordinary workers who are being exploited day in, day out? Thankfully, Labour will take steps to end fire and rehire within the first 100 days of coming to power. I sincerely hope that that is the case, because working people at the sharp end cannot put up with this any longer. The sooner we get rid of it, the better.

Lord Browne of Ladyton (Lab): My Lords, I am confident that the Minister will have read the Second Reading debate of my noble friend Lord Woodley's Employment and Trade Union Rights (Dismissal and Re-engagement) Bill. I too do not intend to repeat the speech I made then, but I make no apology for repeating the most important points, because they were designed to expose whether the code will be the deterrent that the Government think it will be. I am personally extremely sceptical about that, for two very clear reasons, which I will repeat by way of explanation.

First, while this debate is ostensibly concerned with this somewhat anaemic code of practice, it engages much larger questions of access to justice, the balance of power between employers and workers, and, fundamentally, whether the code does what it purports to do and will shield workers from manifest injustice. Given that the introduction of this code was announced in response to P&O Ferries instituting mass redundancies in March 2022, I think it is legitimate to look back at what the Government said then. The then BEIS Minister, Paul Scully, explained the Government's new commitment to introduce a statutory code of conduct. He did so in highly emotive and, one might say, colourful language. He described the practice of firing and rehiring as "deceitful" and "disgraceful", labelled the actions of P&O "appalling" and "unscrupulous", and vowed that the Government would "stand up for workers" against the flagrant disregard shown by companies that use sudden mass dismissal as a negotiating tactic.

Having raised these expectations, it is no wonder that there is manifest disappointment with the glacial emergence, over two years, of a code of practice that will impinge upon employers only at the point a case reaches tribunal. Testing whether or not that will be a deterrent is what I want to draw the Minister's attention to. I did this in my contribution to the Second Reading debate, drawing attention to the issues of delay and the coming imposition of fees for tribunals. The Minister who responded to that debate, the noble Lord, Lord Johnson of Lainston, was unable to pick up on those points in his winding up of the debate and offered to write—and, true to his word, he did write. I thank him for attempting to ease my anxieties but I confess that his letter was not wholly successful. Indeed, it was the opposite: it raised the temperature of my anxieties.

The letter began by admitting that there remains a backlog of 32,000 cases in the tribunal system, asserting that reducing outstanding caseload is the key to bringing down wait times, before revealing that:

"Employment Tribunal timeliness data has not been published for some time due to the Employment Tribunal changing their case management system in 2021".

That was three years ago. We have an assertion that bringing down wait times is essential, followed by a confession that, owing to a change in the case management system three years ago, we are today unable to gauge whether or not wait times are falling.

The viability of this code of practice is entirely contingent on a tribunal system that is effective and can prove timely redress. The fact that we currently, by the Government's own admission, have no access to the data that would tell us whether it delivers timely redress is absurd, if the Government are to rely upon that as being the ultimate deterrent against this behaviour by the people they described with those very colourful adjectives.

The letter also engaged the question of the Government's consultation on reintroducing fees at this time, of all times, for those who wish to bring a case before an employment tribunal. I thank the Minister for outlining, in his letter, the details of the help with fees remission scheme, but I remind your Lordships' House that I raised the case of R (UNISON) v the Lord Chancellor in my speech on Second Reading. It is not mentioned at all in the letter, and I can understand why, because the judgment in this case was unambiguous. It concluded that levying fees was unlawful. It cited the Leggatt report, which specifically identified the absence of fees as one of the three key elements that made tribunals successful, and concluded that fees, however modest, have the effect of preventing access to justice. That was the principal point that I raised in that aspect of my speech, and it was just ignored in the letter I got back from the Government.

I understand the fees coming under consideration are appreciably lower than they were previously, but they will certainly not encourage victims of fire and rehire to have recourse to the tribunal system and may well act as a further discouragement. This is yet another

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case of the Government telling us that they understand the existence of an injustice, assuring us that their heart is in the right place and they are seeking to right a wrong, but then again balking at doing the needful. We are all familiar with the cases of Tesco, Jacobs Douwe Egberts and Carnival and the other cases that seem to be appearing by the day, some of which the noble Lord, Lord Woodley, referred to, and the way in which employers and others weaponise the power advantage they have and exploit their workers. Rather than institute a non-legally binding code of practice that tells employers what they already know, I believe a more fitting course of action would be to enshrine good practice into law and offer clear redress to workers when they are victims of injustice.

Lord Hendy (Lab): My Lords, I share the regrets expressed by my noble friends. I intend to address the second element in the regret amendment put down by my noble friend Lord Woodley, and that relates to the International Labour Organization, which your Lordships will recall is a tripartite body, consisting of Governments, employers and workers. The United Kingdom was a founding member in 1919; it was the first signatory of the fundamental convention on freedom of association—convention 87—in 1949; it is a member of the governing body; and it is represented on the Committee on Freedom of Association.

The relevance of that is that, on 8 November last year, the governing body approved the 404th report of the Committee on Freedom of Association, which reported on the P&O Ferries saga of St Patrick's Day 2022. Your Lordships will recall that 786 seafarers were dismissed on that date and only 100 were subsequently reinstated. The other jobs were given to agency staff. The Committee on Freedom of Association, as approved by the governing body, made three substantive recommendations, none of which, so far as I can see, is reflected in the code of practice.

The first recommendation related to collective bargaining. The committee said that it

"urges the Government, with the social partners, to ensure mutual respect for the commitment undertaken in collective agreements, which is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground".

In many of the instances of fire and rehire mentioned by my noble friend Lord Woodley, there have been established collective agreements and established collective bargaining. That was the case with P&O Ferries, where collective agreements stretching back nearly 100 years were flouted.

5.15 pm

The second recommendation relates to the fact that, in the P&O Ferries case, the unions, RMT and Nautilus International, were unable to take industrial action because at the point of the dispute the members were all dismissed and were unable to take any secondary action by calling on port workers to boycott the ferries. The Committee on Freedom of Association said that:

"At the outset, the Committee recalls that a general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful … The Committee recalls that it had previously requested the UK Government to take the necessary measures to ensure that sympathy strikes were protected under the law … The Committee requests the Government to engage with the social partners to overcome challenges regarding the legislative prohibition on sympathy strikes, in conformity with freedom of association".

As I understand it, the Government have taken no steps whatever to engage with the social partners to overcome those challenges and there is not a word about that in the code of practice.

The third and final substantive recommendation relates to the penalties where such practices are engaged in. It said that

"the Committee notes … that while breaches of the UK law entitle claims to be made in an employment tribunal, such claims are subject to statutorily fixed (and very modest) maxima; for this reason, the company was able to quantify with precision what the cost of the dismissals would be and to assess how long it would be before that cost could be recouped from future profits generated by the poverty wages and diminished terms and conditions of the new crews".

Its recommendation was:

"The Committee … requests the Government to ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress".

The Minister will no doubt say that they have increased the penalties by increasing the award of compensation by 25%. Nobody in this House could seriously think that an increase in the award of compensation by 25% could have had any impact on P&O Ferries. It is most unlikely to dissuade any other employers contemplating sacking their workforce and re-engaging them on worse terms.

My noble friend Lord Woodley's Bill, which he referred to, has two recommendations that one would have wished to see in the code of practice. One is the removal of the caps on compensation so that it would reflect the full loss of each worker in consequence of being dismissed, subject to the usual rules about mitigation of loss, foreseeability and so forth.

The other would be to give the option to the union to obtain an injunction to prevent dismissals where there had been inadequate consultation and inadequate disclosure. For the reason that the committee's recommendations do not find any reflection in the code of practice, I share my noble friend's sense of regret at this code.

Lord Fox (LD): My Lords, I regret that I did not have the pleasure of being present when the Bill of the noble Lord, Lord Woodley, received its Second Reading a month or so ago. I clearly understand that the nature of that debate reflects very clearly on what we are debating today.

The Minister was not in your Lordships' House when we debated the P&O issue. Had he been, he would have experienced outrage and hand-wringing, not just from these Benches but from the Benches behind him and indeed from the Dispatch Box itself. That outrage was felt across the whole of your Lordships' House. As we have heard, this code was supposed to help embrace that issue and try to make sure that such outrages are not repeated. As we have heard in three well-made speeches from the Opposition Benches, we do not believe that this code comes close to doing that.

The code takes a very optimistic view of human nature: it infers that there are two willing parties with reasonable actions and beliefs. That is not the case that a code of conduct needs to deal with. When reasonable people negotiate with reasonable people, we do not need this code. This code is, essentially, how normal, reasonable people would act, and, as the Minister said, most companies are reasonable companies, and most employees operate with reason. That is why this code, in a sense, merely codifies what normal, civilised behaviour should be.

That is not what a code is for. A code is to deal with the people trying to operate outside normal, reasonable behaviour. On several occasions, the Minister used the word "ensure". This does not ensure anything, and noble Lords do not have to take my word for it. Paragraph 12 says:

"A failure to follow the code does not, in itself, make a person or organisation liable to proceedings".

In other words, any teeth it might have had in the first place have been removed by paragraph 12. I share the belief it really had no teeth.

Many other provisions in the code—for example, paragraphs 21 and 22—use the term "reasonable". How would we test "reasonable" in this circumstance? In Section C, around information, I would be interested to know: what is reasonable? We then move to paragraph 27, which is about commercial sensitivity and confidentiality. In every case of fire and rehire, there will be commercial sensitivity. Therefore, it makes sure that no information ever gets put forward. I am old enough to remember when the United Kingdom was part of the European Union, and we were part of the European Works Council system. That excuse is not allowable within the European Works Council. There is a system within that whereby the works councils are brought into the confidence of the management about their intentions in such circumstances. This does not allow such reasonable behaviour to occur.

Given the genuine and heartfelt comments made opposite during the P&O issue, I am disappointed that this is the result. It is toothless, as the noble Lord, Lord Woodley, said on several occasions; it does not ensure that something such as P&O could never happen again. As the noble Lord, Lord Hendy, put it, the 25% uplift is not worth a hill of beans when you look at the financial gain it has made by the actions it has taken.

Lord Leong (Lab): My Lords, I thank the Minister for setting out the code of practice and express my gratitude to all noble Lords who have spoken.

Last week saw the two-year anniversary of the P&O Ferries dismissals, the highest-profile abuse of fire and rehire in recent years—but, sadly, not the only one. The Minister might say that the P&O case is not fire and rehire, but many will not agree with that sentiment. If it looks like a duck, swims like a duck and quacks like a duck, it probably is a duck. Today the replaced workers are paid less than half the national wage, as my noble friend Lord Woodley referred to, in conditions that one described as like being in jail. Workers' pay and conditions horrendously diminished. Meanwhile, the company and its parent, DP World, was awarded £230 million in UK government contracts between March 2022 and July 2023.

This injustice has driven me to extraordinary lengths: it has made me agree with the Member for Welwyn Hatfield, the right honourable Grant Shapps. When he was Secretary of State for Transport, he described the company as

"pirates of the high sea".

I am even minded to agree with the then Prime Minister, Boris Johnson, who said that fire and rehire was

"unacceptable as a negotiating tactic".

The code does nothing to prevent any employer treating workers in a shabby way in the months and years to come.

Noble Lords who have run businesses, as I have, know what it is like to face difficult financial decisions. We understand that, in extreme cases, sometimes the only way to continue operating is to consult with employees on renegotiating contracts. If the company goes bust, nobody wins; everybody loses their job. Only in that situation can fire and rehire possibly be justified. Yet in court, employers do not have to prove that the fire and rehire policy would mean the difference between the life and death of the business. That widely criticised omission acts as a cloak of unaccountability, permitting employers to present unscrupulous decisions as unavoidable. All the well-intentioned recommendations in the code—that the employer "take into account" employee objections; that they engage in "all reasonable steps"; and that they do not raise the spectre of job losses too early in the process—are, in effect, neutered by this loophole.

Furthermore, several noble Lords have referred to the potential sanctions—a 25% uplift in fines at the end of a long David and Goliath legal battle—that could be factored in as a cost of doing business, as the noble Lords, Lord Fox and Lord Hendy, stated. We could see companies rewarding executives who are prepared to brush off a few bad PR headlines while making workers' lives worse. That is appalling in principle and in practice.

The P&O Ferries example should serve as a warning; even the then Prime Minister Johnson thought so. The code does not prevent a race to the bottom; it could lead to a hollowing out of secure jobs. Roads paved with good intentions—whether labelled promises, pledges or non-binding codes of practice—lead only in one direction. It is the workers, threatened with either losing their jobs or accepting worse conditions, who end up feeling the heat. The code currently makes no reference to a necessary qualifying period of employment before it becomes applicable to an employee. Can the Minister tell the House whether the code is applicable from day one for all employees?

In light of the range of concerns raised from only 50 responses to the consultation, I hope that the Minister and the Government will address the shortcomings of the proposal. To that end, my noble friend Lord Woodley's amendment sets out clearly why the Government should reconsider.

5.30 pm

Lord Offord of Garvel (Con): I thank all noble Lords who have participated in this debate. I hope to clarify some key points that were mentioned. I will

[LORD OFFORD OF GARVEL]
first turn to the regret amendment tabled by the noble Lord, Lord Woodley. I know that the noble Lord is a champion of protecting and enhancing worker' rights, but the Government do not believe that his suggested amendment to the code would be appropriate.

The amendment suggests adding measures from his Private Member's Bill on dismissal and re-engagement and from a report from the International Labour Organization. The measures contained in the noble Lord's Bill would, in effect, ban dismissal and re-engagement. That is because the Bill would remove the ground of "some other substantial reason" for an employer to justify a dismissal in a dismissal and re-engagement scenario. Almost all cases of dismissal and re-engagement rely on this ground as potentially a fair reason. Therefore, this would, in effect, ban the use of dismissal and re-engagement.

As I said earlier, it would not be appropriate to impose an outright ban on dismissal and re-engagement. There are some situations in which dismissal and re-engagement have a valid role. Companies that are, for example, going through difficult economic times or a change in their business model may need the flexibility to use this option to save as many jobs as possible.

In regard to the International Labour Organization's Committee on Freedom of Association's definitive report 404, as raised by the noble Lord, Lord Hendy, I would like to clarify that the UK is committed to all ILO conventions that we have ratified, including Convention 87 on the freedom of association and protection of the right to organise, and Convention 98 on the right to organise and collective bargaining. We are carefully considering the Committee on Freedom of Association's recommendations and will provide information to the ILO in due course.

Turning to the point made by the noble Lord, Lord Woodley, about P&O Ferries, echoed by the noble Lords, Lord Fox and Lord Leong, as we said at the time, the treatment of staff by P&O Ferries was disgraceful and was called out as such from this Dispatch Box. It fell short of the high standards we expect in this country, and which most businesses uphold. The company deliberately chose to ignore statutory consultation requirements. P&O Ferries broke the law by dismissing its workers with no warning, having made prior arrangements to bring in agency staff to replace them. What P&O Ferries did was "fire", and not "fire and rehire". The company dismissed staff with no notice or consultation. I understand that it was not seeking to renegotiate its employees' terms and conditions, so the code would not have applied.

The noble Lord said that some of those employees were fired and rehired. I thank him for bringing that to my attention. I am not familiar with the detail of their personal circumstances, but speaking generally, if an employer seeks to renegotiate terms and expects that it may dismiss an employee and rehire them or another employee to effect the changes, then it would be bound by the code. The Government have taken action in response to what P&O Ferries did. This includes legislating through the Seafarers' Wages Act 2023 and the ongoing Insolvency Service civil investigation.

A number of noble Lords raised the deterrent effect of the code and, as I said, the code of practice is a proportionate response, balancing protections for employees with business flexibility. An employment tribunal could increase an employee's compensation by up to 25% where an employer unreasonably fails to comply with the code. The Government will bring forward legislation so that the 25% compensation uplift also applies to the protective award, where employers have not complied with the collective consultation obligations and have unreasonably failed to comply with the code. The noble Lord, Lord Woodley, asked for an update on this legislative change that will increase the deterrent effect of the code. Subject to parliamentary time, the Government intend to bring this forward this summer.

The noble Lord, Lord Leong, asked when the code would apply to an employee. The code will apply from the first day of an employee's employment, though it will be subject to qualifying periods in individual claims.

Having heard the debate, I think there is perhaps just a philosophical difference on how we proceed in these matters. This Government believe that our workforce and labour laws are in an advanced and sophisticated state. We have record employment in this country: 33 million out of a population of 66 million working. We have just increased the national minimum wage at twice the rate of inflation over the last 25 years, and only 5% of our workforce is on the national minimum wage. Now that they have reached that level, they can be considered to have been taken out of low pay if that is defined as two-thirds of median hourly wages. They are now at that level, and therefore, within our labour force, our laws are working flexibly.

In my role as Minister for Exports, I travel the length and breadth of the country, and I meet companies of all shapes and sizes. The one observation I will make to this House is that post Covid, there has been a reassessment of the value of labour in this country. The labour force is now one of the most valuable parts of any company's make-up and capability. There are labour shortages, and good labour is scarce. I would argue, perhaps, that there has never been a better time to be an employee, because of the ability to receive higher wages for good skills that are at a premium, and companies want to have those employees within their businesses. In this situation, and thinking as an employer, I can imagine that it would be only in exceptional circumstances, where we were trying to keep our employees together and keep our company on the road, that we would have such a discussion. It would be absolutely as a last resort.

To take the point raised by the noble Lord, Lord Browne, about there being no teeth and waiting times in the tribunal system, I acknowledge that there are perhaps backlogs in that system, but this is a process that no employer wishes to get caught up in, considering the amount of time and cost it would take when we want to have our employees happy and working and producing effectively for the benefit of all the stakeholders within the company. Just as a matter of philosophy, we would say that this is an exceptional situation. The TUC says that it estimates

that only 3% of employers have ever gone down the road of fire and hire. As we said in the code quite clearly, it is not to be used as a negotiating tool. It is to be used only in a situation where there is legitimate reason to do so.

In conclusion, I would argue that the Government are taking robust and appropriate action in this area. A statutory code of practice is a proportionate response to dealing with controversial fire-and-rehire practices. The code will address this practice, aiming to ensure it is only ever used as a last resort, and that employees are properly consulted and treated fairly. It clarifies and gives legal force to accepted standards about how employers should behave when seeking to change employees' terms and conditions. Subject to parliamentary approval, the code will be in force later this summer. The House should be left in no doubt that the Government will always continue to stand behind workers and stamp out unscrupulous practices when they occur.

Lord Browne of Ladyton (Lab): Does the Minister have a response to my question about the coincidence of the Government consulting on imposing fees on those who seek to apply to an employment tribunal in the face of the case of UNISON v Lord Chancellor, where fees were held to be unlawful because they impeded access to justice? This issue was not addressed in the letter that the noble Lord, Lord Johnson of Lainston, sent to me. It was in my speech at Second Reading. Do the Government have a position on that? Is it just a coincidence that this is happening at the same time as employment tribunals are being given the ability to impose an extra 25% of financial penalties on employers who fire and rehire as part of the code of practice?

Lord Offord of Garvel (Con): As the noble Lord knows, one can read *Hansard* as well as one can, but not being in the Chamber to hear his eloquent argument of the case makes me slightly deficient in this response. I am disappointed that my noble friend was unable to write more comprehensively on the matter. Perhaps I can follow up with a second letter in that regard.

Lord Woodley (Lab): My Lords, this has been a lively, interesting and, indeed, productive debate. I just want to say one thing to the Minister. In a previous life, I was the leader of Britain's largest trade union, and I spent more time fighting for companies and for company survivals, and indeed to make sure that they had the right investment to protect jobs and increase jobs in our country, than I ever did fighting against them. That is why I take a little offence that the Minister suggested that my amendment indicates that fire and rehire is banned in all cases. That is the worst case of selective deafness that I have heard from two Ministers, to be quite honest. I point out to the Minister that it does not say that. It makes it absolutely clear that if we are in a situation where the very foundation of the company depends on these actions being taken, not only should they be carried out but we would support that.

However, with regard to where we are, I do not see anything reasonable in the code of conduct, as indeed we have all said here. The Minister also mentioned that—ironically—a TUC investigation into these things found that only 3% of employers were using fire and rehire as a tactic. I said this in the previous debate: 3% across all employers in this country means 38,800 employers. This is not chicken feed; it is big business. It is a pandemic that is right across our country and it will only get worse if we do not legislate to stop it. Again, it has been very interesting that, not only during my previous debate but today on this amendment, not a single speaker has spoken in favour of the code of conduct, never mind anything else, and that includes on the Tory side of this House.

I therefore regret that the Minister's response is not really doing anything to remove those concerns that we have all registered here about this code of practice. It is toothless, and it does not give the protection and decent compensation that workers who are being exploited deserve. However, as I am sure your Lordships now realise, I do not intend to divide the House on this matter, so I beg leave to withdraw.

Amendment to the Motion withdrawn.

Motion agreed.

Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) (Amendment) Regulations 2024

Motion to Approve

5.42 pm

Moved by ***Baroness Swinburne***

That the draft Regulations laid before the House on 19 February be approved.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Swinburne) (Con): The draft regulations, which were laid before the House on 19 February, will, if approved by Parliament, complete the legislative framework for overview and scrutiny committees, and audit committees, of combined county authorities. They make provision about the membership and proceedings of these committees and in relation to allowances for committee members. The regulations also provide for allowances for members of a combined authority's overview and scrutiny and audit committees.

The wider context of these regulations is that these committees are essential components of the architecture of accountability in combined authorities and combined county authorities. As more powers and resources are devolved to these important bodies and their mayors, the responsibility to ensure sound governance and effective decision-making in the interests of local people becomes ever more important.

Through these regulations we are ensuring that the new combined county authorities have strong and effective overview and scrutiny committees, and we are pursuing a number of further initiatives to develop this architecture of accountability. In particular, we have published the *English Devolution Accountability*

[BARONESS SWINBURNE]
Framework and a scrutiny protocol, and we intend shortly to issue revised statutory guidance on overview and scrutiny.

It may be helpful to say a little more about these initiatives. The *English Devolution Accountability Framework* sets out how institutions with devolved powers, such as combined county authorities,

"will be scrutinised and held to account … by the residents and voters of their area",

by local leaders and businesses and, as appropriate, by central government. As part of this framework, the scrutiny protocol in particular sets out how a combined county authority's or a combined authority's overview and scrutiny and audit committees hold the institution—and, where there is one, the mayor or directly elected leader—to account.

5.45 pm

We intend shortly to issue revised statutory guidance for overview and scrutiny, aimed at local authorities, combined authorities and combined county authorities, to help them carry out their overview and scrutiny functions effectively. The guidance provides advice for senior leaders, members of the overview and scrutiny committees, scrutiny officers and officers with a role in supporting these scrutiny committees. The regulations which we are considering today provide the foundation for these initiatives in their application to combined county authorities.

I turn to the detail of the regulations. They provide for the membership and proceedings of overview and scrutiny committees and audit committees of combined county authorities. They do so by extending the Combined Authorities (Mayoral Elections) Order 2017 so that it applies to combined county authorities as well as to combined authorities. This approach ensures parity between the two types of authority. The regulations also enable the payment of allowances to members of constituent councils of combined authorities and combined county authorities who are appointed to the overview and scrutiny and audit committees.

We have made a few minor changes to the drafting of the 2017 order to reflect the inclusion of non-constituent members and their nominating bodies in the constitutional arrangements for both combined authorities and combined county authorities, and to ensure that the provisions work for both types of authority.

The regulations also accommodate the constitutional difference between combined authorities and combined county authorities. In particular, if the provisions of the 2017 order were simply applied without modification, there would be no duty on a combined county authority to enable, for example, a district council that is within its area but which does not nominate a non-constituent member to refer a matter to the overview and scrutiny committee.

The regulations recognise the legitimate interest of such district councils in certain decisions which could be made by the combined county authority. They do so by extending the referrals provision to include such councils where the matter relates to the council's area. This extension also applies to the supply by the combined county authority of related documents to a council making a referral.

I turn to the new allowances provisions. These were included in the Levelling-up and Regeneration Act 2023 at the request of some of the existing combined authorities, to aid quoracy at meetings of overview and scrutiny committees. The regulations enable both combined authorities and combined county authorities to pay an allowance to members of their constituent councils who are appointed to overview and scrutiny, and audit, committees.

The provision is enabling only; if an authority does not wish to make such a payment, it is not obliged to do so. However, where a payment is made, it must be in accordance with a recommendation from an independent remuneration panel. The regulations also include consequential amendments to existing combined authority orders to ensure that the new allowances provisions may have effect in those authorities.

The Government undertook extensive consultation ahead of the 2017 order for combined authorities. The regulations before us today apply the 2017 order provisions to combined county authorities. They make only essential changes to reflect the constitutional provisions in the 2023 Act and to add the provisions enabling payment of allowances. That said, throughout the drafting process, we have engaged officers from the existing combined authorities and from constituent councils of the East Midlands Combined County Authority, as well as the Chartered Institute of Public Finance and Accountancy and the Centre for Governance and Scrutiny. The approach we adopted has been welcomed and the consequential amendments to existing combined authority orders were agreed with each area.

Under the 2023 Act, we hope to see the establishment of more combined county authorities, which, like combined authorities, will have increasing decision-making powers and budgets. The regulations provide that with these powers comes robust, transparent local accountability. This ensures that the public can have confidence in decisions that these new authorities and their elected mayors make.

Lord Scriven (LD): My Lords, I thank the Minister for presenting this and I see some logic in some of the provisions within the regulations. However, paragraph 10.1 of the Explanatory Memorandum raised my eyebrows. It asks:

"What is the approach to monitoring and reviewing this legislation?"

It then states that:

"The Government has no plans actively to monitor this legislation; the majority of provisions are already in operation without problems for combined authorities".

Tell that to people who have sat on the Tees Valley Combined Authority's overview and scrutiny committee. They would tell you that things were not working properly. It got to such a point that the dysfunctionality of that combined authority and the poor or lack of oversight of what was happening led to the *Tees Valley Review*, which was produced by an independent panel and made some quite interesting observations on what was happening there. The report said that:

"The former monitoring officer advised TVCA oversight and Scrutiny Committee they had no remit to scrutinise"

South Tees Development Corporation decisions. That was quite interesting because Tees Valley Combined Authority had given over £200 million-worth of loans to the South Tees Development Corporation and therefore there was a direct link to why overview and scrutiny needed to take place.

In the report, previous members of the Tees Valley Combined Authority's overview and scrutiny committee

"expressed frustration at the lack of information provided which they felt undermined their ability to scrutinise the activity of STDC and TWL"—

Teesworks Limited—which is now a privately owned company, 90%-owned by the private sector. Two businessmen with a 90% stake are making super profits on the back of £500 million-worth of public sector investment and again, the overview and scrutiny committee has not been able to scrutinise most of that money.

Recommendations 6 and 7 of the *Tees Valley Review* report relate directly to overview and scrutiny and show why it was not working, what the deficiencies are and how things need to be improved. The Minister pointed out that new guidance is coming forward, but if the Government are not going to monitor actively the legislation, how will they know whether another Tees Valley Combined Authority issue could happen or is happening? What mechanisms do the Government have in place to ensure that this kind of dysfunctionality can never happen at a combined authority again? It is an important question that the Minister needs to answer, especially since this new legislation will not be monitored. If arrangements are not in place centrally to determine whether there is this kind of dysfunctionality, what arrangements will be put in place to ensure that this could not happen again in any of the existing combined authorities or the new combined county authorities?

Lord Shipley (LD): My Lords, I will wait for the Minister to reply to the points raised by my noble friend Lord Scriven. In her introduction, she talked about the review that is taking place but not the timescale. It would help the House to know when the Government expect the response, which we all expect, to be produced.

I understand that this instrument maintains parity between combined authorities and combined county authorities and that it is necessary. However, I was concerned to read in paragraph 7.4 of the Explanatory Notes that

"several of the combined authorities with whom the draft legislation was discussed asked if provision could be included enabling committees to meet virtually or to reduce the quoracy requirement for the transaction of committee business from its current level of two thirds of committee members".

I am very pleased that the Government concluded

"that face-to-face attendance of meetings"

of overview and scrutiny, and of audit, is important. It is and, having worked on the levelling-up Bill and moved amendments in relation to overview and scrutiny, and audit, I think that the Government's position is correct.

It is very easy for those who are running overview and scrutiny, and audit, to want to reduce the workload and so suggest "Can we meet virtually?"—that means that, rather than all the conversations that take place before or after a meeting, people are only discussing these matters online—and, "Can committees have a lower turnout/attendance rate?" When we moved these matters in previous legislation, the figure of two-thirds mattered because overview and scrutiny, and audit, must be taken very seriously. I hope that the Government understand this.

We will see when we get the report that the Government are due to present to your Lordships' House, but, as my noble friend Lord Scriven said, my eyes lit upon the words at paragraph 10.1 of the Explanatory Notes saying that:

"The Government has no plans actively to monitor this legislation".

I think that this means relating only to whether people take up the option of allowances—it may mean that; however, it may mean something else. I hope that the Government do not mean the wider definition of "legislation", because all the evidence suggests that the Government need to keep a very close eye on overview and scrutiny and audit, and how it is being carried out.

Lord Khan of Burnley (Lab): My Lords, I thank the Minister for introducing these regulations. It is a pleasure to follow the noble Lords, Lord Scriven and Lord Shipley, who have asked some very important questions.

The Levelling-up and Regeneration Act 2023 provides for the establishment of combined county authorities, which typically cover more rural areas; the existing combined authorities typically cover cities. The purpose of these regulation is to ensure that the same membership and proceedings provisions apply to the overview and scrutiny committees and audit committees of combined county authorities as apply to the same committees in combined authorities.

The regulations aim to create uniformity across both types of local authority in terms of committees that scrutinise the spending of public money and enable their members to be paid. We on these Benches would like to raise some specific issues. The measures mirror powers given to local authorities and the current combined authorities. We must be careful that we do not create legislation that allows combined authorities to create overview and scrutiny functions and audit functions if they do not have the specialist teams that are needed to support them properly.

This is a point my honourable friend Jim McMahon MP raised in the other place; he had no satisfactory response. We all know that when local government excels in scrutiny, it is because it has a well-resourced team that enables it to do proper, deep-dive reviews and investigations, to call in expert witnesses and to really go through things. I do not see that provision of finance in these regulations, so I would welcome a response on that.

Will overview and scrutiny committees have the power to conduct a "best value" review? Will remuneration for members of the committees reflect the type of members the committees want to attract? For instance, getting a specialised accountancy perspective may cost

[Lord Khan of Burnley]

more than getting a residential view; will remuneration for each be the same or different? Have overview and scrutiny committees been reviewed yet? How effective have they been so far at ensuring that there are checks and balances in place on local authority spending? Who will pay for the provisions of these regulations? Will the cost come out of already-stretched local authority budgets?

6 pm

To conclude, we must also recognise that the more powers we give out, the more robust the checks and balances need to be. We are concerned that 14 years of Conservative economic mismanagement, compounded by spiralling inflation and the failure to grow our economy, have hit councils hard. We are keen to ensure that local councils are supported where the Government have failed. We will not expect councils to live hand to mouth, with short-term financial settlements year on year—I think we are now on our sixth single-year financial settlement—which make it difficult for councils to plan. Labour will give councils long-term, multiyear funding settlements so that they can plan ahead, as well as the tools they need to get on with the job. I look forward to the Minister's response.

Baroness Swinburne (Con): I thank Members for their contributions. There were some questions that I may need to come back to in more detail. With regard to the questions that in particular the noble Lord, Lord Scriven, asked about the situation in Teesdale—

Lord Scriven (LD): Teesside.

Baroness Swinburne (Con): Teesside—apologies; a lot of briefings have gone on in the three weeks since I joined this department.

As noble Lords will know, the mayor has accepted all the recommendations that the independent panel made in its review. They are in many cases substantial and therefore will take time to implement. But they are sensible recommendations and are in line with the frameworks that we have put in place and are putting in place with regard to the scrutiny protocol. From that point of view, the mayor in that region now needs time to put this into place, and the overview and scrutiny committee needs to step up to make the changes required.

Lord Scriven (LD): There are two points to that. My question is not really about what is happening in Teesside; it is about what mechanism the Government now have in place to ensure that the things that led to the Teesside review do not happen again. In the explanatory framework, the Government state that they are not going to "actively" monitor the legislation. Secondly, the protocol is welcome but it is non-statutory, so bodies do not have to apply it to their own overview and scrutiny committee. That is the case, is it not?

Baroness Swinburne (Con): We expect that all combined authorities and combined county authorities, where there is a significant amount of power being devolved, will adopt the best practice that we can possibly put before them. The *English Devolution Accountability Framework* pulls together all the existing policies and best practice, and indeed we will go further with the scrutiny protocol, plain English guidance and new published outcomes and metrics for areas to be measured by. There will be a new framework, and they will be held to account.

The intention is that this accountability framework will empower local residents and provide them with confidence that devolution is leading to improvements in their area overall. Ultimately, the mayors are accountable to the public, but we believe that the mechanisms need to be there for them to be accountable on a more frequent basis. The Government retain the ability to intervene in exceptional circumstances, but scrutiny and accountability should be led locally. Those are the principles we are applying to this—not just for one authority but for all these authorities, as we devolve the power.

I do not have an exact timetable for the scrutiny protocol; I will write to noble Lords as to when that will become operational. A lot of the work has already been done. Certainly, the scrutiny protocol will apply to all the activities and arrangements of the overview and scrutiny committees in all English institutions with devolved power, including combined authorities, both mayoral and non-mayoral, and combined county authorities—again, mayoral and non-mayoral—and with regard to all devolved powers in county councils and unitary authorities that have agreed to devolution deals. It is very comprehensive; they will all be covered by it.

With regard to the payments of allowances and the differences that may be deemed necessary in order to get good-quality people, any payment may be made only in accordance with a recommendation from an independent remuneration panel at that authority. Therefore, we would expect that panel to take the lead on this. The other side of the coin, of course, is that if an existing combined authority does not wish to make any payments, it is not required to do so, but if in the future it should change its mind, it will not need to seek further fresh legislation in order to do so.

In conclusion, these regulations are essential to ensure a robust local accountability framework for the exercise of devolved power by combined county authorities and their mayors.

Motion agreed.

Strategy and Policy Statement for Energy Policy in Great Britain

Motion to Approve

6.06 pm

Moved by ***Lord Callanan***

That the draft Strategy and Policy Statement laid before the House on 21 February be approved.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, the past few years have brought unprecedented challenges and uncertainty to Great Britain's energy system. But we have remained resilient and last year laid the foundations for an energy system fit for the future with the landmark Energy Act 2023, which I know many noble Lords were involved in. It was the largest piece of energy legislation in the UK in a generation, and a world first in legally mandating net zero.

The changes in that Act, including the powers to establish the National Energy System Operator, NESO, and new duties for Ofgem, mean that now is the right time to reaffirm the Government's strategic priorities and policy outcomes in this strategy and policy statement. The Draft Strategy and Policy Statement for Energy Policy in Great Britain is developed according to Part 5 of the Energy Act 2013. It sets out in clear terms the Government's strategic priorities and other main considerations of their energy policy, the policy outcomes to be achieved, and the roles and responsibilities of persons involved in implementing that policy.

The Secretary of State, Ofgem—the independent regulator for gas and electricity markets in Great Britain—and the NESO, a new independent public corporation responsible for planning Britain's electricity and gas networks and operating the energy system, will be required to have regard to the strategic priorities set out in this SPS. The Secretary of State and Ofgem must also have regard to the policy outcomes contained within the SPS, and they must both carry out their respective regulatory functions in a manner that they consider best calculated to further the delivery of the policy outcomes.

The NESO is expected to be established this year. The SPS serves an additional purpose of setting out and clarifying the roles and responsibilities of the NESO, alongside Ofgem and the Government. The SPS is intended to provide guidance to the energy sector on the actions and decisions needed to deliver the Government's policy goals, and places emphasis on where the Government expect a shift in the energy industry's strategic direction.

As the independent energy regulator for Great Britain, Ofgem cannot be directed by the Government on how it should make decisions. Similarly, the NESO is being set up to be operationally independent and free from day-to-day government control. However, the SPS will provide guiding principles for Ofgem and the NESO, when it is established.

The strategic priorities and policy outcomes within the SPS do not include the creation of any new policies or duties. The SPS reaffirms the Government's existing priorities and commitments, such as affordability, protecting consumers, security of supply, net zero, investment ahead of need, and encouraging Ofgem to make full use of its enforcement powers to support these ambitions. This statement will therefore support strategic alignment between government, Ofgem, NESO and the industry, through making clear what government wants to achieve in the energy sector.

As mentioned, the legal framework of the Energy Act 2013 means that Ofgem, NESO and the Secretary of State all have a duty to have regard to the strategic priorities within the SPS. Ofgem and NESO must also give notice to the Secretary of State if, at any time, they conclude that a policy outcome contained in the SPS is not realistically achievable. Ofgem must also publish a strategy showing how it will further the delivery of the policy outcomes, and its annual report must assess its contribution to delivery of the policy outcomes. The SPS therefore acts as a tool to promote alignment between government, Ofgem and NESO, as all parties will have to have legal regard to the statement in some sense.

As per the Energy Act 2013, the SPS has completed two consultations. The first consultation was undertaken with Ofgem and the Welsh and Scottish Governments. Government worked with all parties to make sure that their views were correctly captured before moving on to a second, public consultation held last summer. In the public consultation, government received views from Ofgem, the Scottish Government, ESO and many stakeholders across industry, including businesses, investors, trade bodies, suppliers, generators and infrastructure operators.

Feedback throughout both consultations was generally positive, and stakeholders were keen to see an SPS implemented to give guidance to the sector and clarity on the roles of Ofgem, NESO and government in delivering the Government's priorities for the energy sector. Since the consultations have concluded, officials have worked through that feedback and, where appropriate, have used this to inform the current iteration of the SPS which is now laid before your Lordships. The Government are confident that this SPS reflects the right strategic priorities and policy outcomes for energy policy for the whole of Great Britain.

I thank the Secondary Legislation Scrutiny Committee for the time it has taken to review the SPS, as well as the noble Lords, Lord Hollick and Lord Lennie, the noble Baroness, Lady Hayman, and others, for their interest in the development of the SPS.

In conclusion, the SPS reaffirms the Government's commitments and priorities for the energy sector and, in doing so, acts as a tool to support alignment between government, Ofgem, NESO and industry. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend on bringing forward the draft strategy and policy statement, which I support.

As president of National Energy Action, and focusing on the SPS's aims of affordability and protecting consumers to which my noble friend referred, I want to put a question to him. Although I accept, as the department explains in paragraph 46—this was also referred to by the Secondary Legislation Scrutiny Committee—that although Ofgem is independent of government, the regulator is required to

> "have regard to the strategic priorities set out in this statement when carrying out its regulatory functions",

does my noble friend share my concern, particularly for those living in fuel poverty, that although a consumer has control over the unit cost of electricity they are purchasing, they have less control over the standing charge? My understanding of the changes being brought in on 1 April, is that, although we are reducing the

[BARONESS MCINTOSH OF PICKERING]

unit cost to the consumer, the standing charge is going up incrementally. I imagine, in a very short order—possibly two to three years' time—that instead of standing charges going up to 50p or 70p, they will cost up to £1 per day. I believe that for many living in fuel poverty that is unaffordable.

So, while I accept that Ofgem should operate independently of the Government, I recall that in 2014, as part of the price review that the water companies' regulator Ofwat carried out, the Government issued a request to Ofwat to have regard to the affordability of customers' bills. My question to my noble friend is: is that something the Government might be minded to do under this SPS, in order to have regard to affordability and protecting consumers?

6.15 pm

Lord Naseby (Con): My Lords, I welcome the speech from my noble friend and congratulate him on his dedication to this challenging industry. When one looks at the background to the document we have today, it is just over 10 years ago that the concept of a strategy and policy statement was introduced by the Act in 2013—and here we are now. We now have it, and the vehicle is to be this organisation, the NESO—I do not know exactly how to pronounce it.

It would be helpful for colleagues in the House if we had some indication of what the costs will be when NESO is actually established, as the sphere of influence it has to cover is massive—its responsibilities go right across electricity, gas and hydrogen—and it is no bad thing in life to know, before you start something, what the cost is likely to be. That at least provides you with criteria.

It is fortunate, or unfortunate, depending on one's viewpoint—I had the privilege of serving on the Public Accounts Committee in the other place for some 12 years, as well as on the Select Committee on energy—that the National Audit Office published a report titled *Decarbonising Home Heating* on 18 March, precisely a week ago. Thankfully, I managed to pick it up. The summary of its investigations are, in effect, the first solid piece of evidence we have had in any depth on the particular area of home heating. We are talking about 28 million homes, which is a huge market, and the emissions that come from burning natural gas to heat homes. Reducing emissions from heating homes is a key component of the Government's overall target of achieving net zero greenhouse gas emissions by 2050, and they have printed that here.

The report says, in paragraph 3 of its summary, that

"growing the supply chain for heat pumps to a minimum market capacity of 600,000 heat pump installations per year by 2028"

is the Government's target. In the last 12 months, they have achieved 55,000, which seems like slow progress, quite frankly. Furthermore, it says that the Government are

"developing the evidence base to inform strategic decisions in 2026 on the future role of hydrogen in home heating".

It seems to me that we should have done a fair bit of that work already, but apparently we have not.

Paragraph 4 says:

"The government also committed £6.6 billion from 2021-22 to 2024-25 for schemes to improve energy efficiency … This includes the Boiler Upgrade Scheme",

which, equally, does not appear to be doing too well.

The report goes through a series of other points, with which I will not tire colleagues here, but it is well worth reading. I will, however, highlight points on some of the key findings. First, the NAO has established that some aspects of the

"plans to test the feasibility of hydrogen for home heating are behind schedule or have been cancelled, meaning it will have less evidence to make decisions in 2026 on the role of hydrogen".

We know that British Gas has a trial going, and there is a small government trial, but I find that rather worrying. Secondly in relation to hydrogen,

"Ongoing uncertainty over the role of hydrogen could slow the progress of decarbonising home heating".

The report goes on to say that the Government are thinking of using local government to play a role in establishing what to do about decarbonising home heating. As someone who had the privilege of being a leader of a local authority for some years, I do not think this is something, with a subject that is so important, that will be hugely welcomed by local government, which has more than enough on its plate.

As someone who comes from the world of advertising and marketing, I found it worrying to read, in paragraph 14 of the report, that the department has developed a campaign to promote heat pumps, but it does not seem to be getting through:

"public awareness is low: around 30% of respondents to a government survey in summer 2023 had never heard, or hardly knew anything, about the need to change the way homes are heated".

This is all very worrying; we do not seem to be making the progress that we ought to be making.

There are a series of eight recommendations in the report; I will not go through them all, but I will pick out a couple. On page 12 of the summary—and remember this is the NAO, which is not prone to stating anything positive unless it feels quite strongly about it—recommendation c states that the department should:

"Consider whether it is possible to provide more certainty on the role of hydrogen in home heating before 2026 to help industry plan and invest".

There are then some suggestions as to how that could be done.

Additionally, I have one other further area, and that is small nuclear reactors, which were not covered in the NAO report. It is worrying that we have known for at least three years that Rolls-Royce is geared up to do small nuclear reactors, and we have given it good money to work on them, but we are still not at a point where anybody is being appointed. There is a list of six potential people involved; some of them are not even ready now to do a proper pitch, and the rumour is that the pitch will be put back further because some of them are not ready. This slippage, all the way through, symbolises this market, and it is extremely worrying. It is possibly one of the most key areas of our industry and our lives when we talk about home heating.

I do not envy my noble friend on the Front Bench the job, and I thank him for his work so far. There is an awful long way to go, and even though His Majesty's

Government are not the vehicle for doing the communication, we must make sure there is better communication with the general public and that we should go forward together to meet the main policy objective in a way that is based on good science and good experience.

Earl Russell (LD): My Lords, this is the first use of the power to designate a strategy and policy statement—SPS—for energy policy in Great Britain, which was introduced in the Energy Act 2013. The changes in that Act included the powers to establish a National Energy System Operator a new independent public corporation responsible for planning Britain's electricity and gas networks and operating the electricity system. NESO will be required to have regard to the strategic priorities set out in the SPS and new duties for Ofgem, which are all contained in this statement. Can the Minister confirm that NESO will be set up this summer?

All that this statement does is to bring together existing policy and restate that policy in one coherent paper; the statement

"does not introduce new roles or duties for bodies in the sector, it is comprised of only existing government policy, commitments and targets".

We broadly welcome the statement, but my first question is: why has it taken 11 years, since the Energy Act 2013, to get where we are today? It is 11 years late; we should have been revising the second edition by now. While key elements are welcome, there is much that remains unclear or subject to regular change going forward. I do not think this statement should last five years without review. Will the Government commit to more regular reviews, even an annual review, as we continue our process of transition?

The relationship between the National Energy System Operator and Ofgem is still undefined in this strategy, so when will this be defined? Will the Minister agree to give a further review as soon as NESO is set in place, so that its powers, functions and relationships can be fully scrutinised? The strategy document says that NESO has a duty to notify the Secretary of State if, at any time,

"it thinks that a policy outcome in the SPS is not...achievable",

as has been stated by other speakers. What are the interim arrangements for the period until NESO is up and running if it decides that there are policies that are not achievable?

I worry also that Ofgem is not accountable to Parliament at the appropriate level of scrutiny for the new powers that are given to it under this policy. There seem to be some tensions for Ofgem between net-zero targets and promoting economic growth as set out in its core functions.

While I welcome the continued commitment to reach net zero, and I am thankful for all the work the Government have done, the Government need to do more at pace. There are key areas where progress is lagging, such as: the development of long-term energy storage; meeting targets, particularly for power generation to be decarbonised by 2030; and the ability to deliver the nuclear plan for a 24 gigawatt deployment by 2050, when many projects are running behind or are late. There are questions about whether we are still on track for offshore wind, following the collapse of the offshore wind auction this year. There are internal disagreements over the clean heat mechanism, and a year of delays means that the target for implementing heat pumps is in question, as we have heard. Emission targets for 2030 look unlikely to be met, the sixth carbon budget is behind schedule and the planned energy efficiency upgrade of ensuring that all properties achieve a rating of band C by 2030 does not have clear mechanisms to take it forward.

The Government are missing their own 2030 fuel poverty targets by 90%; we need a fair and just transition to net zero, yet fuel poverty is completely missing from this statement. I could not find the words in the document and neither does it make any mention of the Government's own fuel poverty strategy. There is also no mention of the social energy tariff, and the rollout of smart meters is behind. We need more renewables, and we to do more to improve home insulation at scale and at pace. These matters need to be at the heart of our future energy polices, and it feels like they have been forgotten in these documents.

The mention of the EU-UK Trade and Cooperation Agreement is very welcome, as we are spending £1 billion extra a year on our energy bills. When do the Government think the strategic spatial energy plan will be ready? The policy states that the Government expect an investment of around £100 billion in the energy sector by 2030. Does the Minister agree that recent changes in government policy direction, particularly in relation to electric vehicles as well as on other matters, have caused market uncertainty and damaged investor confidence? What actions are the Government taking to ensure the long-term clarity and stability of our environmental policy?

6.30 pm

Lord Lennie (Lab): My Lords, I thank noble Lords who have contributed thus far to the debate for making my job somewhat easier than it would otherwise have been and for raising important questions. The noble Baroness, Lady McIntosh, raised the affordability of standing charges from the NEA. The noble Lord, Lord Naseby, raised a lot of concerns about lack of progress in a number of areas, which, no doubt, the Minister will address. The noble Earl, Lord Russell, had a range of concerns, particularly about a lack of potential progress on the auctioning of offshore wind contracts for difference, which is about to take place—I think next week.

For my own part, there are three points I want to raise this evening. First, this is the first statement since the Government's Energy Act 2013 facilitated such statements. Secondly, while we agree with much of the statement, there are some clear differences between the Conservatives and Labour: in particular, on setting 2030 as the date by when Great Britain will be a clean power generator. Thirdly, there is a lack of detail and therefore a need for revision at the earliest opportunity.

I will take these points in order. The Energy Act 2013 assumed that a strategy and policy statement would be essential to align government policy with the actions of government agencies and bodies such as Ofgem and ensure they were marching in lockstep. There has

[LORD LENNIE]

not been a statement since 2013. As the noble Earl, Lord Russell, said, given the five-year gaps between statements, we should now be reviewing our second statement.

However, this policy statement is important in seeking to align government and Ofgem, with Ofgem having recently been designated with a net-zero mandate under the Government's energy policy of 2023. The Government cannot direct Ofgem, so Ofgem cannot operate unless there is such a policy statement. While this policy statement has been delayed—let us say, since 2013—it is certainly now welcome.

These policy statements are supposed to last five years. We should have had a strategy and policy statement immediately after the 2013 Act, and we should now be revising the second one. It is also clear that the strategy and policy statement will not last more than a year or so from now, because there will be a general election. The outcome of that election is not yet known but, should Labour win, it will certainly be reviewed. Can the Government say why no policy statement has been submitted before now?

While much of the statement is welcome, there are some clear differences between the Government and Labour. The original 2030 date by when we were to have clean power is no longer accepted by the Government. They have recently put back from 2030 until 2035 the date for ending the sales of internal combustion engines, in effect, meaning there will be at least a five-year delay. Their former net zero tsar, Chris Skidmore, and their widely respected former chair of COP, Alok Sharma, have both been highly critical of the Government's policy. This will surely do nothing to reassure either of them.

There are also areas as yet undefined and unclear, such as the relationship between ISOP—now to be called the national energy system operator—and Ofgem. NESO is a commitment in the Energy Act 2023 but, as we have heard, is yet to be established. When it is, there will be much work to be done to define its relationship with Ofgem as well as questions to be addressed about the regional energy system planners. Once NESO is set up, will there be a statement about these matters, including its relationship to Ofgem and, therefore, to government?

There are other areas that require updating. As the noble Earl, Lord Russell, said, these include a plan for developing long-duration energy storage, as well as the 2030 fuel poverty target, which National Energy Action says will be missed by 90%, and the rollout of smart meters, which is well behind the time set originally by the Government. These and other areas in the statement are either unexplained or undefined. Will any update on these matters be forthcoming?

Finally, a strategic policy statement must take account of the real state of the policy landscape or risk irrelevance; but a statement is better than none at all, which is why we welcome this statement despite its shortcomings

Lord Callanan (Con): My Lords, I thank all noble Lords who have taken part in this debate. First, I am confident that the strategic priorities and policy outcomes in the SPS clearly establish what the Government are trying to achieve in the sector. I think it got fairly widespread support and it established why this is important, demonstrating how these smaller policy outcomes contribute to the broader strategic priorities so that stakeholders can be reassured of how their role fits into the bigger picture.

I hope that the SPS gives industry a sufficiently high-level understanding of the roles, responsibilities and remit of government and the regulators in helping to deliver these objectives. Particularly in the case of NESO, we have provided enough information on the body's remit to give confidence on the role that it will play when it is established, while also recognising that its responsibilities will evolve over time. As well as reaffirming our ambitions, this SPS will give encouragement to Ofgem to utilise the full range of its existing powers to ensure that those ambitions are realised and that stability and confidence are restored across the sector.

I move on to the points that were raised in the debate, starting with my noble friend Lady McIntosh. The SPS makes clear the importance of tackling fuel poverty, as was also raised by the noble Lord, Lord Lennie. Ofgem has conducted a call for evidence on the standing charges issue. I know it is a very topical issue; there is a lot of concern. Ofgem received over 40,000 responses to that consultation. It is reviewing those responses. The Government are liaising closely with Ofgem to understand the options going forward. It is an independent regulator, and it would not be right to interfere in the decisions that it will make, but we do understand the concern that has been raised.

The NESO will be funded and regulated by Ofgem through licences and the price control process, as is the case with the electricity and gas system operators today. That is a well-known model, understood widely across the sector. The approach will provide accountability, scrutiny and, of course, value for money, while ensuring that the NESO is able to deliver fully on its objectives.

As part of agreeing future price controls, Ofgem will ensure that NESO is fully resourced to fulfil its objectives and the obligations set out in its licence, including the funding of its statutory duties such as those towards innovation and keeping developments in the energy sector under review. As with other regulated bodies in the sector, the NESO will have the operational freedom it needs to manage and organise itself to effectively deliver its roles and objectives.

I move on to the points raised by my noble friend Lord Naseby. He quoted extensively from the National Audit Office report on home heating. That is of course different from what we are debating today, but he raised some very good points, particularly on the rollout of heat pumps et cetera, on which I agree. My noble friend will be aware that we took a decision not to proceed with the hydrogen village trial last year. That was due chiefly to the lack of available hydrogen, but it also took into account the real concerns that were raised by many members of the public in that area. It is undoubtedly the case that electrification will provide the vast majority of the decarbonisation options in home heating; hydrogen will play a very limited role, if any, in the decarbonisation of heating.

In response to the questions raised by the noble Earl, Lord Russell, and the noble Lord, Lord Lennie, our aim continues to be for the NESO to be operational in 2024, depending on a number of factors including agreeing timelines with various key parties.

On the review of the SPS, I confirm that the Secretary of State can review the strategy and policy statement at any time—for example, following a general election or a significant change in energy policy.

On the questions raised by the noble Earl, Lord Russell, about the rules and responsibilities of NESO, I confirm that we have set out the roles and responsibilities of government, Ofgem and NESO at a high level in the SPS. The Government set the policy direction, while Ofgem is the independent regulator and makes decisions on business and investment plans. NESO will be the whole system planner, the operator of the electricity system, and the expert adviser to the Government and Ofgem as key decision-makers.

We are currently developing a framework agreement, which will set out the relationship between the Government as the shareholder and NESO. We plan to publish this shortly after designation. The specific roles and obligations of NESO will be set out in its licences, on which Ofgem undertook an initial consultation last year. We are due to undertake a statutory consultation this spring. However, as mentioned previously, we expect that NESO's role and remit will continue to evolve over time as energy policy develops.

On NESO not being able to raise concerns over the achievability of SPS outcomes until it is established, I reassure the noble Lord that Ofgem will also have a responsibility to raise concerns over achievability. We are already in frequent dialogue with the current electricity system operator, on which NESO will be based, where the Government's ambitions for energy are regularly discussed.

Finally, I move on to the point made by the noble Lord, Lord Lennie, on why now is the right time for the SPS. The Energy Act 2023 introduced new measures and established the independent system operator and planner in the first place as NESO. We thought that now was a good time—to reply to the point about major policy changes—to develop strategic guidance to explain exactly how we believe that Ofgem, government and NESO would work together to meet the Government's energy priorities going forward.

I hope I have been able to deal with all the points raised by noble Lords.

Lord Naseby (Con): Can my noble friend answer the question about small nuclear reactors? There has been consistent delay after delay. Are we going to get a decision in this calendar year?

Lord Callanan (Con): That is not the subject of this particular policy statement, but my understanding is that Great British Nuclear is currently reviewing the various designs, having instituted a competition to try to pick the best design going forward. I do not know the precise timescale for responding to that, but I will certainly find out and write to the noble Lord.

Motion agreed.

Fair Dealing Obligations (Milk) Regulations 2024

Motion to Approve

6.42 pm

Moved by ***Lord Douglas-Miller***

That the draft Regulations laid before the House on 1 March be approved.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Douglas-Miller) (Con): My Lords, I declare my interests as set out in the register. This evening's protests around Parliament by farmers, seeking a fair price for their product, I think speaks to the need for these regulations.

These regulations are the first of those that were promised, with pigs and eggs to follow, and are part of this Government's continued backing of our farmers, as the Prime Minister made clear at the NFU conference only last month. These regulations make use of powers in the Agriculture Act 2020, introduced by the Government to help level the playing field between dairy farmers and the larger processers that they supply. The then Agriculture Bill was debated intently in this House and the expertise of many noble Lords helped to shape these powers, for which I extend my thanks. I hope noble Lords share my delight that this work is coming to fruition.

The dairy sector plays an extremely important role in UK agriculture. Its success is underpinned by countless relationships between producers and processors that work extremely well. However, we have been made aware that, for some time, there are examples where relationships are not as constructive as they should be, and the vulnerable position farmers are in can often be exploited. The public consultation carried out in 2020 sought to uncover the issues and inform the types of interventions required to address them. The responses highlighted the main issues that dairy farmers experience, and we have constructed these regulations in direct response to those issues.

6.45 pm

We also listened to the perspectives of the milk processors. While the central aim of the regulations remains to enhance fairness and transparency for UK dairy farmers, we have also taken great care to avoid unnecessarily constraining those processers who already treat farmers well. Throughout the entire process of developing these regulations, we have undertaken extensive industry engagement with representatives from across the dairy supply chain to ensure that the regulations were effective and proportionate. It is incredibly pleasing to report that, since the introduction of these regulations, the industry has been in agreement that what we have developed strikes the balance between improving protections for farmers and maintaining the flexibility that businesses need to remain agile.

[LORD DOUGLAS-MILLER]

We will have the opportunity to discuss the content of the regulations, but I will summarise the rationale behind some of their most significant provisions. The regulations introduce a legal requirement for a written contract. We appreciate that this is already commonplace in the industry, but enshrining it in an agreement in writing is the most effective way of safeguarding farmers' rights. We want to see this best practice universally adopted. Importantly, this also allows us to protect farmers from the imposition of changes without their agreement. The consultation responses revealed quite a worrying number of instances where the agreements farmers had signed up to were changed without their consent. Clearly, this is not the basis of a respectable business relationship. The regulations expressly prohibit unilateral contract variations, so farmers know that, once they have signed up to a contract's terms, their agreement is required before any changes can be made.

The regulations introduce new requirements on processes to be more open about how prices are determined through the inclusion in the contract terms of the factors that will be used to determine the price being paid. We know it is ultimately the market that decides the price of milk at any given time, and these regulations are not an exercise in price-fixing. However, where farmers are subject to price variations, they should be confident that these have been determined fairly, in line with their expectations, and that they are a true representation of market value. Farmers have sometimes been left scratching their heads as to where the price included in their monthly milk cheque has come from. This new approach will ensure a far higher degree of trust and transparency.

When it comes to either party wanting a business relationship to end, there are now new rules that apply to all contracts on the process of termination. The specific details of this will still be a matter of negotiation, but they will now be subject to some broad parameters to avoid unfair practices occasionally seen in the past, such as restrictions on the days on which farmers are permitted to serve notice. This is to ensure that farmers are not subject to unjustifiably short notice themselves, nor are they trapped in a contract that they want to terminate for an excessively long time.

The regulations address problems farmers raised with us about exclusive contracts, which are contracts that stipulate that a farmer supplying one processor must supply them with the entirety of their production volume. These arrangements have a place in the industry and can be mutually beneficial. However, they can also be harmful to farming businesses when used alongside other contract terms, such as volume gaps and A and B pricing. Therefore, it is no longer permitted.

It is also worth touching on the way in which the regulations account for farmer representation. We are aware that many democratic organisations, such as co-operatives or producer organisations, are inherently structured to adequately represent the interests of their farmer members. As such, we have allowed for lighter regulation of these groups, exempting them from the pricing provisions and the rules on contract variation.

Finally, the regulations establish how we will ensure compliance. We are recruiting a new agricultural supply chain adjudicator, who will be in post before the regulations come into force. This borrows from approaches which have proven successful in related contexts. The individual appointed will investigate complaints and be able to issue substantial fines to anyone in breach.

In conclusion, I hope that I have been able to assure noble Lords that these regulations are the right approach to some of the problems faced by the dairy industry. They focus on those areas the industry has clearly told us need to be improved. They represent a significant step forward in achieving fairness and transparency for UK dairy farmers. I beg to move.

The Lord Bishop of Hereford: My Lords, I applaud His Majesty's Government for these new contract regulations. They are both comprehensive and long overdue in addressing matters of serious injustice in the dairy farming sector. Unfair milk contracts have been an area of concern for the dairy sector for many years, going back to the voluntary code of practice for dairy contracts, introduced in 2012. In their current form, most milk contracts do not create mutually balanced business relationships between buyers and sellers. Rights and obligations are often heavily biased in favour of buyers.

At times of pressure, purchasers have been able to change contract terms and pricing mechanisms, in some instances even introducing retrospective penalties and price cuts without negotiation. The Covid-19 crisis saw many of these scenarios play out. Farmers were hit with price cuts at no notice, a lack of transparency on pricing, and delayed payments, resulting in significant pressures on producers during this challenging period.

These regulations will see freely negotiated and fairly balanced contracts, tailored to the needs of both buyers and farmers. They mark a significant step forward. It will be important for industry and government to help support the development of farmer representation structures, such as producer organisations within the dairy sector, to make the most of the regulations and improve trust and collaboration across the supply chain.

This legislation contains extensive powers for the Secretary of State to oversee and enforce the code. I welcome the recruitment of the agricultural supply chain adjudicator, who will, among other things, enforce the regulations on behalf of the Secretary of State. Can the Minister clarify whether it is intended that the person appointed to this role will learn from the operation of the Groceries Code Adjudicator, which has been in operation since 2013?

Baroness McIntosh of Pickering (Con): My Lords, I warmly congratulate my noble friend on bringing forward these regulations. They plug a gap which has long been open, as most farmers do not supply supermarkets directly and so are not covered by the Groceries Code Adjudicator.

When I chaired the Environment, Food and Rural Affairs Committee in the other place, I took a small delegation to Denmark to learn about the effectiveness of its milk and other co-operatives. Does my noble

friend see this as an opportunity to encourage more co-operatives and producer organisations than we have seen in the past?

I grew up in the hills of the north of England, where I could see how fiercely independent hill farmers and others were. There is often a certain resistance to working together. I hope that the regulations my noble friend has presented this evening will lend themselves to producing such co-operation in future.

The NFU has long argued for fairer, more transparent supply chains. I hope that its pleas will be rewarded in the regulations before us. Can my noble friend assure the House that the Government will lend their support to the development of representational structures, such as the producer organisations and co-operatives to which he alluded? This will ensure that the dairy sector can work collaboratively and effectively with improved trust and greater collaboration across the supply chain.

I warmly welcome these regulations.

Lord Curry of Kirkharle (CB): My Lords, I too warmly welcome these regulations. It is interesting and rather ironic that the farmers are protesting in Parliament Square while we are addressing this topic. When I saw the tractors outside, I felt rather envious. I wished I had brought my own tractor from Northumberland, although it might have taken most of the weekend.

This has been an issue for a very long time. I have been involved in trying to encourage better relationships within the dairy and other sectors for at least 25, if not 30, years. This is an important development. I welcomed it when the then Agriculture Bill came into the House. It was a big step forward for the Government to bring this in as part of that Bill.

I have two questions for the Minister. First, did the Government seriously consider whether to extend the existing GSCOP and Groceries Code Adjudicator to include the elements contained in that Bill? There have been at least two reviews of the scope of GSCOP during the years. Many of us have been keen that that scope should be extended down the supply chain to provide greater protection and support for primary producers.

Secondly, if the answer to that is, “Yes, we have considered it but have decided to go it alone and establish our own adjudicator within the dairy sector”, are the Government likely to extend that scope to other sectors? Many of the issues dogging the dairy sector dog other sectors too. Relationships within supply chains are nothing like as good as they should be and, in many cases, degenerate into confrontational relationships. In my view, it is important to look at other sectors. When the adjudicator is appointed, it should be made clear that—if it is government policy—the remit is likely to be extended to include other sectors.

Lord Grantchester (Lab): My Lords, I thank the Minister for his explanation to the House today. This is an incredibly important measure to help resolve deep-seated problems at the producer end of the milk supply chain.

I declare my interests and experiences from being involved in a supply chain, as I have owned a dairy farm and received payments for over 40 years. I supplied milk in the beginning to Milk Marque and subsequently to several other processors, as well as chairing a producer group and the milk co-op Dairy Farmers of Britain. I was also a shadow Agriculture Minister in the Lords during the passage of what became the Agriculture Act, opposite the noble Lord, Lord Gardiner. I thank him for committing Section 29 into the Act.

The milk industry is extremely competitive. It has evolved with the rise and consolidation of supermarkets. Their dominance in the grocery trade has migrated milk away from doorstep deliveries. The consolidation of the top, supermarket end of the supply chain has driven consolidation in the processing sector. I liken it to the challenge of playing musical chairs, whereby the number of processors is successively reduced by the expanding supermarkets, which channel the supply chain towards expanding processors. An example of this business is the Co-op, which, at that time, expanded by acquisition. It reduced its milk suppliers from two to one, whereby the Co-op’s amalgamation costs of £6 million were, in effect, paid for by the dairy supply chain competing to be the one supplier of milk, without much regard to fair dealing.

By contrast, the service sector can be equally unstable and volatile, supplying milk to outlets such as Starbucks and others. In the other place, the debate mentioned the possibility of waste. I agree with the Minister in the other place, Mark Spencer, that there is virtually no waste in the milk chain. The recent example of so-called waste, when Covid shut down such outlets, resulted from those dairy suppliers being suddenly told that there would be no collection of their milk for the foreseeable future, and they faced the problem of safe dispersal immediately, with full tanks and cows needing to be milked again. I pay tribute to Dairy UK and Defra, led at that time by the Secretary of State George Eustice, for rectifying the situation.

7 pm

I can explain that farmer co-operatives set up Westbury to produce milk powder so that the price of the commodity product, milk, was not set by the last supply to clear the market. The supply chain has also re-engineered milk away from the spring flush towards the supply trough at winter housing, which has taken considerable investment in the chill chain, such that milk freshness is now maintained at 4 degrees, from the farmer’s milk tank, through processing and distribution, to being on the supermarket shelf. The milk industry is a very mature, successful and effective sector of agriculture, yet it needs this regulation.

In the passage of the Agriculture Bill, debate took place around GSCOP and the role of the Groceries Code Adjudicator, situated in the Business Department, not Defra. I declare my interest as being in the Labour team that took that legislation through the House. The Groceries Supply Code of Practice is different; it is between supermarkets and their immediate business suppliers, not primary producers, which generally do not have direct contracts to supply milk to supermarkets. Careful consideration is needed to determine in which

[LORD GRANTCHESTER]
department the agricultural supply chain adjudicator should be positioned. There is a belief that this code of practice can be swiftly implemented, but it has yet to be written. The powers of the adjudicator must be clearly understood in the supply chain and will not in any way relate to prices in the market. This took some considerable time to be understood in the GSCOP, where invaluable experience and advice will be useful, but residing in the Business Department. I agree that the regime should not be interfered with. The great success of the groceries code was in no small measure due to the appointment of the correct person in that independent role.

Farmers are generally not used to taking their products beyond the farm gate. Does the Minister agree that careful handling of the fair-dealing obligation in the milk sector must prove successful if this regime is to be expanded with confidence into further sectors of the industry, next being the pig industry? Any hint of price setting or collusion will entangle the Competition and Markets Authority. There must be no misleading in that respect, with regard to what this important framework must achieve in establishing fair, balanced contracts that are clear and transparent. It will necessitate nearly all processors issuing new contracts of supply and farmer/producer organisations of those processors coming out from under the wings of processors into effective business supply managers and negotiators, on behalf of their farmer members. There could be a need for training and support from the department to help them understand how they can make a difference.

It is positive that the business model of producer organisations will allow associations of producer organisations to arise without recourse to CMA attention. Can the Minister assure the House that, whoever the headhunters are, they understand and communicate the powers of the adjudicator's office, where the first responsibility is to issue necessary guidance? Will that guidance be subject to industry consultation and endorsed by Parliament?

While it is now four years since the Agriculture Act, there has been exhaustive consultations and discussions within the industry. I pay tribute to the NFU's Dairy Board, under the leadership of Michael Oakes, for contacting every processor and producer organisation to secure agreement that this regulation must be embraced and made to work effectively by the whole industry. It is vital that long-term relationships are built up for the benefit of consumers.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to this SI and for his time and that of his officials in providing a briefing for this long-awaited statutory instrument. Other noble Lords have made positive comments on supporting dairy farmers, and the detail of this statutory instrument. I am grateful to the NFU for its briefing.

Since the voluntary code of practice for dairy contracts was introduced in 2012, nearly 12 years ago, purchasers have been able to change contract terms and pricing mechanisms, even, in some instances, introducing retrospective penalties and price cuts without negotiation. The Covid-19 crisis saw this happen many times: farmers were hit with price cuts at no notice, and there was a lack of transparency over pricing and delayed payments, resulting in significant pressures on producers. Farmers got a very poor deal.

This SI will introduce mandatory minimum terms for dairy contracts which must be adhered to. As the noble Lord has said, these contracts will cover price, cooling-off periods, notice periods, variations, exclusivity and farmer representation. All these should make a huge difference to how farmers are treated and ensure that they get a fair price for their milk, which is essential for the survival of the dairy-farming industry. It will also bring a level of transparency into milk contracts not previously present.

I fully support this SI and have a point to raise. The Government conducted a call for evidence at the end of 2016 on the remit of the Groceries Code Adjudicator and whether it should cover all primary producers. This concluded that it would be better for primary producers in the dairy industry not to be covered by the GCA. That was eight years ago. Similarly, the consultation on the issue took place between June and September 2020, nearly four years ago. It would seem that the Government, although concerned about an unfair pricing system for farmers, were not in a hurry to do anything about it.

There are large parts of the instrument around termination of contracts, including where the business purchaser becomes insolvent and where there are disputes and enforcement. I welcome these sections, as they give farmers access to redress when things go wrong.

I understand that the debate on this SI in the other place was very short indeed, and I have no wish to prolong the debate here this evening. This legislation, while long in the making, is a positive step forward in addressing the imbalances that we have seen for too long in the dairy supply chain. I also hope that it will lead to support for farmers going forward, as they look to create the right structures to make the best use of the issues in this legislation.

Finally, I place on record my thanks, and I am sure the thanks of many others—the noble Lord, Lord Grantchester, referred to this—to Michael Oakes, who has been the chair of the NFU Dairy Board for eight years. Without his tenacious work over the past decade on this issue, I doubt that we would be debating it this evening. It seems that, without an advocate continually pushing, progress can be painfully slow. Let us hope that progress now speeds up considerably, and that this SI becomes law and is enacted without further delay.

Baroness Hayman of Ullock (Lab): My Lords, I start by thanking the Minister for his introduction and saying how impressed I was to watch him pouring a glass of water at the same time: he is clearly channelling his feminine side by doing two things at once.

These draft regulations, as we have heard, propose to introduce minimum standards for the contracts that businesses use when purchasing milk from dairy farmers. We fully support the aim to improve fairness and transparency in the UK dairy sector, which, according to Defra, is characterised by small, fragmented dairy

producers. We have heard a lot about the unfair commercial terms on which farmers have had to go into contracts, so we very much support this SI. Like other noble Lords, I thank the NFU for its work on this issue. The NFU has made it clear that it strongly supports the regulations, as unfair milk contracts have unfortunately been an area of concern for many years. The right reverend Prelate the Bishop of Hereford talked about the voluntary code of practice for dairy contracts, which came in in 2012. This has clearly not been working, so we very much welcome the regulations in front of us today.

While I have said we very much support the regulations, I have a number of questions for the Minister. The proposed requirements include that all contracts should be made in writing and contain clear pricing terms, through either a fixed or variable price, setting out how the price to be paid is generated and establishing a means for producers to challenge variable price calculations. We are very pleased that unilateral changes to contract terms will be prohibited and that the Secretary of State is going to be able to impose fines. The Minister said in his introduction that this is only the first and that further legislation will cover other agricultural sectors. The noble Baroness, Lady Bakewell, mentioned how long the regulations have taken. It has dragged on. Can the Minister say why it has taken so long? It is four years since the Agriculture Act was passed. Although he mentioned pigs in his introduction, does he have any idea when we are likely to see the SIs for the other areas we are expecting—pigs, eggs and fresh produce?

The agricultural supply chain adjudicator and the Groceries Code Adjudicator have been mentioned. Transform Trade sent an interesting briefing expressing its concerns around departmental fragmentation and the sectoral siloed approach that it feels the Government are taking by addressing the problems in only four sectors, and only at the farming stage. Its concerns include the fact that risks and costs will continue to be passed on to all supply chains; and that while the adjudicator may be able to address farmers' experience of unfair trading practices, where the cause of that unfair trading practice originated with the food retailers, the retailers will continue to get away with passing unfair trading practices. I would be interested to have reassurances from the Minister on this concern.

Of course, not all farmers work in the four sectors that are covered. How does Defra intend to keep an eye on what is happening in the other sectors that are not protected? Will the adjudicator appointed to enforce the milk codes be able to share information relevant to the GCA's ability to assess whether the 14 largest UK food retailers they cover have breached the Groceries Supply Code of Practice purchasing code? We need to be sure that this is working effectively.

The noble Lord, Lord Curry, asked about the scope of the GCA. This is a really important question. When I was in the other place, we did a lot of work on the GCA when it was established, and it really needs to be seen to be working effectively, including within this new regime.

My noble friend Lord Grantchester talked about food waste. He mentioned that there is little waste within the dairy sector, but the design of regulations under these powers is potentially a missed opportunity to implement the Government's stated policy of using them to reduce farm-level food waste, as was said during the passage of the Agriculture Act. As we are expecting further SIs to come forward in a similar way, I would be interested to hear why the Government's consultation on using the powers did not make explicit reference to, or explicitly invite evidence on, how the powers could be used to reduce food waste. Food waste prevention may well be on the Government's radar, but it is not clear from the consultations that were carried out, so my final comment is that further elaboration and confirmation around that would be very welcome.

7.15 pm

Lord Douglas-Miller (Con): My Lords, I am very grateful for all the views shared on this SI. I believe we all recognise that the market needs to operate fairly, and that where there are vulnerable parties in the supply chain, the Government are justified in introducing protections. A great number of the questions this evening were focused around the adjudicator, its role, what precisely it is going to be doing and when it is going to be appointed, and I will come back to that in a little more detail and just answer one or two of the other questions first.

My noble friend Lady McIntosh of Pickering asked a few questions around co-operatives and producer organisations. As I said in my opening remarks, with these regulations we have looked to protect what was already working and to prevent only what was going wrong. Our consultation revealed clearly that many relationships in the dairy supply chain are exemplary and working well for all parties. This includes those where farmers have effective representation, be that through the producer organisation model or with the structures of a co-operative. As a result, some parts of these regulations do not apply for producers represented in this way. We hope this encourages purchasers to consider relationships with representative organisations, as evidence suggests that this can be beneficial to all parties.

I move on to the issues around the adjudicator, which were very eloquently expressed by the right reverend Prelate the Bishop of Hereford. The noble Lords, Lord Curry and Lord Grantchester, also touched on many of the issues, and the noble Baroness, Lady Hayman, talked extensively about them, so let me talk a bit about the role that the new adjudicator—the enforcement agency, if you like—will have. Our new adjudicator will focus on the first stage of the supply chain, on a sector-by-sector basis. We are confident that this targeted approach, looking in-depth at specific areas of the supply chain, will be very effective. We are currently recruiting our new agricultural supply chain adjudicator. The final decision will be taken by Ministers following the due Civil Service process. I have taken on board a lot of the comments made about the skills necessary for this individual and how we would like to replicate the process that was so successful with the Groceries Code Adjudicator.

[Lord Douglas-Miller]

I think it was the noble Lord, Lord Curry, who asked why an extension to the Groceries Code Adjudicator was not used instead. The idea of expanding the remit of the Groceries Code Adjudicator was explored in the formal call for evidence in 2016. This concluded that an extension of the GCA's role further along the supply chain would not be appropriate. The reasons for this include that it would extend the GCA's remit significantly. These regulations are focused on the contracts that dairy farmers hold directly, which are almost exclusively with processing companies. The Groceries Code Adjudicator instead regulates the relationships between the largest grocery retailers and their direct suppliers, another point covered by the noble Lord, Lord Grantchester.

There were further questions about why we are not going to use the regulations on all sectors. We will use the powers of Section 29 to protect farmers wherever necessary. However, the different needs and working practices of each industry mean that a targeted approach is needed to draft the most effective regulations. Our work on drafting this statutory instrument and the upcoming pork regulations has justified this approach, with the needs of each industry being very distinct. As well as developing regulations to apply to the UK pork sector, we have recently concluded consultations on the UK laying egg and fresh produce sectors. The Prime Minister has also announced a new review into the broiler chicken sector. There were a number of questions about what is going to be coming forward and the noble Baroness, Lady Hayman, also asked when we would see these SIs. When I have been asked that recently, I have replied, "Before the Summer Recess", and I am hopeful that we might do even better than that in this case.

I am also picking up on the very important point from the noble Lord, Lord Grantchester, about the need for careful handling here, to ensure that the rollout into other sectors does not get derailed by heavy-handed or inappropriate activity. I am hearing that loud and clear.

I also picked up a number of questions from the noble Baronesses, Lady Bakewell and Lady Hayman, on why we have been waiting so long for these regulations. We can all acknowledge—I certainly do—that these regulations have taken longer than expected. However, it has been extremely important that we consulted and engaged extensively to ensure that we are able to take everybody with us on this journey. Again, for the reasons expressed by the noble Lord, Lord Grantchester, it is important we get this first step right. As noble Lords know, I am relatively new to this. Now that I am seeing it, I will push it forwards as fast as I possibly can.

The noble Baroness, Lady Hayman, also asked why these regulations do nothing about food waste. The fair-dealing powers can be used to address practices that result in on-farm food waste. In sectors where this can be an issue, such as the fresh produce sector, we can intervene and introduce new rules to reduce the amount of food going to waste. However, these regulations apply to the dairy industry, and it is only in extremely rare cases that milk is wasted—a point raised earlier. Our consultation did not reveal that a specific intervention was required to address this in this SI.

In summary, I hope noble Lords will agree that this SI is both necessary and proportionate.

Motion agreed.

Christians: Persecution

Question for Short Debate

7.23 pm

Asked by ***Baroness Foster of Aghadrumsee***

To ask His Majesty's Government what steps they are taking to support persecuted Christians around the world.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I thank all those who have put down their names to speak tonight on this important but unfortunately largely ignored issue of the global persecution of Christians. I also thank the Minister for being here to respond.

My thanks also go to all those who have contacted those listed to speak tonight for the various briefings which have been put together. The truth is that we probably have enough material on this issue to speak for a very long time this evening—the matter is an expansive one—but we are constrained by the time limits set and should endeavour to respect those. In an effort to comply, I will cite specific examples of Christian persecution to point out the trends I wish to cover rather than try and deal with every country on the watch-list; that would be impossible.

Whether through serendipity or divine intervention, I can think of no better time than Holy Week to bring this issue to the attention of the House. The Bible tells us that this was the time when Jesus suffered greatly, both physically and mentally, knowing the death he would face on Good Friday. It therefore seems appropriate to focus on the great suffering that continues for Christians across the world today.

In January, along with many other MPs and Peers, I attended the launch of the 2024 Open Doors World Watch List here in Parliament. The Minister was there as well. Every year, this organisation compiles a report which sets out the 50 countries where it is most dangerous to be a Christian. This year, the research found that more than 365 million Christians suffer high levels of persecution and discrimination for their faith—around one in seven Christians worldwide.

For those of us living in the United Kingdom, it can often feel as if our faith is not respected and indeed is often belittled, even though we have an established Church here in England and Wales. As Christians in the UK, we may feel marginalised, but to hear that our brothers and sisters in Christ are persecuted for their faith in the manner that was outlined was frankly shocking. Yet very little of this persecution is spoken about, never mind acted on, and that needs to change.

Back at Christmas in 2018, the then Bishop of Truro, now the right reverend Prelate the Bishop of Winchester, was asked by the then Foreign Secretary, Jeremy Hunt MP, to carry out a review into the global persecution of Christians; to map the extent and the nature of the persecution; to assess the quality of the Foreign, Commonwealth and Development Office response; and finally to recommend changes in policy and practice to deal with the issue.

The comprehensive final report, which was published in June 2019, noted that the problem was indeed a global phenomenon. It said that the western response to the problem, however, was no doubt

"tinged by a certain post-Christian bewilderment, if not embarrassment, about matters of faith, and a consequent failure to grasp how for the vast majority of the world's inhabitants faith is not only a primary marker of identity, but also a primary motivation for action (both for good or ill)".

Religious persecution occurs to a third of the world's population in some form, with Christians being the most persecuted group, even though freedom of religion and belief is a fundamental human right. To make things worse, global persecution of Christians is underreported and therefore is not highlighted and responded to in an adequate way. The geographical spread of anti-Christian persecution, and its increasing severity, was noted by the Truro report. Indeed, in some regions, the level and nature of the persecution arguably came close to meeting the UN's international definition of genocide.

The main impact of the persecution, apart from the individual suffering, is the internal displacement and exodus from various parts of the world. As we come to celebrate Easter in the Christian calendar and all the events that took place in Jerusalem in that Holy Week, we should pay more attention and do something about the fact that Christianity now faces being wiped out in parts of the Middle East, where its roots go back the furthest. In the birthplace of Christ, Christian numbers are at 1.5% of the population. Understandably we have heard much about the plight of our Jewish friends in the region, and indeed the plight of all those living in the region, but rarely do we hear about the tiny Christian minority who are struggling to be heard, let alone helped. In Iraq, the population of Christians has plummeted from 1.5 million to now just over 100,000.

Christianity, which has provided much-needed plurality in the region, is disappearing, and apart from the tragedy which that is for those Christian communities, it has a destabilising impact on the Middle East. I wonder if the Minister, who has great expertise and experience in this area, could comment on that aspect in particular when he makes his remarks.

The Truro report said that Government need to give

"priority and specific targeted support"

to Christian communities—this was

"not only necessary but increasingly urgent".

Given that recommendation, perhaps the Minister could update us on any specific action that has been taken of the back of that report, given that it is nearly five years since its publication.

This issue of stability and security was a theme explored by the Open Doors launch this year. The title of this year's report was *The Cost of Collapse and the Cost of Control*, and it indicated that under the cover of state fragility and failure, violence against Christians has intensified in many parts of the world while, elsewhere, autocratic countries increase their control.

By way of example of state fragility, as sub-Saharan Africa becomes more unstable, religiously motivated violence is intensifying. In 18 of the 26 sub-Saharan countries, 4,606 Christians were killed because of their faith during the 2024 reporting period. The growing violence is causing a displacement crisis as more and more Christians are forced to flee their homes. It is of great concern to me that this displacement of Christians is also happening in India. More than 62,000 Indian Christians were forced to flee their homes during the 2024 reporting period—a huge jump from 380 in 2022 and 834 in 2023. I am sure that His Majesty's Government are very concerned about this and I look forward to hearing the Minister's observations on this region, about which we both care deeply.

A subsection, if I may describe it as such, of the persecution of Christians is the treatment of Christian women. Put simply, they are more likely to be the victims of discrimination and persecution than their male counterparts. That could be through people trafficking, gender-based violence, kidnapping, forced marriage—the list continues. This double marginalisation of being a woman and a Christian is underreported as women are often invisible in such societies and poorly represented. For example, there is evidence from Pakistan of Christian girls being groomed, trafficked into sham marriages and forced to convert to become Muslims.

I welcome the fact that the international development White Paper commits the UK to development policies that are inclusive of people marginalised for their religion and belief. As I said earlier, freedom of religion and belief is a key human right but it is sadly ignored in many parts of the world, especially in areas of conflict. We have a proud history of promoting religious freedom in the United Kingdom, so we should be doing more to promote it across the world. Freedom of religion is almost a passport to securing other human rights, such as freedom from fear, the right to family life and the right to privacy. If freedom of religion is not protected, other rights will be overlooked and ignored as well. We talk a lot in this House about creating foreign policies to aid stabilisation, conflict resolution and, importantly, reconciliation. Surely, such aspects of our foreign policy must recognise the needs of religious minorities in formulating conflict and stabilisation policies.

I urge the Minister to implement the recommendations of the Truro report that remain outstanding. In particular, I look forward to the Government establishing the role of the Prime Minister's Special Envoy on Freedom of Religion or Belief in statute to add to and underline the excellent work carried out by Fiona Bruce MP. There is also a real and urgent need to include mandatory religious literacy in the training of all FCDO staff. This is particularly important given that, I am sad to say, we cannot take for granted that our civil servants have a working understanding of Christianity any

[Baroness Foster of Aghadrumsee]
more. In doing so, we need to recognise that there is, according to the Truro report, a reluctance from some diplomats to raise the issue of Christian persecution for fear of upsetting local Administrations. There does not appear to be that reluctance when it comes to other issues that may cause offence locally. Can the Minister comment on how diplomats and staff in the Foreign Office in general can be better equipped to deal with these complex but urgent issues?

I once again thank all noble Lords who will contribute. I hope that the UK can, as recommended in the Truro report, take on the role of a global leader in articulating freedom of religious belief.

7.33 pm

Lord Moylan (Con): My Lords, it is a privilege to follow the noble Baroness, Lady Foster of Aghadrumsee. I will offer a few reflections of my own.

When I was growing up in the 1960s and 1970s, I felt that we had reached a point where religious persecution had come to an end. On the whole, there was no persecution of Christian belief, certainly in the West, so I and a lot of others were rather surprised that, when John Paul II was elected Pope in 1978, he quite quickly expressed the worldview that he saw the Church as still being subject to persecution. It took some time to think that through. If you grew up in Poland, I suppose you would see things rather differently from how I saw things growing up somewhat later than John Paul II. If you saw the persecution of the Church by Nazis and later under communism, you would have a very different view. Famously, he created an astonishingly prodigious number of saints during his time as Pope, many of them martyrs of the 20th century. I think that spoke very strongly to him. One needs to see this in a broader sense.

While the noble Baroness spoke largely of persecution in the third world—if one is still correct in referring to it as the third world—I will speak about the persecution of Christianity in the West. The persecution that John Paul II was familiar with growing up abated considerably as a result of the fall of the Iron Curtain, but that does not mean it has gone away. In fact, it is present in Europe in a new and virulent form and has spread west. We now see a very large number of attacks on churches in western Europe, prodigiously in France but also in Germany and Spain. We have even seen priests murdered in their churches in France and Spain in the last few years. In Europe, 852 hate crimes were identified in 2022 by the Vienna-based Observatory on Intolerance and Discrimination Against Christians, with attacks on places of worship, symbols and institutions. That represented a 44% increase. Arson attacks against churches in Europe were up by 75% in 2022.

It is salutary to turn briefly to Canada, where in the last few years 100 churches, I believe all of them Catholic, have been torched and burned to the ground. That arose from a story that the Catholic Church had been involved in the past in some form of creating mass graves of native children. That led to a considerable level of hostility, which expressed itself in these church burnings. On closer examination, the evidence to support those claims seems to have been greatly exaggerated at the very least. This was in Canada—a western, liberal country.

According to the United States Conference of Catholic Bishops, there have been 341 incidents across 43 US states since May 2021. These are just against Catholic churches; there are also incidents of attacks against African American churches and Protestant churches. You can find at least a dozen such attacks on Catholic churches on Wikipedia. The way we think about these things is quite curious; when, in looking for this evidence, I typed into Google "Church attacks USA", I got back something that said, "Did you mean 'Church attacks us'?"—it assumed that the Church was attacking us, rather than churches being attacked in the USA. That shows a certain form of bias.

It is important to think about where these attacks are coming from. In France and possibly other parts of Europe, they appear to be associated with Muslims, often illegal immigrants or people in a state of uncertainty who are not settled in that local society. In Canada, they appear to be associated with stories about mass graves of native children. In the United States—I may be touching on a sensitive point here—they appear to be correlated with arguments about abortion and seem to be coming from what might be called a certain strand of liberalism attacking the churches.

That is one of the things that concerns me very greatly, because it is something relatively new and is a matter of considerable concern. We have been free of that, but what starts in America ends up here. Indeed, as an aside, apart from Brexit, I can hardly think of a single original idea that we have produced in Britain that we have not imported from the United States in the last 30 years. I hope it will not happen here, but we need to be wary, because these culture war issues have clearly generated attacks in the United States, and that could come in this direction.

Finally, we badge our international efforts on this subject under the term "freedom of religion or belief". That is what we advocate and that is what we fight for, to a degree, at least—and my noble friend the Minister is, I am sure, going to answer the question posed by the noble Baroness, as to the extent to which the Foreign, Commonwealth and Development Office does that. However, that is what we do when we do it: we badge it as freedom of religion or belief. That is a legal and philosophical principle. It is, in its own terms, wholly admirable, but it is also universal and it does not reflect or recognise the particular cultural heritage of this country, which is indeed a Christian heritage, as evidenced by the presence of Bishops on the Benches over here.

It is possibly the wrong question, but I ask only this: is it too much that we might see ourselves not only as international advocates of that universal principle but as particular defenders of Christianity in the rest of the world?

7.41 pm

Lord Carey of Clifton (CB): My Lords, I am very grateful to the noble Baroness, Lady Foster, for tabling this important Question. I thank her for the excellent review that she has already given of what is going on around the world.

It is manifestly clear that some Christian groups are unfairly treated, abused, murdered and discriminated against in many parts of the world. I am patron of Barnabas Aid, which works in many contexts around the world, bringing aid and support to minority Christian groups and refugees. The estimate of Barnabas Aid of, for example, Christian violence in Nigeria since 2009 is that some 45,000 Christians have been murdered. This is to say nothing of the violence and everyday marginalisation of Christian communities in many other parts of the world. In what has been dubbed the ultimate year of elections, with some 64 national elections taking place in 2024, Christians viscerally fear the outcome in some countries, in stark contrast to the much less existential nature of our general election in the United Kingdom this year.

I do not think we can properly pursue this question without considering another question alongside it, which the noble Baroness, Lady Foster, touched upon: namely, does the United Kingdom value its foundational faith any longer? We seem to go out of our way to avoid the use of the word Christian and to speak of "British" values, as if they are a group of virtues standing alone. We may remember that, in 2007, the European Union decided not to mention the Christian roots of Europe at its 50th anniversary. Pope Benedict XVI retorted that this was a form of apostasy against itself. He went on to show that, in culture, landscape, history, law and values, the roots of Europe, and of course of the United Kingdom, are undeniably Christian. We should not be ashamed of declaring so.

My argument takes me directly back to the Question of the noble Baroness, Lady Foster: what are we doing to help those Christian people abroad whose commitment to our values leads them to be persecuted? Reference has already been made to the Bishop of Truro's independent review of 2019, undertaken at the invitation of the then Secretary of State for Foreign Affairs, Jeremy Hunt. The review showed the horrifying scale and extent of the suffering of minority Christian groups in places as diverse as Iraq, Indonesia, Myanmar, Pakistan and elsewhere.

Of course, it is important to recognise that we do not limit our concern to Christians only. We should care for everybody. However, the clear evidence is that the name of Christianity is a label of discrimination and suffering. Noble Lords may remember that the Truro report was welcomed by the *Times*. In the editorial leader column, it was greeted in the following way:

> "The West must be ready to support the Christian faith. That, rather than embarrassment, has to be the starting point of our necessary conversations with … followers of other faiths".

In conclusion, I offer one thought and ask the Minister—a man we deeply respect—a question. The thought is that valuing the faith that the United Kingdom has received, and which has shaped us in so many ways, does not limit our generosity and welcome to other faiths. To repeat what the noble Baroness, Lady Foster, has said, I would be grateful if the Minister could inform us of how many of the 22 recommendations in that review have been implemented, and what is holding up the remaining ones.

7.46 pm

The Lord Bishop of Oxford: My Lords, I too add my congratulations and appreciation to the noble Baroness, Lady Foster, on securing this important debate and her comprehensive and moving survey and speech. It is a pleasure to follow the noble and right reverend Lord, Lord Carey, and I pay tribute to his considerable expertise in this area over many years. I am grateful to my colleague, the right reverend Prelate the Bishop of Winchester, formerly the Bishop of Truro, for a briefing in advance of this debate. He is not able to be present, but I know he will follow deliberations closely.

As the noble Baroness, Lady Foster, set out so eloquently, the beginning of Holy Week is a fitting time to remember the persecution of Christians across the world and the costs of faith. This persecution has been evident since the very beginning of the Church. Even so, it is extremely sobering and moving to reflect that, according to Open Doors, 365 million Christians face some sort of persecution worldwide—about one in seven of the global Christian population. I also note with other noble Lords the disproportionate consequences and costs for women and girls.

We pay tribute today to the courage and perseverance of persecuted Christians, and, in turn, appreciate the freedom of belief which is a feature of our own democracy. As the historian Tom Holland argued recently in his powerful book, *Dominion*, many of the core values of our society can be traced directly to our Christian heritage and need to be sustained by that Christian heritage now.

However, this debate has a broader significance, because freedom of religion or belief, and violations against anyone, can be important indicators of the state of human rights in any context globally. As the former UN special rapporteur on freedom of religion or belief, Heiner Bielefeldt, said:

> "Freedom of religion or belief rightly has been termed a 'gateway' to other freedoms, including freedom of expression and freedom of peaceful assembly and association".

An approach that guarantees freedom of religion or belief for all, as advocated by the Truro review, is the best way of addressing Christian persecution for two important reasons. First, singling out Christians inevitably others them, increasing their vulnerability. It is also antithetical to the Christian faith itself to favour Christians over other faiths. Christianity puts no limit on its definitions of who is our neighbour, so it is wrong to argue theologically for special treatment of persecuted Christians. Secondly, it is also impossible to support persecuted Christians without supporting the freedom of religion or belief of all persons. Freedom of religion or belief is intertwined with other human rights and a matter of legally binding international human rights obligations.

We need to note and acknowledge in this debate that we have seen a regrettable increase in Islamophobia and anti-Semitism in the United Kingdom since the terrible 7 October attacks and the devastating conflict in Gaza. The work of faith leaders building bridges, strong relationships and understanding locally has been a vital part of the local response to events in Israel and Gaza in my own city and county and across

[THE LORD BISHOP OF OXFORD]
the country. Religious freedom and tolerance need to be nurtured and guarded nationally and locally. It is as important to do that in our own country as it is across the world; the two go together,

The Library briefing provides some estimates on the numbers of Christians persecuted globally. Estimating persecution is problematic and contentious for obvious reasons. A comment made by the former UN special rapporteur Asma Jahangir on all FoRB statistics is very helpful:

"When I am asked which community is persecuted most, I always reply 'human beings'".

Our responsibility is always to stand up for the world's most vulnerable people, wherever they may be found. Freedom of religion or belief is a foundation of human rights.

The Truro review argued that freedom of religion or belief should be "central" in FCDO policy. However, religious literacy in policy and diplomacy remains a significant challenge, even though only religiously literate responses will be effective in addressing some of the world's most serious instances of persecution in countries such as Nigeria, India, Iran, Russia and China. What steps is the FCDO taking to build religious literacy across its work?

Fiona Bruce is sponsoring a Private Member's Bill in the other place, the International Freedom of Religion or Belief Bill, which would establish an office of the special envoy and require the Prime Minister by law to appoint someone to the role. I very much hope that this House will play its part in supporting the Private Member's Bill to establish the special envoy post in law when my right reverend friend the Bishop of Winchester brings it to the House in due course.

Finally, I invite both the Minister and the Opposition to tell this House what future strategies they intend to have in place to continue or enhance the role of the Special Envoy on Freedom of Religion or Belief and the support for persecuted Christians globally.

7.53 pm

Lord Alton of Liverpool (CB): My Lords, all over the world, Article 18, the universal right to freedom of religion or belief, is a violated right, which is why we must thank the noble Baroness, Lady Foster of Aghadrumsee, for initiating this short debate.

Some 80% of the world has a religious faith, and people of all faiths are persecuted, as the right reverend Prelate reminded us. The noble Baroness reminded us that this is a great week for Christianity, with Easter; but it is a great week for all monotheistic religions, with Jews having just celebrated Purim and Muslims celebrating Ramadan. But what singles out Christians is that 350 million of them—one in seven in 144 countries—are persecuted in every country where Article 18 is breached, and 13 Christians are killed each and every day because of their faith. The *Times* said of our indifference that we had become "Spectators at the Carnage". Jonathan Sacks once said:

"The persecution of Christians … is one of the crimes against humanity of our time and I am appalled at the lack of protest it has evoked".

We talk about persecution as if it ended with Nero and the lions in the Colosseum, but it is one of the most shocking untold stories of our time.

Although the Minister and Fiona Bruce MP, the Prime Minister's Special Envoy on Freedom of Religion or Belief—a role that I, too, hope we will legislate to make permanent—have striven to implement the Truro review recommendations, the tide of visceral hatred continues to rise. That is foolish, given the economic link between countries that respect Article 18 and prosperity, stability and harmony, and given the link between persecution and displacement, now at a record 114 million people.

I will discuss China and then highlight two Commonwealth countries. There has been a frenzy today about China's cyberattacks in 2021, one of which was against me, along with sanctions imposed three years ago. Today the Deputy Prime Minister told the House of Commons that the response was "swift and robust"—I dread to think what leisurely or weak would have looked like. There are still no sanctions against state officials, and nothing to match the 47 imposed on Hong Kong by the US. It is wholly incommensurate with the 1 million Uighur Muslims subjected to genocide, the brutal oppression of Tibetan Buddhists, the crimes against Falun Gong and the persecution of Christians. The latter includes the imprisonment of Protestant pastors, the demolition of churches, the jailing of the Christian journalist, Zhang Zhan, who went to Wuhan to ask awkward questions about the origins of Covid, and the trials in Hong Kong of Cardinal Zen and now of Jimmy Lai, a deeply committed Christian. Can the Minister say whether the Foreign Secretary will raise those issues with the Chinese ambassador when he summons him tomorrow?

I turn to Pakistan. Tomorrow, as co-chair of the All-Party Parliamentary Group for the Pakistani Minorities, I will chair an inquiry into discrimination and persecution. I recently met representatives of the over 1 million workers employed like slave labour in brick kilns in Pakistan, who are overwhelmingly Christian. Often illiterate, they rarely earn enough to subsist, much less to clear the loans that they are forced to take out, becoming bonded labour. Debts have been passed down to children from one generation to another, and workers are abused at the whim of their owners, with Hindu and Christian women and girls particularly vulnerable.

Tomorrow, we will hear first-hand accounts from victims. Only last week, two Christian sanitary workers—Asif Masih, 25, and Shan Masih, 28—lost their lives while undertaking the hazardous task of cleaning a choked sewage line, due to the absence of proper protective gear. It was not the first tragedy of its kind. On 14 February, the Minister told me that our aid to Pakistan for this year is £41.5 million, rising to £133 million next year. How much of that will be used to promote the rights of religious minorities? When did we last speak to the Pakistan Government about FoRB? When did we last engage with the Commonwealth Secretary-General about ForB?

That takes me to Nigeria. Some 82% of all Christians killed for their faith last year were in Nigeria: 4,998 Christians were slaughtered, with 200 murdered during Christmas services in 2023. Open Doors reports:

"Christians in Nigeria continue to be terrorised with devastating impunity by Islamic militants",

with

"abductions for ransom, sexual violence and death … leaving a trail of grief and trauma".

Last November, on Red Wednesday—when the FCDO was lit in red to commemorate the persecuted—thanks to Aid to the Church in Need, I met Dominic and Margaret Attah, survivors of the Boko Haram Pentecost attack on St Francis Xavier Church in Owo, when 40 were murdered. Margaret's legs were blown off. Their bishop, Jude Arogundade, at a meeting here that I chaired, lacerated a Head of State for attributing the attack to climate change, a foolish simplicity repeated by some of our own officials, who seem illiterate when it comes to extremism and construct false narratives.

Margaret wanted to know why no one had been brought to justice. I asked the Minister, and he told me in reply:

"We continue to call for those who committed this attack to be brought to justice and held to account".

Needless to say, they have not been; nor have the abductors of Leah Sharibu, who was abducted on 19 February 2018 by ISIS West Africa from the Government Girls Science and Technical College in Dapchi, Yobe State. Leah was told to convert and was raped, impregnated and enslaved. She is still held captive. I promised Rebecca, her mother, that I would lose no opportunity to raise her case. Following a recent meeting with the Africa Minister, have our officials followed that up? What are the Nigerians doing to get her released? Where is the ICC inquiry into potential crimes against humanity in relation to the Christian minority in Nigeria? Those preliminary inquiries concluded three years ago.

How much will Nigeria receive in ODA next year? What percentage will be used to promote FoRB, and when did we last raise that with the Commonwealth? More believers are killed for their faith in Nigeria each year than everywhere else in the world combined. In the face of these deadly violations of a universal right, our indifference and our silence are simply not acceptable.

8.01 pm

The Earl of Sandwich (CB): My Lords, I start with an admission to the noble Baroness, Lady Foster. I have not taken much interest in persecuted Christians until now, because I have always assumed that Christianity had distinct advantages over other religions. There are stronger examples of the persecution of Muslims and Jews. I know this is a shamefully Eurocentric view, but I believe it reflects a widely held, if inaccurate, assumption of public opinion. I am therefore grateful to the noble Baroness for giving us the chance to research the real situation as a background to this debate. My noble friend and others have taken us through the shocking statistics.

The FCDO commissioned its review five years ago, soon after the Minister was appointed special envoy on religious freedom. I believe that he has had a rocky ride through all those recommendations—he has already been asked to talk about that. The then Foreign Secretary cited the startling statistic that 80% of all those persecuted in the world were Christians. This figure probably came from Open Doors, which estimates 365 million as the total number, as we have heard. This is a highly respected NGO, and I am not intending to dispute the figures.

At that time, evidence was coming from countries such as Myanmar, Malaysia, Sudan and Iraq. We know that the situation in some of those countries has got worse. Some of us had a short debate recently about Myanmar, led by the noble Lord, Lord Crisp, focusing mainly on the appalling treatment of health workers by the army since the 2021 coup. What I had not realised was that churches, especially those in the ethnic-minority states, were also deliberately victimised by the present regime. These are indigenous churches; some Christians are of Indian descent and others may be Europeans. Looking back at my notes from the 1970s, when I visited Myanmar for Christian Aid, it is quite clear that missionaries had already left under General Ne Win's Government, and that the majority of Baptist churches had largely become freestanding communities. Some churches receive humanitarian aid, but they are not dependent on foreign aid.

It seems that the army has long targeted and attacked churches, especially in Chin state, where an estimated 85% are Christian. Civilians are targets, and a whole town was burnt by shelling last September. The UK-based Centre for Information Resilience identified and analysed 10 similar instances where churches were damaged—mostly by airstrike—between March and August 2023. To quote the Associated Press:

"Human rights agencies and United Nations investigators have found evidence that security forces indiscriminately and disproportionately targeted civilians with bombs, mass executions of people detained during operations and large-scale burning of civilian houses".

Kachin, Karen and Karenni states are also among the worst affected. Surely this can be called religious ethnic cleansing. It is hardly surprising that armed resistance groups have sprung up in many areas in self-defence. There are also reports of intrusive surveillance.

I was in contact with a Burmese church leader last week, who said:

"The regime not only attacks local defence forces ruthlessly but innocent civilians using heavy weapons … The regime has also burned down hundreds of villages, injured and killed thousands of civilians".

Christian communities are among the victims. A large number of Christian communities have fled to neighbouring countries such as Thailand and India. He went on to say:

"My wife and our four children fled to India two weeks ago across the Indian-Myanmar border. I can hear gun shooting and bombing while I write this letter. Two Christian villages which are very close to us are burning now and my hometown is flooded with displaced groups from these villages. We really need humanitarian assistance."

My questions for the Minister are the following. We know that the FCDO is already doing a lot to support health workers, which is admirable, but can it do any more to bring humanitarian aid and to publicise the situation of Christian communities? In neighbouring India, as we have also heard from the noble Baroness, there are important Christian minorities which suffer discrimination, often from gangs of local Hindu vigilantes. I know that there is a regular EU human rights

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dialogue with India in which we once took a lead. Now that we have entered a trade agreement with India, albeit that it is stalled at the moment, can the Minister confirm that the persecution of Christians and other minorities remains part of the UK dialogue with India?

Foreign funding has also been strictly limited under the Modi Government—more restrictions came in in September 2020—and West Bengal has long suspected foreign intervention and banned many of the international agencies and charities, especially Christian ones, at different times. Does the Minister agree that xenophobia is a continuing factor to be watched in the BJP Government, in spite of India's history of toleration?

8.08 pm

Lord Curry of Kirkharle (CB): My Lords, it is a great privilege to follow other noble Lords who have already contributed very passionately to this debate. In particular, I express my appreciation to the noble Baroness, Lady Foster, for sponsoring this important and timely debate—occurring as it does, as has been mentioned already, just before we celebrate the most important event in the Christian calendar—and for her very comprehensive and compelling introduction.

Let me first state, as a Christian, that persecution of any person holding a particular religious or faith belief is unacceptable. I, too, applaud Fiona Bruce MP and others for their valuable work in supporting freedom of religion or belief. It is a huge and critically important work and needs to continue. Sadly, as we know, there are too many historical examples of abuse and persecution of individuals and of whole communities, and ethnic cleansing of thousands of people, because they belong to a particular religious or faith group. We also have to confess that it has happened on occasions throughout history under the cloak of Christianity, to our shame. I contest that any Christian who tries to faithfully follow the teaching of Jesus would not participate in any form of religious persecution; in fact, the reverse should be evident. The teaching of the Good Samaritan story by Jesus is that loving your neighbour, who might be from a different ethnic or religious group—which was the case in Luke, chapter 10—is an essential element of the Christian message.

This evening's debate is particularly relevant because the data suggests that more Christians are being persecuted today than at any time in our history, and the number is increasing daily. How appalling is that fact? As has been mentioned a number of times in this debate, data from Open Doors World Watch List 2024 has stated that 365 million people worldwide—one in seven—are facing higher levels of persecution and discrimination for their faith: one in five in Africa; one in seven in Asia.

Even more dreadful is the data from Open Doors which estimates that 5,621 Christians were killed for faith-related reasons in 2023, compared to 4,761 in 2021, the majority of these in Nigeria, as stated by the noble Lord, Lord Alton. It has been estimated that, between 2000 and 2020, over a 20-year period, 62,000 Nigerian Christians have been killed by the terrorist group Boko Haram or by Fulani herdsmen, et cetera. These are horrific statistics and mostly occur where Boko Haram has declared Sharia law. Kidnapping is common, as we heard again recently, and thousands of churches have been attacked and burned to the ground.

According to the World Watch List, India, as has been mentioned already, is also becoming very alarming indeed, with the number of Christians being killed increasing dramatically over the past 12 months up to 160 recorded cases. Churches have been attacked, together with Christian institutions and businesses, and 62,000 Christians have been forced to leave their homes in India this past year—a huge number. Eleven out of India's 28 states have now introduced anti-conversion legislation, and 35 pastors have been imprisoned, all this on the watch of Prime Minister Modi. It is an alarming trend. There have been some very high-profile cases. In Manipur last year, ethnic violence resulted in 400 churches being burned to the ground and 50,000 Christian believers displaced. How does this sit with freedom of religion and belief? It is unacceptable.

The global statistics are alarming. The freedom of Christians to worship and express their faith is being more and more constrained, and many are at risk of persecution and death. I am fully aware that the Government must be as concerned as we all are about these dreadful trends, and that solutions are extremely difficult, if not impossible in some cases. It is particularly concerning, when the world's attention is diverted to Gaza and Ukraine or whatever the most recent high-profile tragedy happens to be, that many of these cases of Christian persecution go almost unnoticed.

More needs to be done. The UN and other global institutions need to exert much more pressure on countries where abuse and persecution is now endemic. I believe our Government should take a lead, and I hope the Minister agrees that we need to make renewed efforts to harness global support to call out and influence the perpetrators of violence and persecution.

If we are to take a global lead in these matters, as we should, we need to set an example here in our country of tolerance and respect for all who wish to worship and practise their faith, whatever that faith may be. The noble Lord, Lord Moylan, referred to other western countries including Canada and the US where there are increasing concerns. However, there are many Christians here in Britain today who are nervous and fearful of expressing biblical teaching for fear of recrimination, of losing their jobs, of being alienated and ostracised—or cancelled, to use today's ridiculous jargon. We need to stand firm to defend our Christian freedoms, our ability to promote the Christian gospel. We cannot claim to be a global exemplar if freedom of speech is under threat here. The very thing that we are concerned about globally is at risk in Britain. We must not tolerate intolerance of our freedom to practise Christian faith and values here at home.

8.14 pm

Baroness Cox (CB): My Lords, I thank my noble friend for initiating this debate on such an important subject and introducing it so powerfully. I will focus on a detailed account of such persecution in two countries which I have visited many times and where I

have had the painful privilege of meeting those directly suffering persecution. I will focus first on Nigeria. I am very pleased that it has already been highlighted in this debate because the situation there needs as much attention as possible.

There are almost 103 million Christians in Nigeria, which is almost half the country's total population of 222 million. In the Muslim-majority north of the country, the proportion of Christians is much lower. This is traditionally where most of the persecution of Christians has happened. It continues to this day and continues to spread south. Such persecution is largely inflicted by Nigerian Islamist Muslims. I emphasise that the majority of Muslims in Nigeria are peaceable Islamic civilians. I make a distinction between "Islamic" and "Islamist". Islam refers to those widespread and largely peaceful Muslim beliefs. Islamism refers to radical ideology, including movements such as Islamic State West Africa Province which are often associated with violence and persecution.

Those affected by this ideology in Nigeria include Christians living in the northern states that are under the influence of Islamic law. They face discrimination and great pressure as second-class citizens. Also, those who have converted to Christianity from Muslim backgrounds often experience rejection from their own families, violent intimidation and fierce pressure to renounce their new faith. Christians living in vulnerable locations, particularly in the north and central regions of the country, tend to be terrorised with devastating impunity by Islamist militants and armed so-called bandits.

More believers are killed for their faith each year in Nigeria than anywhere else in the world. Men and boys are often specifically targeted, to undermine the growth of Christian families in the future. Women and girls face abduction and sexual violence, with intense pressure, exacerbated by the knowledge that sometimes their communities reject them when they come home, believing that they may have become complicit with the Islamist ideology. The attacks often involve destruction of properties and abduction of civilians for ransom, sexual violence and killings. I have visited many places where civilians have been subjected to these terrorist attacks. I have spoken to families who have witnessed the abduction or killing of their loved ones. I have walked through the burnt remains of villages and seen the remnants of burnt churches, homes and shops. I have talked to shocked and grieving survivors. I will quote just a few of their testimonies verbatim; I have changed their names. Beatrice, aged 25 of Plateau State, said:

"I returned in the morning but everything was burned. I went to my home and saw my mother and siblings butchered and burned".

Sarah, aged just 14, displaced to Abuja, said:

"We evacuated before the attack. Fulani militia burnt the orphanage and destroyed the crops".

Janet, mother to four children, from Plateau State, said:

"I found my husband had been killed. I cannot go back to my village. It has been burnt. We are barely managing".

I could give many more quotations. Christian believers are often stripped of their livelihoods and driven from their homes to survive as displaced people, leaving a trail of grief and trauma.

My small charity, the Humanitarian Aid Relief Trust, works with local in-country partners in places where civilians are subject to persecution—places which are largely unreached by many other aid organisations for political and security reasons. In Nigeria, it is our privilege to work with the Anglican Archbishop of Jos, Benjamin Kwashi. We always ask our partners to identify their priorities for aid. Their priority in the Middle Belt region is a desperate need for educational resources for the thousands of young people driven from their homes by the current military offensives. Without education, they will not have a future.

HART has delivered education supplies for over 6,000 young people. It is a great privilege. I am always profoundly moved by the sheer delight on the faces of young people as educational resources arrive. However, the military offensives and associated dangers persist and the people of Nigeria still suffer from sustained persecution. I will give one or two more examples. The famous kidnapping of the Chibok girls in 2014 did excite some attention but mostly that does not happen. Earlier this month, nearly 200 people were kidnapped in the Kajuru local council territory in central Nigeria, in addition to over 300 people kidnapped this year by suspected Islamist Fulani militia groups freely operating in the region. More than 300 Christian farmers have been killed in the region since January.

The suffering is exacerbated by the major problem of virtually no aid from the Nigerian Government being provided for those suffering persecution. Our local partner, Reverend Canon Hassan John, told us that, for over 10 years, displaced villagers have been forced to rely on aid from local churches or NGOs. He said:

"I can say categorically that there has been very little or no aid, not even from the state or Federal Government of Nigeria … I am not aware of any assistance from the British Government in the central region … In Southern Kaduna state, at least seven communities have [recently] been attacked. Villagers are forced to move onto the next village. None of these villages have received security or humanitarian assistance. Families in neighbouring villages do what they can to absorb and care for their relatives".

The UK Government have sent much-needed assistance to north-eastern states in Nigeria, where Boko Haram continues to attack and devastate rural areas, but little or nothing has been sent to those suffering persecution in Middle Belt locations, who continue to lose their homes and property and are forced to pay ransom to free their relatives kidnapped by the Islamist Fulani militia groups. They appeal to His Majesty's Government to urge the Nigerian Government to meet the needs of their civilians, especially in the Middle Belt, who are suffering from killings, abductions and destruction of homes, churches, and clinics, with over 2.5 million forced to flee and live in dire conditions as displaced people.

I turn briefly to my second example: Armenia, the first nation to become Christian. Armenia suffered genocide in the last century and is now suffering sustained Islamist Azerbaijani attacks. I have been there many times; we have seen the people having to

[Baroness Cox]
flee. The little land of Nagorno-Karabakh, historically ancient Armenia, has now been cleansed of all Armenians—a real case of ethnic cleansing. Armenia is not a big nation to have to take the many people displaced from Nagorno-Karabakh.

I will finish with a quote from one of the bishops:

"It is not only the perpetrators of crime and evil who commit sin, but also those who stand by – seeing and knowing – and who do not condemn it or try to avert it".

Blessed are the peacemakers, who not only speak words of peace, but make peace, for they shall be called the children of God. I finish with those words, offering them as an inspiring tribute to the theme of this debate, with the focus on people suffering persecution in our world today, while we talk this evening.

8.22 pm

Lord Purvis of Tweed (LD): My Lords, I also commend the noble Baroness, Lady Foster, for bringing this debate, with particularly good timing, as she noted, given the religious holiday that is coming up. For billions of people on the planet, this will be a time to celebrate their faith, family and community, but, regrettably, as has been pointed out during this sober debate, with many dreadful statistics of the scale of the issue, too many Christians will not be able to do so in security and will be fearful of persecution.

I commend the Minister for his work on freedom of religion or belief. As he points out regularly in the Chamber, that freedom is also for those without religion or who do not practise belief. He regularly responds with sincerity and passion about the need for people to practise their own private faith, free from state persecution. I commend the FCDO for the work it has done over recent years—not only the global conferences and the convening power of UK diplomats, but also the training of our own staff to be able to identify those areas where there is likely to be persecution and the growth of extremism, because this is also an issue of security and prevention of conflict. At home, also, in recent months, we have had to debate the wholly unacceptable rise of anti-Semitism and Islamophobia; they have no place in modern Britain. They have never had a place in Britain.

My party's constitution starts with the words:

"we seek to balance the fundamental values of liberty, equality and community, and in which no-one shall be enslaved by poverty, ignorance or conformity".

As with others in the Chamber during this debate, when we have seen persecution in China, with Christians, Muslims, Buddhists and Falun Gong at risk of persecution, or in Algeria with Christian groups and the Ahmadiyya Muslim community reporting difficulties, or in the Gulf, in Bahrain or Saudi Arabia, we reject the persecution and call them out. More recently, questions in this Chamber have related to concerns that exist within India and Afghanistan, where concerns about Christians, Sikhs and Hazaras have been raised.

Regrettably, the list is too long, because we have also discussed today, at length, the situations in Nigeria and in Eritrea; concerns about the growth of terrorist groups such as Boko Haram—which even has in the words of its title the forbidding of education, which is deeply chilling—and Islamic State in west Africa, which has had at its very heart the persecution of minorities; and the concerns about the impact on the Pentecostal Church and Shia Islam.

I recognise that many sovereign states have established religions. As was pointed out, the UK is no different—the world watched our Head of State being crowned in a religious ceremony, not a civil one. England, not a nation in the UK where I live, has an established Church, which has legislators among its members—we were graced with a contribution today.

There is long-standing anxiety about political Islam, and many communities over centuries have been worried about political Christianity too. We in this country need to have a degree of self-awareness that established Churches have all too often been used by repressive or reactionary political leaders to deny rights rather than to give them. The Minister and his colleagues have done excellent work in the sensitive area of working with countries—some friendly—that still retain apostasy laws, for example, and have denied rights to women and children in the name of religion, often incredibly inaccurately so, as the Minister pointed out.

When I campaigned against the death penalty in Uganda, I was told by the Anglican community there that it would support my work on the condition that I did not campaign for LGBT rights. The Anglican community in the Commonwealth is not a homogenous one. It is worth noting that too many of the examples that we have heard in this debate, and too many of the watch countries highlighted by NGOs and the FCDO, are Commonwealth nations. In too many, progressive reforms can be all too problematic.

In recent weeks and months, we have seen religious political leaders using the faith of their own followers as a political tool, such as the Patriarch of the Russian Orthodox Church. The Carnegie Endowment said:

"When Russia invaded Ukraine, the Russian Orthodox Church (ROC) did not hesitate to throw its support behind the Kremlin's war against a neighboring Orthodox nation. Far from wavering, that support has only grown more strident as the war progressed".

The Anglican leader in Rwanda speaks out in favour of the UK immigration agreement, and Anglican leaders in this House speak against it. There is, of course, an element of healthy debate, which needs to be encouraged, but, perhaps now more than for many years, as the noble Lord, Lord Curry, indicated, political leaders are using belief in God as a defence and a motive for repressive actions. It is striking that most who do this are the least godly of all. It gives licence to groups to persecute minorities and for there to be impunity for it.

Of course, it is not new—it is centuries, if not millennia, old—and in some areas we struggle to reconcile the contemporary consequences of such past actions. The racist undertones of British imperial expansion reflected the "three Cs" of colonialism: civilisation, Christianity and commerce. Coming to terms with this is hard; England's established Church recently rejected its oversight body's finding that contributing less than 1% over 10 years of its endowment funds which were originally based on the proceeds of exploiting enslaved people was too little over too long a timeframe.

None of this historical reflection, or indeed how contemporary political leaders are abusing faith for political and corrupt ends, can defend or excuse the persecution of Christian people seeking to practise their own faith. I support their ability to do that unflinchingly.

Given the Private Member's Bill to establish a statutory envoy, can the Minister assure the House that there will be enough time in both Houses to see this on to the statute book? Are the Government seeking amendments to widen its scope and capacity?

I close by reflecting on one point. The noble Baroness indicated that the persecution of Christians is far too underreported, and no doubt she is absolutely right, but given the context of the Middle East and what is happening in Gaza and Israel, this is a personal comment from my friend, Layla Moran, whose mother is a Christian Arab from Jerusalem and who has family members seeking shelter in the Holy Family Church in Gaza. She said:

"I am on the side of basic humanity … I am on the side of the Israeli community, the Palestinian community and the Jewish, Muslim and Christian communities".—[*Official Report*, Commons, 25/10/23; col. 913.]

Protecting people's ability to practise their faith should be an element of basic humanity.

8.29 pm

Baroness Sherlock (Lab): My Lords, I add my thanks to the noble Baroness, Lady Foster, for securing this debate and introducing it so comprehensibly, and to all noble Lords who have spoken.

We on these Benches are absolutely committed to the importance of promoting and protecting freedom of religion or belief for all. Since that was questioned as a framework for this debate, it is worth returning to Article 18 of the Universal Declaration of Human Rights, which could not be clearer that:

"Everyone has the right to freedom of thought, conscience and religion",

including the freedom to change their religion and the right to manifest it. Despite that clarity, as the noble Lord, Lord Alton, pointed out, violations of these rights happen daily. I was very grateful to the noble Earl, Lord Sandwich, for his candour in saying that he was simply not aware of the scale of persecution of Christians; that feels like something that other noble Lords have mentioned and probably goes further than just him. Listening to the description of the watch-list showing that 365 million Christians worldwide are not simply being given a hard time but face

"high levels of persecution and discrimination for their faith"

should give us all pause for thought.

We are in the season where many of the world's major faiths have a focus, and it feels particularly poignant that we are having this debate in Holy Week, when most western churches mark the events leading up to the crucifixion and resurrection of Jesus Christ. I should declare as an interest that I am an ordained minister in the established Church of England. When I go freely to church on Easter morning to celebrate the resurrection, it will be an occasion of great joy, so it is deeply painful that one in seven Christians globally will be unable to go to church to mark the resurrection or will do so at great personal risk. That should be a cause for concern to all people of good will, whatever their faith.

The sheer global scale of the persecution of Christians was underscored in the latest annual report on international religious freedom from the Pew Research Center in the US. It assessed 198 countries and found that Christians were harassed by Governments or private actors in 160 of them in 2021. This reflects that sheer global scale; it was noted in the Truro report that, as perhaps the single biggest genuinely global religion, Christianity becomes something of a bellwether for oppression more generally. There are two reasons for this debate to be important. One is to inform those who, like the noble Earl, Lord Sandwich, do not know about the scale of the persecution of Christians, but the other is that if Christians are being persecuted, so are other people. I was very grateful to the right reverend Prelate the Bishop of Oxford for making it clear that Christians standing up and talking about the persecution of Christians are not doing so because they are Christians; they are doing so because they are being persecuted. It is hard to justify that theologically in anybody's book.

Particular countries of concern have been mentioned: North Korea is still ranked as the most dangerous place in the world to be a Christian; China and Pakistan were both mentioned by the noble Lord, Lord Alton; the noble Baroness, Lady Foster, and the noble Lord, Lord Curry, mentioned India; Laos has jumped 10 places to 21st in the watch-list; Cuba and Mexico have been flagged up by Christian Solidarity Worldwide; and Nigeria, raised by the noble Lord, Lord Alton, and the noble Baroness, Lady Cox, and others, is a source of considerable concern when the best part of 5,000 Christians have been murdered there for their faith. There are also issues, as the noble Baroness, Lady Foster, said, elsewhere in sub-Saharan Africa; there have been deaths in the DRC, Burkina Faso, Cameroon and the CAR, and many Christians have been displaced in that region. Can the Minister tell us how the Government view this region and what they are doing to speak into the situation there?

A number of noble Lords including the noble Lord, Lord Curry, referred to the Truro report. Where the Government have credible evidence of severe violations of freedom of religion or belief, the Truro process requires the Foreign Secretary to consider whether to impose sanctions on the perpetrators. We have had sanctions imposed on individuals and entities in Myanmar and North Korea. Can the Minister update the House on whether any sanctions have been imposed recently on additional countries?

On the positive side, on a visit to Washington a few weeks ago, I had a meeting with Ambassador Rashad Hussain, the United States Ambassador-at-Large for International Religious Freedom and was very impressed to hear of the work that he and his team are doing. Given the Minister's extensive interest and work in this area, could he update the House on what transatlantic partnership working is being done in this important area?

[BARONESS SHERLOCK]

The noble Earl, Lord Sandwich, raised the question of trade deals. One way to hold different nations to account over their human rights and FoRB violations is to include human rights clauses in trade agreements that the UK is negotiating. Can the Minister update the House on whether, and if so how, the FCDO's important work on human rights and FoRB is being reflected in our trade negotiations?

I welcome the Government's initiatives to put this issue centre stage globally. We can all in this House agree on the important role that freedom of religious belief can play in tackling extremism and promoting democracy. Although today's debate has focused on the important issue of persecution of Christians, sadly, as many noble Lords have noted, Christians are not alone in experiencing persecution. The Pew research found that Christians and Muslims face harassment in a larger number of countries than any other group, but that is a measure of scale rather than specifically depth of persecution. Other religious minorities are facing persecution at a frightening rate across the world; and I agree that we should not conclude without acknowledging the position of the non-religious, since the right not to practise a religion, or to abandon or change one's religion, is just as fundamental and absolutely central to Article 18. We should be championing freedom of religion or belief for all around the world.

In closing, I pay tribute to all those noble Lords, many of whom have spoken this evening, who have spent years dedicatedly highlighting instances of persecution on grounds of religion and belief around the world. I also thank the many organisations in the field, including Open Doors and Christian Solidarity Worldwide, as well as Amnesty International, Human Rights Watch, and all those whose staff and volunteers take risks so that we may get to hear about things that we would otherwise not hear about.

History has shown us that violations of freedom of religion or belief do not happen in isolation. Countries that fail to respect religious freedom or the right to no belief invariably fail to respect other basic human rights also. The UK must continue to call out human rights violations and abuses wherever they are to be found if we are to play our part in ensuring a free world where all can flourish. It is a reminder to us of the paramount importance of tackling persecution around the world but also of tackling hate incidents in our own place. This includes tackling anti-Semitism, Islamophobia and, above all, working together to be the kind of country where people of all faiths and none can live well together, respect one another and build a world in which, as I said, all of us can flourish. I look forward to the Minister's reply.

8.37 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I join the chorus of thanks to my noble friend Lady Foster for initiating this debate, and I thank all noble Lords for their very insightful contributions.

Many noble Lords talked about the significance of Holy Week, and about other faiths as well. As a Muslim myself, I have already mentioned to my dear colleague on the Front Bench how, no sooner had I opened my fast for Ramadan—no sooner had I taken a date and a swig of water—than I was summoned to the Chamber. The insightful and detailed nature of what we have heard today is reflective of the depth of interest on an issue that I myself regard as a key priority, not just as a Minister but at a very personal level. Before I go into details, I will say that I was intrigued when my noble friend Lord Moylan described—I think I am paraphrasing him correctly—that there are few innovations in the UK that do not come across the pond from the US. As someone who had just opened his fast, the words "chicken tikka masala" immediately came to mind.

On the important issue of freedom of religion or belief, I share in what many noble Lords have said. Whether you are a practising Christian, Muslim or from any faith in our incredible country, the real test of your own faith is not just defending your own but standing up for the rights and beliefs of those of other faiths or, indeed, no faith. It is an incumbent and fundamental human right.

Across the world, the abuse and violation of the right to freedom of religion or belief is deeply concerning. Indeed, as my noble friend Lady Foster said, it is shocking. The noble Earl, Lord Sandwich, talked about things not being known. Sometimes it is the unsaid that needs to be said, and Christian persecution is reflective of exactly what needs to be said.

As someone who is an Ahmadi Muslim, I was called in by the then Foreign Secretary Jeremy Hunt, who asked me about the persecution of communities: "Tariq, what do you think about having a report looking at Christian persecution?" Quick as a flash, I said, "Of course, Jeremy; it needs to be done". Wherever we see Christians persecuted around the world, other communities are equally persecuted.

On the question of scale and diversity, the noble Baroness, Lady Sherlock, mentioned North Korea, and I agree with her. There are other areas, such as the Roman Catholic Church in Nicaragua, for example. Sadly, these are just a few examples of places where Christians are persecuted.

On the recent Open Doors World Watch List report, which the noble Baroness and many noble Lords mentioned, I was pleased to attend the launch event, as was acknowledged. There, we again heard the startling and shocking statistic of one in seven Christians being persecuted worldwide. Last year alone, 5,000 Christians were murdered—these are just the accounted for numbers. This is the reason we must continue to challenge violations and abuses wherever they occur. I assure all noble Lords that we are very much seized of this as a Government, and I will illustrate some of the detail in the short time I have. On the questions I do not answer, I will write to noble Lords in more detail.

My noble friend Lord Moylan said that the central message is to never take your eye off the ball. Persecution can happen any time, anywhere, and we need to remain vigilant, whether it is in the east, west or anywhere across the globe. The UK Government are firm in our position that no one should be persecuted, abused or intimidated because of their faith, religion or belief. The noble Lord, Lord Curry, rightly talked about Christians protecting all. I say to the noble Lord that

that is reflective of all faiths and their protection of other faiths. Protecting and promoting this fundamental human right has been a long-standing commitment of the Government—indeed, of successive Governments in which I have had an opportunity to serve.

We demonstrated the depth of our commitment two years ago, when, together with the Prime Minister's special envoy for freedom of religion or belief, I hosted an international ministerial conference. At that conference, we brought together over 800 faith and belief leaders and human rights actors, and 100 government delegations, to agree on a plan to promote and protect FoRB. Since the conference, we have taken several actions to build on the momentum. I thank the noble Lord, Lord Purvis, for his kind remarks, both about the work of the Government and my personal commitment. I agree that we must continue to act in a very focused manner on this.

The right reverend Prelate the Bishop of Oxford talked about essential human rights and reflecting on our own country and the rising tide of attacks on different faiths, Islamophobia and anti-Semitism. As was rightly coined, we should be intolerant of religious intolerance.

We are strengthening international coalitions within FoRB. The noble Baroness, Lady Sherlock, asked about our work with the United States. I have a small personal anecdote. The then ambassador for freedom of religion Sam Brownback, who is well-known to the noble Lord, Lord Alton, asked me to have a meeting with him and one other individual in the US mission. That is where the International Religious Freedom or Belief Alliance was born. He asked me whether the UK would support it and I said that of course we would. Freedom of religion or belief remains a priority in our multilateral work.

We underlined our commitment on the national pledge to mark December's anniversary of the Universal Declaration of Human Rights. We regularly raise situations of concern at the UN Human Rights Council. Just a few weeks ago, we raised the plight of the Baha'i community in Yemen and Iran, the Ahmadi Muslims and Christians in Pakistan, and the Roman Catholic Church in Nicaragua, during an interactive dialogue with the UN special rapporteur. We hold states accountable for their obligations though the UN's universal periodic review. In January, we were an active participant, when we focused on Nigeria.

There are other positive actions we are taking in different parts of the world. The Middle East was mentioned. While there are challenges in a number of countries, including Iraq and Iran, there is a positive element of the work that we do. Last June, we led a resolution at the UN Security Council, with the UAE, on tolerance and international peace and security, which was unanimously adopted for the first time. It directly addressed the persecution of religious minorities in conflict settings. After the global conference, we pledged to build coalitions to boost global efforts.

I commend my dear friend Fiona Bruce MP for her work and dedication in serving two consecutive terms as chair of the International Religious Freedom or Belief Alliance. Indeed, the FoRB role predated the Truro review. I had the honour to lead on it, as the first FoRB envoy, under the then Foreign Secretary Boris Johnson and then Prime Minister Theresa May. The Government are fully supportive of Fiona Bruce's Private Member's Bill. She has had that assurance from me several times privately, as well as publicly. I am delighted that my dear friend is watching carefully from the Gallery. Earlier this month, I was pleased to meet with both my honourable friend and the new chair of the alliance, Ambassador Robert Řehák of the Czech Republic. This network has now extended to 42 counties and has published numerous statements on persecuted religious minorities, including one last year on Christians, covering countries such as Nigeria and Myanmar. I know that these are a focus and interest of the noble Lord, Lord Alton, and the noble Baroness, Lady Cox.

When she was the chair of the international alliance, the special envoy established a scheme to raise awareness each month of different prisoners of conscience. Last year, we saw the release of Hanna Abdimalik, a Christian in Somaliland, and Shamil Khakimov, a Jehovah's Witness in Tajikistan. Again, I pay tribute to the work of Fiona Bruce MP and that of the wider alliance in this respect.

On bilateral action, we do not shy away from challenging those not meeting their obligations. We have heard already from the noble Baroness, Lady Foster, in introducing the debate, about the challenges faced across the Middle East. I am reminded that I have raised in my interactions with Israeli interlocutors the importance of Jerusalem to the three Abrahamic faiths. During the current crisis, I have been in regular touch, including with imams and the Archbishop of Jerusalem. I pay tribute to his work.

The UK Government strongly condemn the violence faced by religious minorities in Pakistan. I am grateful to the noble Lord, Lord Alton, and to the honourable gentleman Jim Shannon, for raising the persecution of the Christian community in Jaranwala, in Punjab. During the most violent attack of recent years, mobs burned churches and attacked Christians' homes. The Foreign Secretary raised the persecution of Christian communities directly with then Prime Minister Kakar. The noble Lord, Lord Alton, asked when we last raised the issue of religious persecution with Pakistan. I did so only last week, with the visit of its new Foreign Minister, Ishaq Dar. I also regularly raise concerns about the attacks on marginalised religious communities with the high commissioners of different countries, including Pakistan's.

The UK regularly raises the issue of insecurity and its impact with the Nigerian Government. We heard from the noble Lords, Lord Purvis and Lord Alton, and the noble Baroness, Lady Cox, on various issues relating to minorities. I assure the noble Lord that we remain much seized of the case of Leah Sharibu.

India and China were raised. The noble Lord, Lord Alton, knows that our focus is on the Uighur Muslims. The noble Baroness, Lady Foster, the noble Lord, Lord Curry, and the noble Earl, Lord Sandwich, raised issues concerning India. On a recent visit there, I had a direct discussion with the Indian Home Minister, particularly about Manipur.

[LORD AHMAD OF WIMBLEDON]
I am conscious that I have only about a minute and a half left. I assure all noble Lords that the reports from the Bishop of Truro have been embedded; 22 recommendations were made some years ago, after an independent review of our work. Implementing the recommendations has been largely positive; it was assessed that most recommendations were at an advanced stage of delivery or in the process of being delivered. In the interests of time, I shall write a letter on the detail of where we have progressed on the 22 recommendations and lay it in the Library.

I assure noble Lords that every recommendation, including on training and on the permanence of the FoRB envoy's role, is embedded in our work. The FoRB envoy has hosted a series of round tables, including focus on areas such as Nigeria, Pakistan, Iran and Myanmar. Just last week, she brought together many committed FoRB advocates for a reception at the FCDO.

I assure noble Lords that we remain committed to the key priorities of raising the issues of Christian persecution. We marked Red Wednesday by lighting up the department's UK-based buildings. I commend the hosting in Parliament by the FoRB envoy of Margaret Attah, survivor of a terrorist attack on St Francis Xavier church in Owo, Nigeria.

To conclude, this has been a short but important debate, focused directly on the issue of Christian persecution. As I said, it is an issue of which the Government are seized. Freedom of religion or belief must remain on the international agenda, and we continue to work with our international partners to forge a united approach to protecting and promoting not only freedom of religion but all human rights.

I end with the words of Jesus, who said, at John 13:34:

"I give you a new commandment: love one another. Just as I have loved you, you must also love one another".

House adjourned at 8.50 pm.

Grand Committee

Monday 25 March 2024

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Scott of Needham Market) (LD): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as the Division Bells are rung and we will resume after 10 minutes.

Data Protection and Digital Information Bill

Committee (2nd Day)

Scottish, Welsh and Northern Ireland Legislative Consent sought.

3.45 pm

Clause 5: Lawfulness of processing

Amendment 11

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

11: Clause 5, page 6, line 15, at end insert—

"(za) After point (a) insert—

"(aa) the data subject has given consent for his or her personal data to enter the public domain via a public body;

(ab) processing is carried out by a public body pursuant to a legal or statutory obligation or right, and the public body is entitled to make such data available to the public;""

Member's explanatory statement

This amendment would add to the list of GDPR Article 6(1) on the lawfulness of processing.

Lord Clement-Jones (LD): My Lords, I rise to speak to my Amendment 11 and to Amendments 14, 16, 17, 18, Clause 5 stand part and Clause 7 stand part. I will attempt to be as brief as I can, but Clause 5 involves rather a large number of issues.

Processing personal data is currently lawful only if it is performed for at least one lawful purpose, one of which is that the processing is for legitimate interests pursued by the controller or a third party, except where those interests are overridden by the interests or fundamental rights of the data subject. As such, if a data controller relies on their legitimate interest as a legal basis for processing data, they must conduct a balancing test of their interest and those of the data subject.

Clause 5 amends the UK GDPR's legitimate interest provisions by introducing the concept of recognised legitimate interest, which allows data to be processed without a legitimate interest balancing test. This provides businesses and other organisations with a broader scope of justification for data processing. Clause 5 would amend Article 6 of the UK GDPR to equip the Secretary of State with a power to determine these new recognised legitimate interests. Under the proposed amendment, the Secretary of State must have regard to,

"among other things … the interests and fundamental rights and freedoms of data subjects".

The usual legitimate interest test is much stronger: rather than merely a topic to have regard to, a legitimate interest basis cannot lawfully apply if the data subject's interests override those of the data controller.

Annexe 1, as inserted by the Bill, now provides a list of exemptions but is overly broad and vague. It includes national security, public security and defence, and emergencies and crime as legitimate interests for data processing without an assessment. Conservative MP, Marcus Fysh, said on Third Reading:

"Before companies share data or use data, they should have to think about what the balance is between a legitimate interest and the data rights, privacy rights and all the other rights that people may have in relation to their data. We do not want to give them a loophole or a way out of having to think about that."—[*Official Report*, Commons, 29/11/23; col. 896.]

I entirely agree with that.

The amendment in Clause 5 also provides examples of processing that may be considered legitimate interests under the existing legitimate interest purpose, under Article 6(1)(f), rather than under the new recognised legitimate interest purpose. These include direct marketing, intra-group transmission of personal data for internal administrative purposes, and processing necessary to ensure the security of a network.

The Bill also provides a much more litigious data environment. Currently, an organisation's assessment of its lawful purposes for processing data can be challenged through correspondence or an ICO complaint, whereas, under the proposed system, an individual may be forced to legally challenge a statutory instrument in order to contest the basis on which their data is processed.

As I will explain later, our preference is that the clause not stand part, but I accept that there are some areas that need clarification and Amendment 11 is designed to do this. The UK GDPR sets out conditions in which processing of data is lawful. The Bill inserts in Article 6(1) a provision specifying that processing shall be lawful for the purposes of a recognised legitimate interest, as I referred to earlier, an example of which may be for the purposes of direct marketing.

Many companies obtain data from the open electoral register. The register is maintained by local authorities, which have the right to sell this data to businesses. Amendment 11 would insert new Article (6)(1)(aa) and (ab), which provide that data processing shall be lawful where individuals have consented for their data

"to enter the public domain via a public body",

or where processing is carried out by public bodies pursuant to their duties and rights, which may include making such data available to the public. Individuals are free to opt out of the open electoral register if they so wish and it would be disproportionate—in fact, irritating—to consumers to notify those who have consented to their data being processed that their data is being processed.

On Amendment 14, as mentioned, the Bill would give the Secretary of State the power to determine recognised legitimate interests through secondary

[LORD CLEMENT-JONES]
legislation, which is subject to minimal levels of parliamentary scrutiny. Although the affirmative procedure is required, this does not entail much scrutiny or much of a debate. The last time MPs did not approve a statutory instrument under the affirmative procedure was in 1978. In practice, interests could be added to this list at any time and for any reason, facilitating the flow and use of personal data for limitless potential purposes. Businesses could be obligated to share the public's personal data with government or law enforcement agencies beyond what they are currently required to do, all based on the Secretary of State's inclination at the time.

We are concerned that this Henry VIII power is unjustified and undermines the very purpose of data protection legislation, which is to protect the privacy of individuals in a democratic data environment, as it vests undue power over personal data rights in the Executive. This amendment is designed to prevent the Secretary of State from having the ability to pre-authorise data processing outside the usual legally defined route. It is important to avoid a two-tier data protection framework in which the Secretary of State can decide that certain processing is effectively above the law.

On Amendment 17, some of the most common settings where data protection law is broken relate to the sharing of HIV status of an individual living with HIV in their personal life in relation to employment, healthcare services and the police. The sharing of an individual's HIV status can lead to further discrimination being experienced by people living with HIV and can increase their risk of harassment or even violence. The National AIDS Trust is concerned that the Bill as drafted does not go far enough to prevent individuals' HIV status from being shared with others without their consent. They and we believe that the Bill must clarify what an "administrative purpose" is for organisations processing employees' personal data. Amendment 17 would add wording to clarify that, in paragraph 9(b) of Article 6,

"intra-group transmission of personal data"

in the workplace, within an organisation or in a group of organisations should be permitted only for individuals who need to access an employee's personal data as part of their work.

As far as Amendment 18 is concerned, as it stands Clause 5 gives an advantage to large undertakings with numerous companies that can transmit data intra-group purely because they are affiliated to one central body. However, this contradicts both the ICO's and the CMA's repeated position that first party versus third party is not a meaningful distinction to cover privacy risk. Instead, it is the distinction of what data is processed, rather than the corporate ownership of the systems doing the processing. The amendment reflects the organisational measures that undertakings should have as safeguards. The groups of undertakings transmitting data should have organisational measures via contract to be able to take advantage of this transmission of data.

Then we come to the question of Clause 5 standing part of the Bill. This clause is unnecessary and creates risks. It is unnecessary because the legitimate interest balancing test is, in fact, flexible and practical; it already allows processing for emergencies, safeguarding and so on. It is risky because creating lists of specified legitimate interests inevitably narrows this concept and may make controllers less certain about whether a legitimate interest that is not a recognised legitimate interest can be characterised as such. In the age of AI, where change is exponential, we need principles and outcome-based legislation that are flexible and can be supplemented with guidance from an independent regulator, rather than setting up a system that requires the Government to legislate more and faster in order to catch up.

There is also a risk that the drafting of this provision does not dispense with the need to conduct a legitimate interest balancing test because all the recognised legitimate interests contain a test, of necessity. Established case law interprets the concept of necessity under data protection law as requiring a human rights balancing test to be carried out. This rather points to the smoke-and-mirrors effect of this drafting, which does nothing to improve legal certainty for organisations or protections for individuals.

I now come to Clause 7 standing part. This clause creates a presumption that processing will always be in the public interest or substantial public interest if done in reliance on a condition listed in proposed new Schedule A1 to the Data Protection Act 2018. The schedule will list international treaties that have been ratified by the UK. At present, the Bill lists only the UK-US data-sharing agreement as constituting relevant international law. Clause 7 seeks to remove the requirement for a controller to consider whether the legal basis on which they rely is in the public interest or substantial public interest, has appropriate safeguards and respects data subjects' fundamental rights and freedoms. But the conditions in proposed new Schedule A1 in respect of the UK-US agreement also state that the processing must be necessary, as assessed by the controller, to respond to a request made under the agreement.

It is likely that a court would interpret "necessity" in the light of the ECHR. The court may therefore consider that the inclusion of a necessity test means that a controller would have to consider whether the UK-US agreement, or any other treaty added to the schedule, is proportionate to a legitimate aim pursued. Not only is it unreasonable to expect a controller to do such an assessment; it is also highly unusual. International treaties are drafted on a state-to-state basis and not in a way that necessarily corresponds clearly with domestic law. Further, domestic courts would normally consider the rights under the domestic law implementing a treaty, rather than having to interpret an international instrument without reference to a domestic implementing scheme. Being required to do so may make it more difficult for courts to enforce data subjects' rights.

The Government have not really explained why it is necessary to amend the law in this way rather than simply implementing the UK-US agreement domestically. That would be the normal approach; it would remove the need to add this new legal basis and enable controllers to use the existing framework to identify a legal basis to process data in domestic law. Instead, this amendment makes it more difficult to understand how the law

operates, which could in turn deter data sharing in important situations. Perhaps the Minister could explain why Clause 7 is there.

I beg to move.

Baroness Kidron (CB): My Lords, I rise to speak to Amendments 13 and 15. Before I do, let me say that I strongly support the comments of the noble Lord, Lord Clement-Jones, about HIV and the related vulnerability, and his assertion—almost—that Clause 5 is a solution in search of a problem. "Legitimate interest" is a flexible concept and I am somewhat bewildered as to why the Government are seeking to create change where none is needed. In this context, it follows that, were the noble Lord successful in his argument that Clause 5 should not stand part, Amendments 13 and 15 would be unnecessary.

On the first day in Committee, we debated a smaller group of amendments that sought to establish the principle that nothing in the Bill should lessen the privacy protections of children. In his response, the Minister said:

"if over the course of our deliberations the Committee identifies areas of the Bill where that is not the case, we will absolutely be open to listening on that, but let me state this clearly: the intent is to at least maintain, if not enhance, the safety and privacy of children and their data".—[*Official Report*, 20/3/24; col. GC 75.]

I am glad the Minister is open to listening and that the Government's intention is to protect children, but, as discussed previously, widening the definition of "research" in Clause 3 and watering down purpose limitation protections in Clause 6 negatively impacts children's data rights. Again, in Clause 5, lowering the protections for all data subjects has consequences for children.

4 pm

In Clause 5, proposed new paragraph (6) of Article 6 gives the Secretary of State power to amend the circumstances under which data processing is deemed legitimate in the public interest. Amendment 13 simply requires the Secretary of State to ensure that the Bill does not "reduce, minimise or undermine" existing standards and protections for children's data when exercising these powers. Similarly, proposed new paragraph (9) gives examples of the types of processing that may be necessary for the purpose of a generalised—as opposed to a public interest—legitimate interest, including, in new paragraph (9)(a),

"processing that is necessary for the purposes of direct marketing".

Amendment 15 limits direct marketing in paragraph (9)(a) to adults.

I struggle to understand why the Government believe it is appropriate to enable companies to market directly to anyone without their express consent. The requirement to opt in to marketing has served consumers well and, arguably, online users need more protection, rather than less, from intrusive marketing practices. But it seems a retrograde step that, if an individual, irrespective of age, expressly states they do not wish to receive direct marketing, a company could rely on paragraph (9)(a) to override those wishes. For children, not only is this intrusive and aggressive but it conflicts with their rights and protections, as set out in Article 6(1)(f) of the UK GDPR and codified in the age-appropriate design code.

Once again, I am finding it hard to marry the Government's assurance—given privately, from the Dispatch Box in the other place, and by the noble Viscount the Minister—that the Government remain fully committed to the high standards of protection they set out for children with the proposal routinely to expose them to direct marketing. The changes in UK data law proposed by Clause 5, and numerous others scattered throughout the Bill, expose the reality that the Bill is intended to reduce privacy for UK citizens and, as a knock-on, the privacy and safety protection of children. The Government have a choice: to let the House decide whether children deserve a lesser standard of protection, or to amend the Bill to maintain the current standards.

Baroness Harding of Winscombe (Con): My Lords, I support the noble Baroness, Lady Kidron, in Amendments 13 and 15, to which I have added my name. Rather than repeat her arguments—as we are now all trying not to do—I want to build on them and point to the debate we had on the first group in Committee, when my noble friend the Minister insisted that the Government had no desire to water down the protections for children in the Bill. In Clause 5, in proposed new paragraph (7) of Article 6, the Government have felt it necessary to be explicit, in that paragraph only, that children might need extra protection. This, on its own, makes me worried that the whole Bill is reducing the protection children have, because the Government felt it necessary to insert new paragraph (7)(b). Interestingly, it refers to,

"where relevant, the need to provide children"

with additional support. But where is that not relevant?

Amendment 13 simply looks to strengthen this—to accept the premise on which the Bill is currently drafted that we need to be explicit where children deserve the right to a higher level of protection, and to get the wording right. Will my noble friend the Minister reconsider? There are two choices here: to state right at the beginning of the Bill that there is a principle that there will be no reduction in children's right to a higher level of protection, or to do as the Bill currently does and make sure that we get the wording right at every stage as we work through.

Baroness Jones of Whitchurch (Lab): My Lords, I thank noble Lords who have spoken to this group. As ever, I am grateful to the Delegated Powers and Regulatory Reform Committee for the care it has taken in scrutinising the Bill. In its 10th report it made a number of recommendations addressing the Henry VIII powers in the Bill, which are reflected in a number of amendments that we have tabled.

In this group, we have Amendment 12 to Clause 5, which addresses the committee's concerns about the new powers for the Secretary of State to amend new Annexe 1 of Article 6. This sets out the grounds for treating data processing as a recognised legitimate interest. This issue was raised by the noble Lord, Lord Clement-Jones, in his introduction. The Government argue that they are starting with a limited number of grounds and that the list might need to be changed swiftly, hence the need for the Secretary of State's power to make changes by affirmative regulations.

[Baroness Jones of Whitchurch]

However, the Delegated Powers and Regulatory Reform Committee argues:

"The grounds for lawful processing of personal data go to the heart of the data protection legislation, and therefore in our view should not be capable of being changed by subordinate legislation".

It also argues that the Government have not provided strong reasons for needing this power. It recommends that the delegated power in Clause 5(4) should be removed from the Bill, which is what our Amendment 12 seeks to do.

These concerns were echoed by the Constitution Committee, which went one stage further by arguing:

"Data protection is a matter of great importance in maintaining a relationship of trust between the state and the individual".

It is important to maintain these fundamental individual rights. On that basis, the Constitution Committee asks us to consider whether the breadth of the Secretary of State's powers in Clauses 5 and 6 is such that those powers should be subject to primary rather than secondary legislation.

I make this point about the seriousness of these issues as they underline the points made by other noble Lords in their amendments in this group. In particular, the noble Lord, Lord Clement-Jones, asked whether any regulations made by the Secretary of State should be the subject of the super-affirmative procedure. We will be interested to hear the Minister's response, given the concerns raised by the Constitution Committee.

Will the Minister also explain why it was necessary to remove the balancing test, which would require organisations to show why their interest in processing data outweighs the rights of data subjects? Again, this point was made by the noble Lord, Lord Clement-Jones. It would also be helpful if the Minister could clarify whether the new powers for the Secretary of State to amend the recognised legitimate interest could have consequences for data adequacy and whether this has been checked and tested with the EU.

Finally, we also welcome a number of other amendments tabled by the noble Lord, Lord Clement-Jones, in particular those to ensure that direct marketing should be considered a legitimate interest only if there is proper consent. This was one of the themes of the noble Baroness, Lady Kidron, who made, as ever, a very powerful case for ensuring that children specifically should not be subject to direct market as routine and that there should be clear consent.

The noble Baronesses, Lady Kidron and Lady Harding, have once again, quite rightly, brought us back to the Bill needing to state explicitly that children's rights are not being watered down by it, otherwise we will come back to this again and again in all the clauses. The noble Baroness, Lady Kidron, said that this will be decided on the Floor of the House, or the Minister could give in now and come back with some government amendments. I heartily recommend to the Minister that he considers doing that because it might save us some time. I look forward to the Minister's response on that and on the Delegated Powers and Regulatory Reform Committee's recommendations about removing the Secretary of State's right to amend the legitimate interest test.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): My Lords, I rise to speak to Amendments 11, 12, 13, 14, 15, 16, 17 and 18 and to whether Clauses 5 and 7 should stand part of the Bill. In doing so, I thank the noble Lord, Lord Clement-Jones, and the noble Baronesses, Lady Jones and Lady Kidron, for their amendments. The amendments in the group, as we have heard, relate to Clauses 5 and 7, which make some important changes to Article 6 of the UK GDPR on the lawfulness of processing.

The first amendment in the group, Amendment 11, would create a new lawful ground, under Article 6(1) of UK GDPR, to enable the use of personal data published by public bodies with a person's consent and to enable processing by public bodies for the benefit of the wider public. The Government do not believe it would be necessary to create additional lawful grounds for processing in these circumstances. The collection and publication of information on public databases, such as the list of company directors published by Companies House, should already be permitted by existing lawful grounds under either Article 6(1)(c), in the case of a legal requirement to publish information, or Article 6(1)(e) in the case of a power.

Personal data published by public bodies can already be processed by other non-public body controllers where their legitimate interests outweigh the rights and interests of data subjects. However, they must comply with their requirements in relation to that personal data, including requirements to process personal data fairly and transparently. I am grateful to the noble Lord, Lord Clement-Jones, for setting out where he thinks the gaps are, but I hope he will accept my reassurances that it should already be possible under the existing legislation and will agree to withdraw the amendment.

On Clause 5, the main objectives introduce a new lawful ground under Article 6(1) of the UK GDPR, known as "recognised legitimate interests". It also introduces a new annexe to the UK GDPR, in Schedule 1 to the Bill, that sets out an exhaustive list of processing activities that may be undertaken by data controllers under this new lawful ground. If an activity appears on the list, processing may take place without a person's consent and without balancing the controller's interests against the rights and interests of the individual: the so-called legitimate interests balancing test.

The activities in the annexe are all of a public interest nature, for example, processing of data where necessary to prevent crime, safeguarding national security, protecting children, responding to emergencies or promoting democratic engagement. They also include situations where a public body requests a non-public body to share personal data with it to help deliver a public task sanctioned by law.

The clause was introduced as a result of stakeholders' concerns raised in response to the public consultation *Data: A New Direction* in 2021. Some informed us that they were worried about the legal consequences of getting the balancing test in Article 6(1)(f) wrong.

Others said that undertaking the balancing test can lead to delays in some important processing activities taking place.

As noble Lords will be aware, many data controllers have important roles in supporting activities that have a public interest nature. It is vital that data is shared without delay where necessary in areas such as safeguarding, prevention of crime and responding to emergencies. Of course, controllers who share data while relying on this new lawful ground would still have to comply with wider requirements of data protection legislation where relevant, such as data protection principles which ensure that the data is used fairly, lawfully and transparently, and is collected and used for specific purposes.

In addition to creating a new lawful ground of recognised legitimate interests, Clause 5 also clarifies the types of processing activities that may be permitted under the existing legitimate interests lawful ground under Article 6(1)(f) of the UK GDPR. Even if a processing activity does not appear on the new list of recognised legitimate interests, data controllers may still have grounds for processing people's data without consent if their interests in processing the data are not outweighed by the rights and freedoms that people have in relation to privacy. Clause 5(9) and (10) makes it clear this might be the case in relation to many common commercial activities, such as intragroup transfers.

4.15 pm

The first stand part notice in this group would remove Clause 5 from the Bill in its entirety. As I have explained, these provisions are important because they will encourage responsible and necessary data sharing under a new lawful ground of recognised legitimate interest and clarify the types of processing activities that may take place under the existing lawful ground of legitimate interest under Article 6(1)(f). Therefore, I hope the noble Lord will not press his opposition to this clause.

Amendments 12 to 14 concern the Secretary of State's regulation-making power to add new processing activities to the list. Amendment 12 would remove this delegated power, with the intention, as I understand it, to implement a recommendation of the Delegated Powers and Regulatory Reform Committee. Amendment 13 would make sure that the Secretary of State has greater regard to the rights of children before making use of the regulations, and Amendment 14 would increase parliamentary scrutiny over any additions to the list by making the regulation-making power subject to the super-affirmative procedure.

The Bill already provides for additions to Schedule 1 to be subject to the affirmative resolution procedure, and we believe that this provides the right level of scrutiny, given the other safeguards the Secretary of State must consider before bringing regulations to Parliament. These include requirements for the Secretary of State to consider the impact of any changes to the rights and freedoms of individuals, to have regard to the specific need to provide for the special protection of children, and to consult the Information Commissioner and any other persons the Secretary of State considers appropriate on future changes to the list.

Introducing a higher degree of parliamentary scrutiny to that included in the Bill, or removing the power to add to the list of activities, could be detrimental in instances where there is a need for Ministers to add other urgent public interest activities to the list of recognised legitimate interests and could lead to unnecessary delays in the sharing of vital information.

On the point made about EU data adequacy, across all reforms in the Bill, the Government maintain an ongoing dialogue with the EU and have a positive, constructive relationship with it. We continue to engage regularly with the EU to ensure that our reforms are understood, and we believe that they are compatible with maintaining our data adequacy decisions. For all these reasons, I hope that noble Lords will agree not to press their amendments.

Baroness Jones of Whitchurch (Lab): My Lords, may I just revisit that with the Minister? I fear that he is going to move on to another subject. The Delegated Powers Committee said that it thought that the Government had not provided strong enough reasons for needing this power. The public interest list being proposed, which the Minister outlined, is quite broad, so it is hard to imagine the Government wanting something not already listed. I therefore return to what the committee said. Normally, noble Lords like to listen to recommendations from such committees. There is no strong reason for needing that extra power, so, to push back a little on the Minister, why, specifically, is it felt necessary? If it were a public safety interest, or one of the other examples he gave, it seems to me that that would come under the existing list of public interests.

Viscount Camrose (Con): Indeed. Needless to say, we take the recommendations of the DPRRC very seriously, as they deserve. However, because this is an exhaustive list, and because the technologies and practices around data are likely to evolve very rapidly in ways we are unable currently to predict, it is important to retain as a safety measure the ability to update that list. That is the position the Government are coming from. We will obviously continue to consider the DPRRC's recommendations, but that has to come with a certain amount of adaptiveness as we go. Any addition to the list would of course be subject to parliamentary debate, via the affirmative resolution procedure, as well as the safeguards listed in the provision itself.

Clause 50 ensures that the ICO and any other interested persons should be consulted before making regulations.

Amendments 15, 16, 17 and 18 would amend the part of Clause 5 that is concerned with the types of activities that might be carried out under the current legitimate interest lawful ground, under Article 6(1)(f). Amendment 15 would prevent direct marketing organisations relying on the legitimate interest lawful ground under Article 6(1)(f) if the personal data being processed related to children. However, the age and vulnerability in general of data subjects is already an important factor for direct marketing organisations when considering whether the processing is justified. The ICO already provides specific guidance for controllers

[VISCOUNT CAMROSE]
carrying out this balancing test in relation to children's data. The fact that a data subject is a child, and the age of the child in question, will still be relevant factors to take into account in this process. For these reasons, the Government consider this amendment unnecessary.

Baroness Kidron (CB): My Lords, am I to take it from that that none of the changes currently in the Bill will expose children on a routine basis to direct marketing?

Viscount Camrose (Con): As is the case today and will be going forward, direct marketing organisations will be required to perform the balancing test; and as in the ICO guidance today and, no doubt, going forward—

Baroness Kidron (CB): I am sorry if I am a little confused—I may well be—but the balancing test that is no longer going to be there allows a certain level of processing, which was the subject of the first amendment. The suggestion now is that children will be protected by a balancing test. I would love to know where that balancing test exists.

Viscount Camrose (Con): The balancing test remains there for legitimate interests, under Article 6(1)(f).

Amendment 16 seeks to prevent organisations that undertake third-party marketing relying on the legitimate interest lawful ground under Article 6(1)(f) of the UK GDPR. As I have set out, organisations can rely on that ground for processing personal data without consent when they are satisfied that they have a legitimate interest to do so and that their commercial interests are not outweighed by the rights and interests of data subjects.

Clause 5(4) inserts in Article 6 new paragraph (9), which provides some illustrative examples of activities that may constitute legitimate interests, including direct marketing activities, but it does not mean that they will necessarily be able to process personal data for that purpose. Organisations will need to assess on a case-by-case basis where the balance of interest lies. If the impact on the individual's privacy is too great, they will not be able to rely on the legitimate interest lawful ground. I should emphasise that this is not a new concept created by this Bill. Indeed, the provisions inserted by Clause 5(4) are drawn directly from the recitals to the UK GDPR, as incorporated from the EU GDPR.

I recognise that direct marketing can be a sensitive—indeed, disagreeable—issue for some, but direct marketing information can be very important for businesses as well as individuals and can be dealt with in a way that respects people's privacy. The provisions in this Bill do not change the fact that direct marketing activities must be compliant with the data protection and privacy legislation and continue to respect the data subject's absolute right to opt out of receiving direct marketing communications.

Amendment 17 would make sure that the processing of employee data for "internal administrative purposes" is subject to heightened safeguards, particularly when it relates to health. I understand that this amendment relates to representations made by the National AIDS Trust concerning the level of protection afforded to employees' health data. We agree that the protection of people's HIV status is vital and that it is right that it is subject to extra protection, as is the case for all health data and special category data. We have committed to further engagement and to working with the National AIDS Trust to explore solutions in order to prevent data breaches of people's HIV status, which we feel is best achieved through non-legislative means given the continued high data protection standards afforded by our existing legislation. As such, I hope that the noble Lord, Lord Clement-Jones, will agree not to press this amendment.

Amendment 18 seeks to allow businesses more confidently to rely on the existing legitimate interest lawful ground for the transmission of personal data within a group of businesses affiliated by contract for internal administrative purposes. In Clause 5, the list of activities in proposed new paragraphs (9) and (10) are intended to be illustrative of the types of activities that may be legitimate interests for the purposes of Article 6(1)(f). They are focused on processing activities that are currently listed in the recitals to the EU GDPR but are simply examples. Many other processing activities may be legitimate interests for the purposes of Article 6(1)(f) of the UK GDPR. It is possible that the transmission of personal data for internal administrative purposes within a group affiliated by contract may constitute a legitimate interest, as may many other commercial activities. It would be for the controller to determine this on a case-by-case basis after carrying out a balancing test to assess the impact on the individual.

Finally, I turn to the clause stand part debate that seeks to remove Clause 7 from the Bill. I am grateful to the noble Lord, Lord Clement-Jones, for this amendment because it allows me to explain why this clause is important to the success of the UK-US data access agreement. As noble Lords will know, that agreement helps the law enforcement agencies in both countries tackle crime. Under the UK GDPR, data controllers can process personal data without consent on public interest grounds if the basis for the processing is set out in domestic law. Clause 7 makes it clear that the processing of personal data can also be carried out on public interest grounds if the basis for the processing is set out in a relevant international treaty such as the UK-US data access agreement.

The agreement permits telecommunications operators in the UK to disclose data about serious crimes with law enforcement agencies in the US, and vice versa. The DAA has been operational since October 2022 and disclosures made by UK organisations under it are already lawful under the UK GDPR. Recent ICO guidance confirms this, but the Government want to remove any doubt in the minds of UK data controllers that disclosures under the DAA are permitted by the UK GDPR. Clause 7 makes it absolutely clear to telecoms operators in the UK that disclosures under the DAA can be made in reliance on the UK GDPR's public tasks processing grounds; the clause therefore contributes to the continued, effective functioning of the agreement and to keeping the public in both the UK and the US safe.

For these reasons, I hope that the noble Lord, Lord Clement-Jones, will agree to withdraw his amendment.

Lord Clement-Jones (LD): My first reaction is "Phew", my Lords. We are all having to keep to time limits now. The Minister did an admirable job within his limit.

I wholeheartedly support what the noble Baronesses, Lady Kidron and Lady Harding, said about Amendments 13 and 15 and what the noble Baroness, Lady Jones, said about her Amendment 12. I do not believe that we have yet got to the bottom of children's data protection; there is still quite some way to go. It would be really helpful if the Minister could bring together the elements of children's data about which he is trying to reassure us and write to us saying exactly what needs to be done, particularly in terms of direct marketing directed towards children. That is a real concern.

4.30 pm

The Minister said, "Yes, the balancing test absolutely will have to be carried out. It won't be a recognised legitimate interest; it'll have to be a balancing test, as ever". There is a mantra taking place here: "We have no desire to water down child protection". I take that at face value, but something that brings all of this together for us would be extremely helpful.

The noble Baroness, Lady Jones, has done a fantastic job in pulling together all the DPRRC's recommendations and saying, "Right, we need to understand throughout why the Secretary of State has these powers". As she says, the powers in Clause 5 go to the heart of the Bill. In my view, the legitimate interest balancing test should not have been disturbed, but, if it is to be disturbed and we are to have this new category of recognised legitimate interests, we will need to be extremely careful. That is why I put down a super-affirmative, but I much prefer the noble Baroness's amendment.

Annexe 1 of the Bill, which can be changed by the Secretary of State, now provides a list of exemptions that includes national security, public security and defence, emergencies and crime. They are as broad as that—barely with qualification—in an already extremely broad category. So, when the Minister says that this is needed for changes in technology, it sounds extremely expedient on his behalf that this is being put in place. He prayed in aid the qualification to the new Article 6(1), but this is taking away fundamental rights. This is probably the most important Secretary of State power in the whole Bill—it is even more important than Clause 14, which we will come on to.

On that basis, too, the noble Baroness was absolutely right to raise the issue of data adequacy. Certainly, the vibes I am getting are that individual Members of the European Parliament will be kicking the tyres on this Bill pretty hard if it ever goes through in its current form. The Minister says, "Oh, well, the National AIDS Trust can rest assured that everything's fine with these administrative transfers because we have such high standards currently", but what we are trying to do is make sure that we retain those high standards and, if anything, increase them.

There is not a great deal of plausibility of trust here. If we do not trust what is happening out there, how on earth are the public going to? This whole thing seems to be built on an edifice whereby the Government want things to be done without due care and attention. There is a feeling right through this Bill—particularly in Clause 5—that rights are being watered down. Of course, the legal advice I have on Clause 5 is that, at the end of the day, the necessity test may be necessary throughout, and so it may not be effective.

Then we get to Clause 7 standing part. That clause is also pretty baffling, but I will need to read the Minister's response. Again, it is more wet towels. In the meantime, I beg leave to withdraw Amendment 11.

Amendment 11 withdrawn.

Amendments 12 to 18 not moved.

Clause 5 agreed.

Schedule 1: Lawfulness of processing: recognised legitimate interests

Amendment 19

Moved by ***Baroness Jones of Whitchurch***

19: Schedule 1, page 192, line 21, leave out from beginning to end of line 6 on page 197

Member's explanatory statement

This amendment is consequential on an amendment in the name of Baroness Jones of Whitchurch to leave out Clause 114. These Schedule 1 provisions would become redundant if Clause 114 is removed from the Bill.

Baroness Jones of Whitchurch (Lab): My Lords, Amendment 19 is consequential on my more substantive Clauses 114 and 115 stand part notices, which are also in this group. I am grateful to the noble Lord, Lord Clement-Jones, for his support.

These amendments all relate to the 150 or so pages of late amendments tabled in the Commons on Report and therefore not given adequate scrutiny before now. No real explanation has been given for why the Government felt it necessary to table the amendments in this way, and this group of amendments comes under the heading of so-called "democratic engagement". Clause 113 extends a soft opt-in for direct mail marketing for furthering charitable or political objectives, while Clause 114 goes further and allows the Secretary of State to change the direct marketing rules through secondary legislation for the purpose of democratic engagement. This would allow the Government, in the run-up to an election, to switch off the direct mailing rules that apply to political parties.

Like many others, we are highly suspicious of the Government's motives in introducing these amendments in the run-up to this election. Although we do not have a problem with a softer opt-in for direct mailing for charities, the application of Clause 114 to political parties gives politicians carte blanche to mine voters' data given in good faith for completely different purposes. It would allow voters to be bombarded with calls, texts and personalised social media without their explicit consent.

When you consider these proposals in the context of other recent moves by the Government to make it harder for some people to vote and to vastly increase

[BARONESS JONES OF WHITCHURCH]
the amount of money that can be spent on campaigning in the run-up to an election, you have to wonder what the Government are up to, because these measures have certainly not been requested by Labour. In fact, these measures were not supported by the majority of respondents to the Government's initial consultation, who wanted the existing rules upheld.

The Advertising Association has told us that it is concerned that switching off the rules could result in an increase in poor practice, such as political lobbying under the guise of research. This is apparently a practice known as "plugging". It referred us to a report from the previous Information Commissioner on how political parties manage data protection, which provided key recommendations for how political parties could improve. These included providing clearer information about how data will be used and being more transparent about how voters are profiled and targeted via social media platforms. This is the direction our democratic engagement should be going in, with stronger and more honest rules that treat the electorate with respect, not watering down the rules that already exist.

When these proposals were challenged in the Commons on Report, the Minister, John Whittingdale, said:

"We have no immediate plans to use the regulation powers".—[*Official Report*, Commons, 29/11/23; col. 912.]

If that is the case, why do the Government not take the proposals off the table, go back to the drawing board by conducting a proper consultation and test whether there is any appetite for these changes? They should also involve the Information Commissioner at an early stage, as he has already gone on record to say that this is

"an area in which there are significant potential risks to people if any future policy is not implemented very carefully".

Finally, if there are to be any changes, they should be subject to full parliamentary scrutiny and approval.

We believe that Clauses 114 and 115 are taking us in fundamentally the wrong direction, against the interests of the electorate. I look forward to the Minister's response, but I give notice now that, unless the Government adopt a very different strategy on this issue, we will return to this on Report. I beg to move.

Baroness Bennett of Manor Castle (GP): My Lords, I follow the noble Baroness, Lady Jones of Whitchurch, with pleasure, as I agree with everything that she just said. I apologise for having failed to notice this in time to attach my name; I certainly would have done, if I had had the chance.

As the noble Baroness said, we are in an area of great concern for the level of democracy that we already have in our country. Downgrading it further is the last thing that we should be looking at doing. Last week, I was in the Chamber looking at the statutory instrument that saw a massive increase in the spending limits for the London mayoral and assembly elections and other mayoral elections—six weeks before they are held. This is a chance to spend an enormous amount of money; in reality, it is the chance for one party that has the money from donations from interesting and dubious sources, such as the £10 million, to bombard voters in clearly deeply dubious and concerning ways.

We see a great deal of concern about issues such as deepfakes, what might happen in the next general election, malicious actors and foreign actors potentially interfering in our elections. We have to make sure, however, that the main actors conduct elections fairly on the ground. As the noble Baroness, Lady Jones, just set out, this potentially drives a cart and horses through that. As she said, these clauses did not get proper scrutiny in the Commons—as much as that ever happens. As I understand it, there is the potential for us to remove them entirely later, but I should like to ask the Minister some direct questions, to understand what the Government's intentions are and how they understand the meaning of the clauses.

Perhaps no one would have any problems with these clauses if they were for campaigns to encourage people to register to vote, given that we do not have automatic voter registration, as so many other countries do. Would that be covered by these clauses? If someone were conducting a "get out the vote" campaign in a non-partisan way, simply saying, "Please go out and vote. The election is on this day. You will need to bring along your voter ID", would it be covered by these clauses? What about an NGO campaigning to stop a proposed new nuclear power station, or a group campaigning for stronger regulations on pesticides or for the Government to take stronger action against ultra-processed food? How do those kinds of politics fit with Clauses 114 and 115? As they are currently written, I am not sure that it is clear what is covered.

There is cause for deep concern, because no justification has been made for these two clauses. I look forward to hearing the Minister's responses.

Baroness Harding of Winscombe (Con): My Lords, this weekend, as I was preparing for the amendments to which I have put my name, I made the huge mistake of looking at the other amendments being discussed. As a result, I had a look at this group. I probably should declare an interest as the wife of a Conservative MP; therefore, our household is directly affected by this amendment and these clause stand part notices. I wholeheartedly agree with everything said by the noble Baronesses, Lady Jones and Lady Bennett of Manor Castle.

I have two additional points to make, because I am horrified by these clauses. First, did I miss something, in that we are now defining an adult as being 14-plus? At what point did that happen? I thought that you had the right to vote at 18, so I do not understand why electoral direct marketing should be free to bombard our 14 year-olds. That was my first additional point.

Secondly, I come back to what I said on the first day of Committee: this is all about trust. I really worry that Clauses 114 and 115 risk undermining two important areas where trust really matters. The first is our electoral system and the second is the data that we give our elected representatives, when we go to them not as party representatives but as our representatives elected to help us.

4.45 pm

I have seen this as the wife of a politician. Many people go to their MP who are not supporters of that MP's party or even of them as an individual, but they

need their help. In doing so, they give their data, and I do not want to create any more barriers that reduce the trust that some of the most vulnerable in society have in our elected representatives. We live at a time when social media does enough of that for us, and we do not need to make it even easier for our electoral campaigning to diminish the trust the electorate has in the political system.

This is a fundamental group of amendments. It takes quite a lot for me to stand up on something so party political—I think my husband will be completely horrified that I did this homework over the weekend—but I ask the Minister to reconsider and to listen hard to the considered views, probably more considered than mine, on the Opposition Benches calling for more consultation before something such as this is introduced.

Lord Clement-Jones (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Harding and Lady Bennett, after the excellent introduction to the amendments in this group by the noble Baroness, Lady Jones. The noble Baroness, Lady Harding, used the word "trust", and this is another example of a potential hidden agenda in the Bill. Again, it is destructive of any public trust in the way their data is curated. This is a particularly egregious example, without, fundamentally, any explanation. Sir John Whittingdale said that a future Government

"may want to encourage democratic engagement in the run up to an election by temporarily 'switching off' some of the direct marketing rules".—[*Official Report*, Commons, 29/11/2023; col. 885.]

Nothing to see here—all very innocuous; but, as we know, in the past the ICO has been concerned about even the current rules on the use of data by political parties. It seems to me that, without being too Pollyannaish about this, we should be setting an example in the way we use the public's data for campaigning. The ICO, understandably, is quoted as saying during the public consultation on the Bill that this is

"an area in which there are significant potential risks to people if any future policy is not implemented very carefully".

That seems an understatement, but that is how regulators talk. It is entirely right to be concerned about these provisions.

Of course, they are hugely problematic, but they are particularly problematic given that it is envisaged that young people aged 14 and older should be able to be targeted by political parties when they cannot even vote, as we have heard. This would appear to contravene one of the basic principles of data protection law: that you should not process more personal data than you need for your purposes. If an individual cannot vote, it is hard to see how targeting them with material relating to an election is a proportionate interference with their privacy rights, particularly when they are a child. The question is, should we be soliciting support from 14 to 17 year-olds during elections when they do not have votes? Why do the rules need changing so that people can be targeted online without having consented? One of the consequences of these changes would be to allow a Government to switch off—the words used by Sir John Whittingdale—direct marketing rules in the run-up to an election, allowing candidates and parties to rely on "soft" opt-in to process data and make other changes without scrutiny.

Exactly as the noble Baroness, Lady Jones, said, respondents to the original consultation on the Bill wanted political communications to be covered by existing rules on direct marketing. Responses were very mixed on the soft opt-in, and there were worries that people might be encouraged to part with more of their personal data. More broadly, why are the Government changing the rules on democratic engagement if they say they will not use these powers? What assessment have they made of the impact of the use of the powers? Why are the powers not being overseen by the Electoral Commission? If anybody is going to have the power to introduce the ability to market directly to voters, it should be the Electoral Commission.

All this smacks of taking advantage of financial asymmetry. We talked about competition asymmetry with big tech when we debated the digital markets Bill; similarly, this seems a rather sneaky way of taking advantage of the financial resources one party might have versus others. It would allow it to do things other parties cannot, because it has granted itself permission to do that. The provisions should not be in the hands of any Secretary of State or governing party; if anything, they should be in entirely independent hands; but, even then, they are undesirable.

Viscount Camrose (Con): My Lords, I thank the noble Baroness, Lady Jones, for tabling her amendments. Amendment 19 would remove processing which is necessary for the purposes of democratic engagement from the list of recognised legitimate interests. It is essential in a healthy democracy that registered political parties, elected representatives and permitted participants in referendums can engage freely with the electorate without being impeded unnecessarily by data protection legislation.

The provisions in the Bill will mean that these individuals and organisations do not have to carry out legitimate interest assessments or look for a separate legal basis. They will, however, still need to comply with other requirements of data protection legislation, such as the data protection principles and the requirement for processing to be necessary.

On the question posed by the noble Baroness about the term "democratic engagement", it is intended to cover a wide range of political activities inside and outside election periods. These include but are not limited to democratic representation; communicating with electors and interested parties; surveying and opinion gathering; campaigning activities; activities to increase voter turnout; supporting the work of elected representatives, prospective candidates and official candidates; and fundraising to support any of these activities. This is reflected in the drafting, which incorporates these concepts in the definition of democratic engagement and democratic engagement activities.

The ICO already has guidance on the use of personal data by political parties for campaigning purposes, which the Government anticipate it will update to reflect the changes in the Bill. We will of course work

[VISCOUNT CAMROSE]
with the ICO to make sure it is familiar with our plans for commencement and that it does not benefit any party over another.

On the point made about the appropriate age for the provisions, in some parts of the UK the voting age is 16 for some elections, and children can join the electoral register as attainers at 14. The age of 14 reflects the variations in voting age across the nation; in some parts of the UK, such as Scotland, a person can register to vote at 14 as an attainer. An attainer is someone who is registered to vote in advance of their being able to do so, to allow them to be on the electoral roll as soon as they turn the required age. Children aged 14 and over are often politically engaged and are approaching voting age. The Government consider it important that political parties and elected representatives can engage freely with this age group—

Lord Bassam of Brighton (Lab): I am interested in what the Minister says about the age of attainers. Surely it would be possible to remove attainers from those who could be subject to direct marketing. Given how young attainers could be, it would protect them from the unwarranted attentions of campaigning parties and so on. I do not see that as a great difficulty.

Viscount Camrose (Con): Indeed. It is certainly worth looking at, but I remind noble Lords that such communications have to be necessary, and the test of their being necessary for someone of that age is obviously more stringent.

Lord Bassam of Brighton (Lab): But what is the test of necessity at that age?

Viscount Camrose (Con): The processor has to determine whether it is necessary to the desired democratic engagement outcome to communicate with someone at that age. But I take the point: for the vast majority of democratic engagement communications, 14 would be far too young to make that a worthwhile or necessary activity.

Lord Bassam of Brighton (Lab): As I recall, the ages are on the electoral register.

Viscount Camrose (Con): I am not aware one way or the other, but I will happily look into that to see what further safeguards we can add so that we are not bombarding people who are too young with this material.

Lord Kamall (Con): May I make a suggestion to my noble friend the Minister? It might be worth asking the legal people to get the right wording, but if there are different ages at which people can vote in different parts of the United Kingdom, surely it would be easier just to relate it to the age at which they are able to vote in those elections. That would address a lot of the concerns that many noble Lords are expressing here today.

Lord Clement-Jones (LD): My Lords, this whole area of democratic engagement is one that the Minister will need to explain in some detail. This is an Alice in Wonderland schedule: "These words mean what I want them to mean". If, for instance, you are engaging with the children of a voter—at 14, they are children—is that democratic engagement? You could drive a coach and horses through Schedule 1. The Minister used the word "necessary", but he must give us rather more than that. It was not very reassuring.

Baroness Kidron (CB): The Minister mentioned a presumption that the ICO will update its guidance. Is there a timeframe for that? Will the guidance be updated before this comes into effect? How does the age of 14 relate to the AADC, which sets the age of adulthood at 18?

Baroness Bennett of Manor Castle (GP): Before the Minister replies, we may as well do the full round. I agree with him, in that I very much believe in votes at 16 and possibly younger. I have been on many a climate demonstration with young people of 14 and under, so they can be involved, but the issue here is bigger than age. The main issue is not age but whether anybody should be subjected to a potential barrage of material in which they have not in any way expressed an interest. I am keen to make sure that this debate is not diverted to the age question and that we do not lose the bigger issue. I wanted to say that I sort of agree with the Minister on one element.

Baroness Harding of Winscombe (Con): I agree with the noble Baroness, but with one rider. We will keep coming back to the need for children to have a higher level of data protection than adults, and this is but one of many examples we will debate. However, I agree with her underlying point. The reason why I support removing both these clauses is the hubris of believing that you will engage the electorate by bombarding them with things they did not ask to receive.

Viscount Camrose (Con): A fair number of points were made there. I will look at ages under 16 and see what further steps, in addition to being necessary and proportionate, we can think about to provide some reassurance. Guidance would need to be in effect before any of this is acted on by any of the political parties. I and my fellow Ministers will continue to work with the ICO—

Baroness Kidron (CB): I am sorry to press the Minister, but does the Bill state that guidance will be in place before this comes into effect?

Viscount Camrose (Con): I am not sure whether it is written in the Bill. I will check, but the Bill would not function without the existence of the guidance.

Lord Bassam of Brighton (Lab): I am sorry to drag this out but, on the guidance, can we be assured that the Minister will involve the Electoral Commission? It has a great deal of experience here; in fact, it has opined in the past on votes for younger cohorts of the population. It seems highly relevant to seek out its experience and the benefits of that.

5 pm

Viscount Camrose (Con): I would of course be very happy to continue to engage with the Electoral Commission.

We will continue to work with the ICO to make sure that it is familiar with the plans for commencement and that its plans for guidance fit into that. In parts of the UK where the voting age is 18 and the age of attainment is 16, it would be more difficult for candidates and parties to show that it was necessary or proportionate to process the personal data of 14 and 15 year-olds in reliance on the new lawful ground. In this context, creating an arbitrary distinction between children at or approaching voting age and adults may not be appropriate; in particular, many teenagers approaching voting age may be more politically engaged than some adults. These measures will give parties and candidates a clear lawful ground for engaging them in the process. Accepting this amendment would remove the benefits of greater ease of identification of a lawful ground for processing by elected representatives, candidates and registered political parties, which is designed to improve engagement with the electorate. I therefore hope that the noble Baroness, Lady Jones, will withdraw her amendment.

I now come to the clause stand part notice that would remove Clause 114, which gives the Secretary of State a power to make exceptions to the direct marketing rules for communications sent for the purposes of democratic engagement. As Clause 115 defines terms for the purposes of Clause 114, the noble Baroness, Lady Jones, is also seeking for that clause to be removed. Under the current law, many of the rules applying to electronic communications sent for commercial marketing apply to messages sent by registered political parties, elected representatives and others for the purposes of democratic engagement. It is conceivable that, after considering the risks and benefits, a future Government might want to treat communications sent for the purposes of democratic engagement differently from commercial marketing. For example, in areas where voter turnout is particularly low or there is a need to increase engagement with the electoral process, a future Government might decide that the direct marketing rules should be modified. This clause stand part notice would remove that option.

We have incorporated several safeguards that must be met prior to regulations being laid under this clause. They include the Secretary of State having specific regard to the effect the exceptions could have on an individual's privacy; a requirement to consult the Information Commissioner and other interested parties, as the Secretary of State considers appropriate; and the regulations being subject to parliamentary approval via the affirmative procedure.

For these reasons, I hope that the noble Baroness will agree to withdraw or not press her amendments.

Baroness Jones of Whitchurch (Lab): My Lords, I am pleased that I have sparked such a lively debate. When I tabled these amendments, it was only me and the noble Lord, Lord Clement-Jones, so I thought, "This could be a bit sad, really", but it has not been. Actually, it has been an excellent debate and we have identified some really good issues.

As a number of noble Lords said, the expression "democratic engagement" is weasel words: what is not to like about democratic engagement? We all like it. Only when you drill down into the proposals do you realise the traps that could befall us. As noble Lords and the noble Baroness, Lady Bennett, rightly said, we have to see this in the context of some of the other moves the Government are pursuing in trying to skew the electoral rules in their favour. I am not convinced that this is as saintly as the Government are trying to pretend.

The noble Baroness, Lady Harding, is absolutely right: this is about trust. It is about us setting an example. Of all the things we can do on data protection that we have control over, we could at least show the electorate how things could be done, so that they realise that we, as politicians, understand how precious their data is and that we do not want to misuse it.

I hope we have all knocked on doors, and I must say that I have never had a problem engaging with the electorate, and actually they have never had a problem engaging with us. This is not filling a gap that anybody has identified. We are all out there and finding ways of communicating that, by and large, I would say the electorate finds perfectly acceptable. People talk to us, and they get the briefings through the door. That is what they expect an election campaign to be about. They do not expect, as the noble Baroness, Lady Harding, said, to go to see their MP about one thing and then suddenly find that they are being sent information about something completely different or that assumptions are being made about them which were never the intention when they gave the information in the first place. I just feel that there is something slightly seedy about all this. I am sorry that the Minister did not pick up a little more on our concerns about all this.

There are some practical things that I think it was helpful for us to have talked about, such as the Electoral Commission. I do not think that it has been involved up to now. I would like to know in more detail what its views are on all this. It is also important that we come back to the Information Commissioner and check in more detail what his view is on all this. It would be nice to have guidance, but I do not think that that will be enough to satisfy us in terms of how we proceed with these amendments.

The Minister ultimately has not explained why this has been introduced at this late stage. He is talking about this as though conceivably, in the future, a Government might want to adopt these rules. If that is the case, I respectfully say that we should come back at that time with a proper set of proposals that go right through the democratic process that we have here in Parliament, scrutinise it properly and make a decision then, rather than being bounced into something at a very late stage.

I have to say that I am deeply unhappy at what the Minister has said. I will obviously look at *Hansard*, but I may well want to return to this.

Amendment 19 withdrawn.

Schedule 1 agreed.

Clause 6: The purpose limitation

Amendment 20

Moved by ***Viscount Camrose***

20: Clause 6, page 8, leave out lines 20 to 22 and insert—

"(c) the nature of the processing, including whether it is processing described in Article 9(1) (processing of special categories of personal data) or Article 10(1) (processing of personal data relating to criminal convictions etc);"

Member's explanatory statement

This technical amendment changes new Article 8A(2)(c) of the UK GDPR so that it refers to processing rather than personal data, reflecting the terms of Articles 9(1) and 10(1).

Viscount Camrose (Con): My Lords, I rise to speak to a series of minor and technical, yet necessary, government amendments which, overall, improve the functionality of the Bill. I hope the Committee will be content if I address them together. Amendments 20, 42, 61 and 63 are minor technical amendments to references to special category data in Clauses 6 and 14. All are intended to clarify that references to special category data mean references to the scope of Article 9(1) of the UK GDPR. They are simply designed to improve the clarity of the drafting.

I turn now to the series of amendments that clarify how time periods within the data protection legal framework are calculated. For the record, these are Amendments 136, 139, 141, 149, 151, 152, 176, 198, 206 to 208, 212 to 214, 216, 217, 253 and 285. Noble Lords will be aware that the data protection legislation sets a number of time periods or deadlines for certain things to happen, such as responding to subject access requests; in other words, at what day, minute or hour the clock starts and stops ticking in relation to a particular procedure. The Data Protection Act 2018 expressly applies the EU-derived rules on how these time periods should be calculated, except in a few incidences where it is more appropriate for the UK domestic approach to apply, for example time periods related to parliamentary procedures. I shall refer to these EU-derived rules as the time periods regulation.

In response to the Retained EU Law (Revocation and Reform) Act 2023, we are making it clear that the time periods regulation continues to apply to the UK GDPR and other regulations that form part of the UK's data protection and privacy framework, for example, the Privacy and Electronic Communications (EC Directive) Regulations 2003. By making such express provision, our aim is to ensure consistency and continuity and to provide certainty for organisations, individuals and the regulator. We have also made some minor changes to existing clauses in the Bill to ensure that application of the time periods regulation achieves the correct effect.

Secondly, Amendment 197 clarifies that the requirement to consult before making regulations that introduce smart data schemes may be satisfied by a consultation before the Bill comes into force. The regulations must also be subject to affirmative parliamentary scrutiny to allow Members of both Houses to scrutinise legislation. This will facilitate the rapid implementation of smart data schemes, so that consumers and businesses can start benefiting as soon as possible. The Government are committed to working closely with business and wider stakeholders in the development of smart data.

Furthermore, Clause 96(3) protects data holders from the levy that may be imposed to meet the expenses of persons and bodies performing functions under smart data regulations. This levy cannot be imposed on data holders that do not appear capable of being directly affected by the exercise of those functions.

Amendment 196 extends that protection to authorised persons and third-party recipients on whom the levy may also be imposed. Customers will not have to pay to access their data, only for the innovative services offered by third parties. We expect that smart data schemes will deliver significant time and cost savings for customers.

The Government are committed to balancing the incentives for businesses to innovate and provide smart data services with ensuring that all customers are empowered through their data use and do not face undue financial barriers or digital exclusion. Any regulations providing for payment of the levy or fees will be subject to consultation and to the affirmative resolution procedure in Parliament.

Amendments 283 and 285 to Schedule 15 confer a general incidental power on the information commission. It will have the implied power to do things incidental to or consequential upon the exercise of its functions, for example, to hold land and enter into agreements. This amendment makes those implicit powers explicit for the avoidance of doubt and in line with standard practice. It does not give the commission substantive new powers. I beg to move.

Lord Kamall (Con): My Lords, I know that these amendments were said to be technical amendments, so I thought I would just accept them, but when I saw the wording of Amendment 283 some alarm bells started ringing. It says:

"The Commission may do anything it thinks appropriate for the purposes of, or in connection with, its functions".

I know that the Minister said that this is stating what the commission is already able to do, but I am concerned whenever I see those words anywhere. They give a blank cheque to any authority or organisation.

Many noble Lords will know that I have previously spoken about the principal-agent theory in politics, in which certain powers are delegated to an agency or regulator, but what accountability does it have? I worry when I see that it "may do anything … appropriate" to fulfil its tasks. I would like some assurance from the Minister that there is a limit to what the information commission can do and some accountability. At a time when many of us are asking who regulates the regulators and when we are looking at some of the arm's-length bodies—need I mention the Post Office?—there is some real concern about accountability.

I understand the reason for wanting to clarify or formalise what the Minister believes the information commission is doing already, but I worry about this form of words. I would like some reassurance that it is not wide-ranging and that there is some limit and accountability to future Governments. I have seen

this sentiment across the House; people are asking who regulates the regulators and to whom are they accountable.

Lord Clement-Jones (LD): My Lords, I must congratulate the noble Lord, Lord Kamall. Amid a blizzard of technical and minor amendments from the Minister, he forensically spotted one to raise in that way. He is absolutely right. The Industry and Regulators Committee has certainly been examining the accountability and scrutiny devoted to regulators, so we need to be careful in the language that we use. I think we have to take a lot on trust from the Minister, particularly in Grand Committee.

I apparently failed to declare an interest at Second Reading. I forgot to state that I am a consultant to DLA Piper and the Whips have reminded me today that I failed to do so on the first day in Committee, so I apologise to the Committee for that. I am not quite sure why my consultancy with DLA Piper is relevant to the data protection Bill, but there it is. I declare it.

5.15 pm

Lord Kamall (Con): I should also declare an interest. I apologise that I did not do so earlier. I worked with a think tank which wrote a series of papers on who regulates the regulators. I still have a relationship with that think tank.

Lord Bassam of Brighton (Lab): My Lords, I have been through this large group and, apart from my natural suspicion that there might be something dastardly hidden away in it, I am broadly content, but I have a few questions.

On Amendment 20, can the Minister conform that the new words "further processing" have the same meaning as the reuse of personal data? Can he confirm that Article 5(1)(b) will prohibit this further processing when it is not in line with the original purpose for which the data was collected? How will the data subject know that is the case?

On Amendment 196, to my untutored eye it looks like the regulation-making power is being extended away from the data holder to include authorised persons and third-party recipients. My questions are simple enough: was this an oversight on the part of the original drafters of that clause? Is the amendment an extension of those captured by the effect of the clause? Is it designed to achieve consistency across the Bill? Finally, can I assume that an authorised person or third party would usually be someone acting on behalf of an agent of the data holder?

I presume that Amendments 198, 212 and 213 are needed because of a glitch in the drafting—similarly with Amendment 206. I can see that Amendments 208, 216 and 217 clarify when time periods begin, but why are the Government seeking to disapply time periods in Amendment 253 when surely some consistency is required?

Finally—I am sure the Minister will be happy about this—I am all in favour of flexibility, but Amendment 283 states that the Information Commissioner has the power to do things to facilitate the exercise of his functions. The noble Lord, Lord Kamall, picked up on this. We need to understand what those limits are. On the face of it, one might say that the amendment is sensible, but it seems rather general and broad in its application. As the noble Lord, Lord Kamall, rightly said, we need to see what the limits of accountability are. This is one of those occasions.

Viscount Camrose (Con): I thank the noble Lords, Lord Kamall and Lord Bassam, for their engagement with this group. On the questions from the noble Lord, Lord Kamall, these are powers that the ICO would already have in common law. As I am given to understand is now best practice, they are put on a statutory footing in the Bill as part of best practice with all Bills. The purpose is to align with best practice. It does not confer substantial new powers but clarifies the powers that the regulator has. I can also confirm that the ICO was and remains accountable to Parliament.

Lord Kamall (Con): I am sorry to intervene as I know that noble Lords want to move on to other groups, but the Minister said that the ICO remains accountable to Parliament. Will he clarify how it is accountable to Parliament for the record?

Viscount Camrose (Con): The Information Commissioner is directly accountable to Parliament in that he makes regular appearances in front of Select Committees that scrutinise the regulator's work, including progress against objectives.

The noble Lord, Lord Bassam, made multiple important and interesting points. I hope he will forgive me if I undertake to write to him about those; there is quite a range of topics to cover. If there are any on which he requires answers right away, he is welcome to intervene.

Lord Bassam of Brighton (Lab): I want to be helpful to the Minister. I appreciate that these questions are probably irritating but I carefully read through the amendments and aligned them with the Explanatory Notes. I just wanted some clarification to make sure that we are clear on exactly what the Government are trying to do. "Minor and technical" covers a multitude of sins; I know that from my own time as a Minister.

Viscount Camrose (Con): Indeed. I will make absolutely sure that we provide a full answer. By the way, I sincerely thank the noble Lord for taking the time to go through what is perhaps not the most rewarding of reads but is useful none the less.

Baroness Kidron (CB): On the question of the ICO being responsible to Parliament, in the then Online Safety Bill and the digital markets Bill we consistently asked for regulators to be directly responsible to Parliament. If that is something the Government believe they are, we would like to see an expression of it.

Viscount Camrose (Con): I would be happy to provide such an expression. I will be astonished if that is not the subject of a later group of amendments. I have not yet prepared for that group, I am afraid, but yes, that is the intention.

Lord Clement-Jones (LD): In which case, you are warned.

Amendment 20 agreed.

Amendments 21 to 23 not moved.

Clause 6, as amended, agreed.

Schedule 2 agreed.

Clauses 7 and 8 agreed.

Clause 9: Vexatious or excessive requests by data subjects

Amendment 24

Moved by ***Baroness Jones of Whitchurch***

24: Clause 9, page 17, leave out line 33

Member's explanatory statement

This amendment would mean that the resources available to the controller could not be taken into account when determining whether a request by a data subject is vexatious or excessive.

Baroness Jones of Whitchurch (Lab): My Lords, in moving Amendment 24, I will speak also to Amendment 26. I welcome the amendments in the name of the noble Lord, Lord Clement-Jones.

Together, these amendments go to the heart of questioning why the Government have found it necessary to change the grounds for the refusal of a subject access request from "manifestly unfounded" to "vexatious or excessive". At the moment, Article 15 of the UK GDPR gives data subjects a right of access to find out what personal information an organisation hold on them, how it is using it and whether it is sharing it. This right of access is key to transparency and often underpins people's ability to exercise other data rights and human rights; for example, it impacts on an individual's right to privacy in Article 8 of the ECHR and their right to non-discrimination in Article 40 of the same.

The Equality and Human Rights Commission has raised specific concerns about these proposals, arguing that subject access requests

"are a vital mechanism for data subjects to exercise their fundamental rights to privacy and freedom from discrimination".

It argues that these rights will be even more vital as AI systems are rolled out, using personal information

"in ways that may be less than transparent to data subjects".

So we must be suspicious as to why these changes are being made and whether they are likely to reduce the legitimate opportunities for data subjects to access their personal information.

This comes back to the mantra of the noble Lord, Lord Clement-Jones, regarding a number of the clauses we have dealt with and, I am sure, ones we have yet to deal with: why are these changes necessary? That is the question we pose as well. Is it simply to give greater clarity, as the Minister in the Commons claimed; or is it to lighten the burden on business—the so-called Brexit dividend—which would result in fewer applications being processed by data controllers? Perhaps the Minister could clarify whether data subject rights will be weakened by these changes.

In the Commons, the Minister, John Whittingdale, also argued that some data search requests are disproportionate when the information is of low importance or low relevance to the data subject. However, who has the right to make that decision? How is a data controller in a position to judge how important the information is to an individual? Can the Minister clarify whether the data controller would have the right to ask the data subject their reasons for requesting the information? This is not permitted under the current regime.

A number of stakeholders have argued that the new wording is too subjective and is open to abuse by data controllers who find responding to such requests, by their very nature, vexatious or excessive. For a busy data operator, any extra work could be seen as excessive. Although the Information Commissioner has said that he is clear how these words should be applied, he has also said that they are open to numerous interpretations. Therefore, there is a rather urgent need for the Information Commissioner to provide clear statutory guidance on the application of the terms, so that only truly disruptive requests can be rejected. Perhaps the Minister can clarify whether this is the intention.

In the meantime, our Amendment 24 aims to remove the easy get-out clause for refusing a request by making it clear that the resources available to the controller should not, by itself, be a reason for rejecting an application for information. There is an inevitable cost involved in processing requests, and we need to ensure that it does not become the standard excuse for denying data subjects their rights. Our Amendment 26 would require the data controller to produce evidence of why a request is considered vexatious or excessive if it is being denied. It should not be possible to assert this as a reason without providing the data subject with a clear and justifiable explanation. Amendment 25, from the noble Lord, Lord Clement-Jones, has a similar intent.

We remain concerned about the changes and the impact they will have on established data and human rights. As a number of stakeholders have argued, access to personal data and its uses underpins so many other rights that can be enforced by law. We should not give these rights away easily or without proper justification. I look forward to hearing what the Minister has to say, but without further clarification in the Bill, I doubt whether our concerns will be assuaged. I beg to move.

Lord Sikka (Lab): My Lords, I will say a little bit about my intention to delete this clause altogether. Clause 9 significantly changes the data and privacy landscape, and for the worse. The Constitution Committee's report on the Bill, published on 25 January, noted:

"Clause 9 amends Article 12 of the UK GDPR to broaden the basis for refusal"—

not for enhancing, but for refusal—

"of a data access request by providing more leeway to 'data controllers'".

In the world we live in, there is a huge imbalance of power between corporations, governments, public bodies and individuals. People must have a right to know what information is held about them, and how and when it is used. It is vital in order to check abuses and hold powerful elites to account.

The request for information can, at the moment, be wholly or partly denied, depending on the circumstances. It can be refused if it is considered to be manifestly unfounded or manifestly excessive. These phrases, "manifestly unfounded" and "manifestly excessive", are fairly well understood. There is already a lot of case law on that. Clause 9, however, lowers the threshold for refusing information from "manifestly unfounded or excessive" to "vexatious or excessive".

5.30 pm

As has been pointed out, under the Bill, data controllers are required to carry out only those searches they think "reasonable and proportionate". On 29 November, the Minister in the other place pointed out that data controllers can reject inquiries that they deem to be

"of low importance or of low relevance to the data subject".—[*Official Report*, Commons, 29/11/23; col. 873.]

The Bill therefore effectively allows organisations to make assumptions about the reasons for requests and then refuse to act upon requests that

"are intended to cause distress",

or

"are not made in good faith".

That in itself is highly problematic. It means that there will be little or no transparency about the data controllers' decisions. The unilateral decision of the controllers cannot easily be challenged, which is a further erosion of people's right to know.

I have no doubt that, at some point, the Minister will refer to the private costs of meeting the SARs. I would welcome some data, if the Minister has any, on how many requests for information are received each year, how many are considered "manifestly unfounded or excessive" at the outset by the data controllers, how many are rejected, how many requests go to the Information Commissioner and are rejected, how many subsequently go to tribunal, and whether the initial decision to refuse the request is accepted or rejected. If he going to refer to any costs, I would also like to ask him some accounting questions about how the costs are computed. I hope he will be able to answer those, because I simply will not take his word that it actually has a cost. If those costs exist, who audited them and when? He has a lot of information to give on that.

In many ways, any focus on costs is primitive, because these private costs do not consider the social costs. There is a social cost associated with refusal. That social cost is highly evident from the case of the Post Office scandal. People regularly asked for information. In November 2015, for example, the Justice For Subpostmasters Alliance urged its members to submit subject access requests to find out what information the Post Office held about them. The information they received, even though only part of their request was met, helped to show that the Post Office knew about the flaws of the Horizon system. Clause 9 makes it easier for companies such as the Post Office to refuse to provide such information to people, and to refuse even to tell them what data it holds. If Clause 9 becomes law, it will help to hide wrongdoings and corrupt practices.

If, in his response, the Minister is tempted to argue that the "vexatious" threshold of the Bill will somehow be aligned with the freedom of information regime, I would remind him that the FoI regime is much broader in scope, as it enables individuals to seek access to

"information held by public authorities or by persons providing services".

Instead, this Bill empowers individuals to make requests only in relation to their personal data. The scope of these requests is therefore much narrower—the two cannot really be compared. Of course, numerous FoI requests by sub-postmasters were also refused or only partly answered. These included a request for six months' correspondence between the business department and Paula Vennells. That was refused on the grounds of cost, even though a previous request for a longer period of correspondence had been fulfilled.

I come to the further link between FoI and this Bill. I personally experienced such selective obstruction by the Treasury when I requested some information about the forced closure of the Bank of Credit and Commerce International in July 1991. After some five and half years of obstruction and the legal process, three judges, in the 2011 case of Professor Prem Sikka v the Information Commissioner and the Commissioners of Her Majesty's Treasury, ordered the Government to release a document codenamed the Sandstorm report to me. It showed that the Government were covering up fraud and money laundering on a gigantic scale. They used BCCI to fund al-Qaeda, which was created by the western powers, Saudi intelligence services, arms smugglers, criminals, murderers—all the lowlifes.

As a result, I have no idea what information the Government now hold about me. Under this clause, it would be so easy for someone to deny that information to me if I requested it. If people such as me cannot access personal data, it will be almost impossible for us to exercise our right to call for the erasure of that data. I cannot ask anyone to delete that data if someone refuses to give it to me. I urge the Minister to withdraw this clause, as it is an affront to human rights and public accountability.

Lord Clement-Jones (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Sikka. He raised even more questions about Clause 9 than I ever dreamed of. He has illustrated the real issues behind the clause and why it is so important to debate its standing part, because, in our view, it should certainly be removed from the Bill. It would seriously limit people's ability to access information about how their personal data is collected and used. We are back to the dilution of data subject rights, within which the rights of data subject access are, of course, vital. This includes limiting access to information about automated decision-making processes to which people are subject.

A data subject is someone who can be identified directly or indirectly by personal data, such as a name, an ID number, location data, or information relating to their physical, economic, cultural or social identity.

[LORD CLEMENT-JONES]
Under existing law, data subjects have a right to request confirmation of whether their personal data is being processed by a controller, to access that personal data and to obtain information about how it is being processed. The noble Lord, Lord Sikka, pointed out that there is ample precedent for how the controller can refuse a request from a data subject only if it is manifestly unfounded or excessive. The meaning of that phrase is well established.

There are three main ways in which Clause 9 limits people's ability to access information about how their personal data is being collected and used. First, it would lower the threshold for refusing a request from "manifestly unfounded or excessive" to "vexatious or excessive". This is an inappropriately low threshold, given the nature of a data subject access request—namely, a request by an individual for their own data.

Secondly, Clause 9 would insert a new mandatory list of considerations for deciding whether the request is vexatious or excessive. This includes vague considerations, such as

"the relationship between the person making the request (the 'sender') and the person receiving it (the 'recipient')".

The very fact that the recipient holds data relating to the sender means that there is already some form of relationship between them.

Thirdly, the weakening of an individual's right to obtain information about how their data is being collected, used or shared is particularly troubling given the simultaneous effect of the provisions in Clause 10, which means that data subjects are less likely to be informed about how their data is being used for additional purposes other than those for which it was originally collected, in cases where the additional purposes are for scientific or historical research, archiving in the public interest or statistical purposes. Together, the two clauses mean that an individual is less likely to be proactively told how their data is being used, while it is harder to access information about their data when requested.

In the Public Bill Committee in the House of Commons, the Minister, Sir John Whittingdale, claimed that:

"The new parameters are not intended to be reasons for refusal",

but rather to give

"greater clarity than there has previously been".—[*Official Report*, Commons, Data Protection and Digital Information Bill Committee, 16/5/23; cols. 113-14.]

But it was pointed out by Dr Jeni Tennison of Connected by Data in her oral evidence to the committee that the impact assessment for the Bill indicates that a significant proportion of the savings predicted would come from lighter burdens on organisations dealing with subject access requests as a result of this clause. This suggests that, while the Government claim that this clause is a clarification, it is intended to weaken obligations on controllers and, correspondingly, the rights of data subjects. Is that where the Secretary of State's £10 billion of benefit from this Bill comes from? On these grounds alone, Clause 9 should be removed from the Bill.

We also oppose the question that Clause 12 stand part of the Bill. Clause 12 provides that, in responding to subject access requests, controllers are required only to undertake a

"reasonable and proportionate search for the personal data and other information".

This clause also appears designed to weaken the right of subject access and will lead to confusion for organisations about what constitutes a reasonable and proportionate search in a particular circumstance. The right of subject access is central to individuals' fundamental rights and freedoms, because it is a gateway to exercising other rights, either within the data subject rights regime or in relation to other legal rights, such as the rights to equality and non-discrimination. Again, the lowering of rights compared with the EU creates obvious risks, and this is a continuing theme of data adequacy.

Clause 12 does not provide a definition for reasonable and proportionate searches, but when introducing the amendment, Sir John Whittingdale suggested that a search for information may become unreasonable or disproportionate

"when the information is of low importance or of low relevance to the data subject".—[*Official Report*, Commons, 29/11/23; col. 873.]

Those considerations diverge from those provided in the Information Commissioner's guidance on the rights of access, which states that when determining whether searches may be unreasonable or disproportionate, the data controller must consider the circumstances of the request, any difficulties involved in finding the information and the fundamental nature of the right of access.

We also continue to be concerned about the impact assessment for the Bill and the Government's claims that the new provisions in relation to subject access requests are for clarification only. Again, Clause 12 appears to have the same impact as Clause 9 in the kinds of savings that the Government seem to imagine will emerge from the lowering of subject access rights. This is a clear dilution of subject access rights, and this clause should also be removed from the Bill.

We always allow for belt and braces and if our urging does not lead to the Minister agreeing to remove Clauses 9 and 12, at the very least we should have the new provisions set out either in Amendment 26, in the name of the noble Baroness, Lady Jones of Whitchurch, or in Amendment 25, which proposes that a data controller who refuses a subject access request must give reasons for their refusal and tell the subject about their right to seek a remedy. That is absolutely the bare minimum, but I would far prefer to see the deletion of Clauses 9 and 12 from the Bill.

Viscount Camrose (Con): As ever, I thank noble Lords for raising and speaking to these amendments. I start with the stand part notices on Clauses 9 and 36, introduced by the noble Lord, Lord Clement-Jones. Clauses 9 and 36 clarify the new threshold to refuse or charge a reasonable fee for a request that is "vexatious or excessive". Clause 36 also clarifies that the Information Commissioner may charge a fee for dealing with, or refuse to deal with, a vexatious or excessive request made by any persons and not just data subjects, providing necessary certainty.

5.45 pm

It is important to be clear that controllers already have the ability to refuse or charge a reasonable fee for "manifestly unfounded or excessive" data subject requests. However, the scope of the current provision is unclear, and there are a variety of circumstances where controllers would benefit from being able to confidently refuse or charge a reasonable fee for a request. The Government are introducing the new "vexatious or excessive" terminology to clarify the scope of the provision. Clause 36 amends the grounds for refusing to deal with a request to ensure consistency with this terminology and clarifies that the Information Commissioner may refuse a request by any persons, not just data subjects.

On Amendment 24, the Government believe that it is reasonable to consider

"the resources available to the controller"

as one of the new circumstances for controllers to determine "vexatious or excessive" requests. This will give controllers the confidence to focus resources on responding to reasonable requests.

Today, controllers can already consider resources when refusing or charging a reasonable fee for a request. The Government do not want to change that. The current ICO guidance sets out that controllers can consider resources as a factor when determining whether a request is excessive. We expect the new parameters to be considered individually, as well as in relation to one another. A controller should consider which parameters may be relevant when deciding how to respond to a request. Thus a controller may also consider available resources when deciding whether to respond to a request in full—for example, where the resource impact of responding would be minimal, even if a large amount of information had been requested.

I will take Amendments 25 and 26 together. They would require controllers to provide evidence for why a request is considered vexatious or excessive. In the view of the Government, these amendments are redundant, because the Bill already requires controllers to provide data subjects with reasons for why and when they have not acted on data subject requests. When a data subject is not satisfied, they have the right to complain to the controller and then to the ICO. If they are still not satisfied, the data subject can take the controller to court to attempt to resolve the dispute.

Lord Bassam of Brighton (Lab): From looking at the wording of the Members' explanatory statements for wishing to leave out Clauses 9 and 36, I do not think that the Minister has addressed this, but does he accept that the Bill now provides a more lax approach? Is this a reduction of the standard expected? To me, "vexatious or excessive" sounds very different from "manifestly unfounded or excessive". Does he accept that basic premise? That is really the core of the debate; if it is not, we have to look again at the issue of resources, which seems to be the argument to make this change.

Lord Clement-Jones (LD): If that is the case and this is a dilution, is this where the Government think they will get the savings identified in the impact assessment? It was alleged in the Public Bill Committee that this is where a lot of the savings would come from—we all have rather different views. My first information was that every SME might save about £80 a year then, suddenly, the Secretary of State started talking about £10 billion of benefit from the Bill. Clarification of that would be extremely helpful. There seems to be a dichotomy between the noble Lord, Lord Bassam, saying that this is a way to reduce the burdens on business and the Minister saying that it is all about confident refusal and confidence. He has used that word twice, which is worrying.

Lord Sikka (Lab): I apologise for intervening, but the Minister referred to resources. By that, he means the resources for the controller but, as I said earlier, there is no consideration of what the social cost may be. If this Bill had already become law, how would the victims of the Post Office scandal have been able to secure any information? Under this Bill, the threshold for providing information will be much lower than it is under the current legislation. Can the Minister say something about how the controllers will take social cost into account or how the Government have taken that into account?

Viscount Camrose (Con): First, on the point made by the noble Lord, Lord Bassam, it is not to be argumentative—I am sure that there is much discussion to be had—but the intention is absolutely not to lower the standard for a well-intended request.

Sadly, a number of requests that are not well intended are made, with purposes of cynicism and an aim to disrupt. I can give a few examples. For instance, some requests are deliberately made with minimal time between them. Some are made to circumvent the process of legal disclosure in a trial. Some are made for other reasons designed to disrupt an organisation. The intent of using "vexatious" is not in any way to reduce well-founded, or even partially well-founded, attempts to secure information; it is to reduce less desirable, more cynical attempts to work in this way.

Lord Bassam of Brighton (Lab): But the two terms have a different legal meaning, surely.

Viscount Camrose (Con): The actual application of the terms will be set out in guidance by the ICO but the intention is to filter out the more disruptive and cynical ones. Designing these words is never an easy thing but there has been considerable consultation on this in order to achieve that intention.

Lord Clement-Jones (LD): My Lords—sorry; it may be that the Minister was just about to answer my question. I will let him do so.

Viscount Camrose (Con): I will have to go back to the impact assessment but I would be astonished if that was a significant part of the savings promised. By the way, the £10.6 billion—or whatever it is—in savings was given a green rating by the body that assesses these things; its name eludes me. It is a robust calculation. I will check and write to the noble Lord, but I do not

[VISCOUNT CAMROSE]
believe that a significant part of that calculation leans on the difference between "vexatious" and "manifestly unfounded".

Lord Clement-Jones (LD): It would be very useful to have the Minister respond on that but, of course, as far as the impact assessment is concerned, a lot of this depends on the Government's own estimates of what this Bill will produce—some of which are somewhat optimistic.

Baroness Jones of Whitchurch (Lab): My Lords, can we join in with the request to see that information in a letter? We would like to see where these savings will be made and how much will, as noble Lords have said, be affected by the clauses that we are debating today.

Lord Clement-Jones (LD): The noble Baroness, Lady Jones, has given me an idea: if an impact assessment has been made, clause by clause, it would be extremely interesting to know just where the Government believe the golden goose is.

Viscount Camrose (Con): I am not quite sure what is being requested because the impact assessment has been not only made but published.

Lord Clement-Jones (LD): Yes, but it is a very broad impact assessment.

Viscount Camrose (Con): I see—so noble Lords would like an analysis of the different components of the impact assessment. It has been green-rated by the independent Regulatory Policy Committee. I have just been informed by the Box that the savings from these reforms to the wording of SARs are valued at less than 1% of the benefit of more than £10 billion that this Bill will bring.

Lord Clement-Jones (LD): That begs the question of where on earth the rest is coming from.

Viscount Camrose (Con): Which I will be delighted to answer. With this interesting exchange, I have lost in my mind the specific questions that the noble Lord, Lord Sikka, asked but I am coming on to some of his other ones; if I do not give satisfactory answers, no doubt he will intervene and ask again.

I appreciate the further comments made by the noble Lord, Lord Sikka, about the Freedom of Information Act. I hope he will be relieved to know that this Bill does nothing to amend that Act. On his accounting questions, he will be aware that most SARs are made by private individuals to private companies. The Government are therefore not involved in that process and do not collect the kind of information that he described.

Following the DPDI Bill, the Government will work with the ICO to update guidance on subject access requests. Guidance plays an important role in clarifying what a controller should consider when relying on the new "vexatious or excessive" provision. The Government are also exploring whether a code of practice on subject access requests can best address the needs of controllers and data subjects.

On whether Clause 12 should stand part of the Bill, Clause 12 is only putting on a statutory footing what has already been established—

Lord Sikka (Lab): My apologies. The Minister just said that the Government do not collect the data. Therefore, what is the basis for changing the threshold? No data, no reasonable case.

Viscount Camrose (Con): The Government do not collect details of private interactions between those raising SARs and the companies they raise them with. The business case is based on extensive consultation—

Lord Sikka (Lab): I hope that the Government have some data about government departments and the public bodies over which they have influence. Can he provide us with a glimpse of how many requests are received, how many are rejected at the outset, how many go to the commissioners, what the cost is and how the cost is computed? At the moment, it sounds like the Government want to lower the threshold without any justification.

Viscount Camrose (Con): As I say, I do not accept that the threshold is being lowered. On the other hand, I will undertake to find out what information can be reasonably provided. Again, as I said, the independent regulatory committee gave the business case set out a green rating; that is a high standard and gives credibility to the business case calculations, which I will share.

The reforms keep reasonable requests free of charge and instead seek to ensure that controllers can refuse or charge a reasonable fee for requests that are "vexatious or excessive", which can consume a significant amount of time and resources. However, the scope of the current provision is unclear and, as I said, there are a variety of circumstances where controllers would benefit from being able confidently to refuse or charge the fee.

Lord Sikka (Lab): The Minister used the phrase "reasonable fee". Can he provide some clues on that, especially for the people who may request information? We have around 17.8 million individuals living on less than £12,570. So, from what perspective is the fee reasonable and how is it determined?

Viscount Camrose (Con): "Reasonable" would be set out in the guidance to be created by the ICO but it would need to reflect the costs and affordability. The right of access remains of paramount importance in the data protection framework.

Lastly, as I said before on EU data adequacy, the Government maintain an ongoing dialogue with the EU and believe that our reforms are compatible with maintaining our data adequacy decisions.

For the reasons I have set out, I am not able to accept these amendments. I hope that noble Lords will therefore agree to withdraw or not press them.

6 pm

Baroness Jones of Whitchurch (Lab): I thank all noble Lords who have spoken in this debate. I am grateful to my noble friend Lord Sikka for rightly sharing the Constitution Committee's concerns that, on the face of it, it looks like this is broadening the basis for refusal of data requests. He made an important point about the costs needing to be balanced against the social costs of refusing requests and the social impact that there may be, particularly if it is to do with employment or access to public services.

At the heart of this is that we need to ensure that data controllers are not making subjective judgments about whether a request is reasonable. The Minister says that the Information Commissioner will produce guidance. This is important, as that guidance will be absolutely crucial to making a judgment about whether we think this new regime will be credible. The Minister introduced a new phrase: that the intention is to support "well-intended" requests. Well, then we need to start defining "well intended". I think we will chase these phrases round and round before we get some proper clarification; it would have helped if it had been in the Bill.

We have also gone round and round a bit on whether the changes in the wording weaken the rights of data subjects and whether they save money. The Minister talked about the 1% saving. I am fascinated by that because it does not seem very much; if it is not very much, why are we doing it? We come back to all of this again. I do not quite know what we are hoping to achieve here.

I will need to look at what the Minister said but we need a lot more clarification on this to be reassured that data subjects will not be refused more and more access to the information they want. I was disappointed to hear the Minister say that the controller can consider resources because that seems to me to be the ultimate get-out clause: if a controller can say that they cannot afford to do the data search, does not that mean that individual rights can be ignored just on that basis? That seems too easy; if somebody does not want to do the piece of work, that is an obvious get-out clause, so I remain concerned about the Minister's response to that amendment as well.

We have explored a lot of this in a lot of different ways and we have had a good debate. I will look again at *Hansard* but, for the moment, I beg leave to withdraw my amendment.

Amendment 24 withdrawn.

Amendments 25 and 26 not moved.

Clause 9 agreed.

Clause 10 agreed.

Clause 11: Information to be provided to data subjects

Amendment 27

Moved by ***Baroness Harding of Winscombe***

27: Clause 11, page 23, line 10, leave out "to the extent that" and insert "when any one or more of the following is true"

Member's explanatory statement

This amendment would clarify that only one condition under paragraph 5 must be present for paragraphs 1 to 4 to not apply.

Baroness Harding of Winscombe (Con): My Lords, in moving Amendment 27 in my name, I will also express my support for Amendments 28 to 34. I thank my noble friend Lord Black, the noble Baroness, Lady Jones, and the noble Lord, Lord Clement-Jones, for supporting and signing a number of these amendments.

This is quite a specific issue compared to the matters of high policy that we have been debating this afternoon. There is a specific threat to the continuing ability of companies to use the open electoral register for marketing purposes without undue burdens. Some 37% of registered voters choose not to opt out of their data being used for direct marketing via the open electoral register, so quite a significant proportion of the population openly agrees that that data can be used for direct marketing. It is an essential resource for accurate postal addresses and for organisations such as CACI—I suspect that a number of us speaking have been briefed by it; I thank it for its briefing—and it has been used for more than 40 years without detriment to consumers and with citizens' full knowledge. The very fact that 63% of people on the electoral register have opted out tells you that this is a conscious choice that people have knowingly made.

Why is it in doubt? A recent First-tier Tribunal ruling in a legal case stated, by implication, that every company using open electoral register data must, by 20 May 2024, notify individuals at their postal addresses whenever their data on the electoral register is used and states that cost cannot be considered "disproportionate effort". That means that organisations that are using the electoral roll would need to contact 24.2 million individuals between now and the middle of May, making it completely practically and financially unviable to use the electoral register at scale.

This group of amendments to Clause 11 aims to address this issue. I fully acknowledge that we have tried to hit the target with a number of shots in this group, and I encourage the Minister, first, to acknowledge that he recognises that this is a real problem that the Bill should be able to address and, secondly, if the wording in individual amendments is not effective or has some unintended consequences that we have missed, I encourage him to respond appropriately.

To be clear, the amendments provide legal certainty about the use of the open electoral register without compromising on any aspect of the data privacy of UK citizens or risking data adequacy. The amendments specify that companies are exempt from the requirement to provide individuals with information in cases where their personal data has not been obtained from them directly if that data was obtained from the open electoral register. They provide further clarification of what constitutes "disproportionate effort" under new paragraph (e) in Article 14(5) of the GDPR. These additional criteria include the effort and cost of compliance, the damage and distress caused to the data subjects and the reasonable expectation of the data subjects, which the percentage of people not opting out shows.

Why is this a problem that we need to fix? First, if we do not fix this, we might create in the physical world the very problem that parts of the Bill are trying to address in the digital world: the bombarding of

[BARONESS HARDING OF WINSCOMBE]

people with lots of information that they do not want to receive, lots of letters telling us that a company is using the electoral roll that we gave it permission to use in the first place. It will also inadvertently give more power to social media companies for targeting because it will make physical direct marketing much harder to target, so SMEs will be forced into a pretty oligopolistic market for social media targeting. Finally, it will mean that we lose jobs and reduce productivity at a time when we are trying to do the opposite.

This is quite a simple issue and there is cross-party support. It is not an issue of great philosophical import, but for the companies in this space, it is very real, and for the people working in this industry, it is about their jobs. Inch by inch, we need to look at things that improve productivity rather than actively destroy it, even when people have agreed to it. With that, I note the hour and I beg to move.

Lord Black of Brentwood (Con): My Lords, I support Amendments 27 to 34, tabled variously by my noble friend Lady Harding, and the noble Lord, Lord Clement-Jones, to which I have added my name. As this is the first time I have spoken in Committee, I declare my interests as deputy chairman of the Telegraph Media Group and president of the Institute of Promotional Marketing and note my other declarations in the register.

The direct marketing industry is right at the heart of the data-driven economy, which is crucial not just to the future of the media and communications industries but to the whole basis of the creative economy, which will power economic growth into the future. The industry has quite rightly welcomed the Bill, which provides a long-term framework for economic growth as well as protecting customers.

However, there is one area of great significance, as my noble friend Lady Harding has just eloquently set out, on which this Bill needs to provide clarity and certainty going forward, namely, the use of the open electoral register. That register is an essential resource for a huge number of businesses and brands, as well as many public services, as they try to build new audiences. As we have heard, it is now in doubt because of a recent legal ruling that could, as my noble friend said, lead to people being bombarded with letters telling them that their data on the OER has been used. That is wholly disproportionate and is not in the interests of the marketing and communications industry or customers.

These sensible amendments would simply confirm the status quo that has worked well for so long. They address the issue by providing legal certainty around the use of the OER. I believe they do so in a proportionate manner that does not in any way compromise any aspect of the data privacy of UK citizens. I urge the Minister carefully to consider these amendments. As my noble friend said, there are considerable consequences of not acting for the creative economy, jobs in direct marketing, consumers, the environment and small businesses.

Lord Clement-Jones (LD): My Lords, I am extremely grateful to the noble Baroness, Lady Harding, and the noble Lord, Lord Black, for doing all the heavy lifting on these amendments. I of course support them having put forward my own amendments. It is just the luck of the draw that the noble Baroness, Lady Harding, put forward her amendment along with all the others. I have very little to say in this case, and just echo what the noble Lord, Lord Black, said about the fact that the open electoral register has played an important part in the direct marketing, data-driven economy, as it is described. It is particularly interesting that he mentioned the creative industries as well.

The First-tier Tribunal precedent could impact on other public sources of data, including the register of companies, the register of judgments, orders and fines, the land register and the food standards agency register. It could have quite far-reaching implications unless we manage to resolve the issue. There is a very tight timescale. The First-tier Tribunal's ruling means that companies must notify those on the electoral register by 20 May or be at risk of breaching the law. This is really the best route for trying to resolve the issue. Secondly, the First-tier Tribunal's ruling states that costs cannot be considered as disproportionate effort. That is why these amendments explicitly refer to that. This is no trivial matter. It is a serious area that needs curing by this Bill, which is a good opportunity to do so.

I shall speak briefly to Clause 11 as a whole standing part. That may seem a bit paradoxical, but it is designed to address issues arising in Article 13, not Article 14. Article 13 of the UK GDPR requires controllers, where they intend to process data that was collected directly from data subjects—as opposed to Article 14 obligations, which apply to personal data not obtained from the data subject—for a new purpose, to inform data subjects of various matters to the extent necessary,

"to ensure fair and transparent processing".

Clause 11(1) removes this obligation for certain purposes where it would require disproportionate effort. The obligation is already qualified to what is necessary to make processing fair and transparent, the fundamental requirements of the GDPR. If, in these circumstances, processing cannot be made fair and transparent without disproportionate effort, then it should not take place. Clause 11(1) would sidestep the requirement and allow unfair, untransparent processing to go ahead for personal data that the data controllers had themselves collected. Perhaps I should have tabled a rather more targeted amendment, but I hope that noble Lords get the point of the difference between this in terms of Article 13 and Article 14.

6.15 pm

Baroness Stowell of Beeston (Con): My Lords, I rise briefly to support the amendments in the name of my noble friend Lady Harding and the others in this group. She has comprehensively explained their importance; they may not be philosophical, as she says, but they have practical importance. One of the most compelling reasons for us to act is as she so precisely described: if we do not, we create a situation in the real world that the Bill seeks to address in the digital world.

Although this is about direct marketing, allied to it are pressures on advertising revenues and the greater control that is being taken by the larger platforms in

this area all the time. The effect that has on revenues means that this is an important issue that deserves a proper response from the Government. I hope that my noble friend the Minister acts in the way that we want by, if not accepting one of these amendments, coming forward with something from the Government.

Baroness Jones of Whitchurch (Lab): My Lords, I can also be relatively brief. I thank all noble Lords who have spoken and the noble Baroness, Lady Harding, and the noble Lord, Lord Clement-Jones, for their amendments, to many of which I have added my name.

At the heart of this debate is what constitutes a disproportionate or impossibility exemption for providing data to individuals when the data is not collected directly from data subjects. Amendments 29 to 33 provide further clarity on how exemptions on the grounds of disproportionate effort should be interpreted—for example, by taking into account whether there would be a limited impact on individuals, whether they would be caused any distress, what the exemptions were in the first place and whether the information had been made publicly available by a public body. All these provide some helpful context, which I hope the Minister will take on board.

I have also added my name to Amendments 27 and 28 from the noble Baroness, Lady Harding. They address the particular concerns about those using the open electoral register for direct marketing purposes. As the noble Baroness explained, the need for this amendment arises from the legal ruling that companies using the OER must first notify individuals at their postal addresses whenever their data is being used. As has been said, given that individuals already have an opt-out when they register on the electoral roll, it would seem unnecessary and impractical for companies using the register to follow up with individuals each time they want to access their data. These amendments seek to close that loophole and return the arrangements back to the previous incarnation, which seemed to work well.

All the amendments provide useful forms of words but, as the noble Baroness, Lady Harding, said, if the wording is not quite right, we hope that the Minister will help us to craft something that is right and that solves the problem. I hope that he agrees that there is a useful job of work to be done on this and that he provides some guidance on how to go about it.

Viscount Camrose (Con): I thank my noble friend Lady Harding for moving this important amendment. I also thank the cosignatories—the noble Lords, Lord Clement-Jones and Lord Black, and the noble Baroness, Lady Jones. As per my noble friend's request, I acknowledge the importance of this measure and the difficulty of judging it quite right. It is a difficult balance and I will do my best to provide some reassurance, but I welcomed hearing the wise words of all those who spoke.

I turn first to the clarifying Amendments 27 and 32. I reassure my noble friend Lady Harding that, in my view, neither is necessary. Clause 11 amends the drafting of the list of cases when the exemption under Article 14(5) applies but the list closes with "or", which makes it clear that you need to meet only one of the criteria listed in paragraph (5) to be exempt from the transparency requirements.

I turn now to Amendments 28 to 34, which collectively aim to expand the grounds of disproportionate effort to exempt controllers from providing certain information to individuals. The Government support the use of public data sources, such as the OER, which may be helpful for innovation and may have economic benefits. Sometimes, providing this information is simply not possible or is disproportionate. Existing exemptions apply when the data subject already has the information or in cases where personal data has been obtained from someone other than the data subject and it would be impossible to provide the information or disproportionate effort would be required to do so.

We must strike the right balance between supporting the use of these datasets and ensuring transparency for data subjects. We also want to be careful about protecting the integrity of the electoral register, open or closed, to ensure that it is used within the data subject's reasonable expectations. The exemptions that apply when the data subject already has the information or when there would be a disproportionate effort in providing the information must be assessed on a case-by-case basis, particularly if personal data from public registers is to be combined with other sources of personal data to build a profile for direct marketing.

These amendments may infringe on transparency—a key principle in the data protection framework. The right to receive information about what is happening to your data is important for exercising other rights, such as the right to object. This could be seen as going beyond what individuals might expect to happen to their data.

The Government are not currently convinced that these amendments would be sufficient to prevent negative consequences to data subject rights and confidence in the open electoral register and other public registers, given the combination of data from various sources to build a profile—that was the subject of the tribunal case being referenced. Furthermore, the Government's view is that there is no need to amend Article 14(6) explicitly to include the "reasonable expectation of the data subjects" as the drafting already includes reference to "appropriate safeguards". This, in conjunction with the fairness principle, means that data controllers are already required to take this into account when applying the disproportionate effort exemption.

The above notwithstanding, the Government understand that the ICO may explore this question as part of its work on guidance in the future. That seems a better way of addressing this issue in the first instance, ensuring the right balance between the use of the open electoral register and the rights of data subjects. We will continue to work closely with the relevant stakeholders involved and monitor the situation.

Baroness Harding of Winscombe (Con): I wonder whether I heard my noble friend correctly. He said "may", "could" and "not currently convinced" several times, but, for the companies concerned, there is a

[BARONESS HARDING OF WINSCOMBE]
very real, near and present deadline. How is my noble friend the Minister suggesting that deadline should be considered?

Viscount Camrose (Con): On the first point, I used the words carefully because the Government cannot instruct the ICO specifically on how to act in any of these cases. The question about the May deadline is important. With the best will in the world, none of the provisions in the Bill are likely to be in effect by the time of that deadline in any case. That being the case, I would feel slightly uneasy about advising the ICO on how to act.

Lord Clement-Jones (LD): My Lords, I am not quite getting from the Minister whether he has an understanding of and sympathy with the case that is being made or whether he is standing on ceremony on its legalities. Is he saying, "No, we think that would be going too far", or that there is a good case and that guidance or some action by the ICO would be more appropriate? I do not get the feeling that somebody has made a decision about the policy on this. It may be that conversations with the Minister between Committee and Report would be useful, and it may be early days yet until he hears the arguments made in Committee; I do not know, but it would be useful to get an indication from him.

Viscount Camrose (Con): Yes. I repeat that I very much recognise the seriousness of the case. There is a balance to be drawn here. In my view, the best way to identify the most appropriate balancing point is to continue to work closely with the ICO, because I strongly suspect that, at least at this stage, it may be very difficult to draw a legislative dividing line that balances the conflicting needs. That said, I am happy to continue to engage with noble Lords on this really important issue between Committee and Report, and I commit to doing so.

On the question of whether Clause 11 should stand part of the Bill, Clause 11 extends the existing disproportionate effort exemption to cases where the controller collected the personal data directly from the data subject and intends to carry out further processing for research purposes, subject to the research safeguards outlined in Clause 26. This exemption is important to ensure that life-saving research can continue unimpeded.

Research holds a privileged position in the data protection framework because, by its nature, it is viewed as generally being in the public interest. The framework has various exemptions in place to facilitate and encourage research in the UK. During the consultation, we were informed of various longitudinal studies, such as those into degenerative neurological conditions, where it is impossible or nearly impossible to recontact data subjects. To ensure that this vital research can continue unimpeded, Clause 11 provides a limited exemption that applies only to researchers who are complying with the safeguards set out in Clause 26.

The noble Lord, Lord Clement-Jones, raised concerns that Clause 11 would allow unfair processing. I assure him that this is not the case, as any processing that uses the disproportionate effort exemption in Article 13 must comply with the overarching data protection principles, including lawfulness, fairness and transparency, so that even if data controllers rely on this exemption they should consider other ways to make the processing they undertake as fair and transparent as possible.

Finally, returning to EU data adequacy, the Government recognise its importance and, as I said earlier, are confident that the proposals in Clause 11 are complemented by robust safeguards, which reinforces our view that they are compatible with EU adequacy. For the reasons that I have set out, I am unable to accept these amendments, and I hope that noble Lords will not press them.

Baroness Harding of Winscombe (Con): My Lords, I am not quite sure that I understand where my noble friend the Minister is on this issue. The noble Lord, Lord Clement-Jones, summed it up well in his recent intervention. I will try to take at face value my noble friend's assurances that he is happy to continue to engage with us on these issues, but I worry that he sees this as two sides of an issue—I hear from him that there may be some issues and there could be some problems—whereas we on all sides of the Committee have set out a clear black and white problem. I do not think they are the same thing.

I appreciate that the wording might create some unintended consequences, but I have not really understood what my noble friend's real concerns are, so we will need to come back to this on Report. If anything, this debate has made it even clearer to me that it is worth pushing for clarity on this. I look forward to ongoing discussions with a cross-section of noble Lords, my noble friend and the ICO to see if we can find a way through to resolve the very real issues that we have identified today. With that, and with thanks to all who have spoken in this debate, I beg leave to withdraw my amendment.

Amendment 27 withdrawn.

Amendments 28 to 34 not moved.

Clause 11 agreed.

Clauses 12 and 13 agreed.

Amendment 35 not moved.

6.30 pm

Clause 14: Automated decision-making

Amendment 36

Moved by ***Lord Bassam of Brighton***

36: Clause 14, page 26, line 10, after "processing" insert ", including profiling,"

Member's explanatory statement

This amendment, and another in the name of Baroness Jones of Whitchurch to the proposed new Article 22A of the UK GDPR, would make clear that protection is offered for profiling operations leading to decisions.

Lord Bassam of Brighton (Lab): My Lords, this is the first group of amendments covering issues relating to automated decision-making, one of the most interesting areas of data use but also one of the most contested and, for the public at large, one of the most controversial and difficult to navigate. The development of AI and data systems that easily enable automatable decisions could offer huge efficiencies for consumers of public services. Equally, the use of such systems can, if used and regulated in the wrong way, have a devastating impact on people's lives. If we have learned one thing from the Horizon scandal it is simply that, in the wrong hands and with the wrong system in place, the misuse of data can destroy lives and livelihoods.

Our country has a massive social security system, which includes everything from pension payments to disability income support and, of course, the universal credit system, which covers people entitled to in-work and out-of-work benefits. Over 22 million people receive DWP benefits of one sort or another. If automated decisions make errors in this field the potential to damage lives is enormous, as I am sure the Minister will appreciate.

I turn to the four amendments in the group in the name of my noble friend Lady Jones. Amendments 36 and 37 seek to amend new Article 22A of the UK GDPR and make it clear that protection is provided for profiling operations that lead to decisions. This is important, not least because the clause further reduces the scope for the human review of automated decision-making. Profiling is used as part of this process, and these amendments seek to protect individual data subjects from its effect. We take the view that it is essential that human interaction is involved in making subject access decisions.

Amendment 40 also makes it clear that, in the context of the new Article 22A, for human involvement to be considered meaningful, the review of the decision must be completed by a competent person. One of the positive changes made by the Bill is the introduction of the concept of "meaningful human involvement" in a decision. Meaningful human review is a key component for achieving an appropriate level of oversight over automated decision-making, for protecting individuals from unfair treatment and for offering an avenue for redress. The aim of the amendment is to bring more clarity around what "meaningful human involvement" should consist of. It would require that a review needs to be performed by a person with the necessary competence, training and understanding of the data, and, of course, the authority to alter the decision.

Our Amendment 109 is not so much about building protections as introducing something new and adding to the strength of what is already there. Users have never been able to get personalised explanations of automated decisions but, given the impact that these can have, we feel that systems should be in place for people to understand why a computer has simply said yes or no.

As it stands, the Bill deletes Section 14 of the Data Protection Act 2018 in its entirety. Our amendment would undo that and then add personalisation in. The amendment would retain Section 14 of that Act, which is where most automated decision-making safeguards are currently detailed in law. It would introduce an entitlement for data subjects to receive a personalised explanation of an automated decision made about them. This is based on public attitudes research conducted by the Ada Lovelace Institute, which shows a clear demand for greater transparency over these sorts of decisions.

The amendment also draws on independent legal analysis commissioned by the Ada Lovelace Institute, which found that the generic nature of explanations provided under current law are insufficient for individuals to understand how they have been affected by automated decision-making. This was considered to be a major barrier to meaningful protection from and redress for harms caused by AI. As many noble Lords have made clear in these debates, we have put building trust at the heart of how we get the most from AI and, more particularly, ADM systems.

I turn to the amendments in the name of the noble Lord, Lord Clement-Jones. In essence, they are about—as the noble Lord will, I am sure, explain better than I possibly could—the level of engagement of individuals in decisions about data subject automated decision-making processes. The common thread through the amendments is that they raise the bar in terms of the safeguards for data subjects' rights and freedoms. We have joined the noble Lord, Lord Clement-Jones, on Amendment 47, and might equally have added our names to the other amendments in the group as we broadly support those too.

Amendment 38A, in the name of the noble Baroness, Lady Bennett, would place an additional requirement under new Article 22A to ensure human engagement in the automated decision-making processes.

I am sure the Committee will want more than warm words from the Minister when he comes to wind up the debate. For all of us, ADM is the here and now; it shapes how we use and consume public services and defines what and who we are. Reducing our protections from its downsides is not to be done lightly and we cannot easily see how that can be justified. I want to hear from the Minister how the Government came to conclude that this was acceptable, not least because, as we will hear in later debates on the Bill, the Government are seeking powers that provide for invasive bulk access to potentially every citizen's bank accounts. I beg to move the amendments in the name of the noble Baroness, Lady Jones.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Bassam, who has already set out very clearly what the group is about. I will chiefly confine myself to speaking to my Amendment 38A, which seeks to put in the Bill a clear idea of what having a human in the loop actually means. We need to have a human in the loop to ensure that a human interpreted, assessed and, perhaps most crucially, was able to intervene in the decision and any information on which it is based.

Noble Lords will be aware of many situations that have already arisen in which artificial intelligence is used—I would say that what we are currently describing is artificial intelligence but, in real terms, it is not truly that at all. What we have is a very large use of big data

[BARONESS BENNETT OF MANOR CASTLE]
and, as the noble Lord, Lord Bassam, said, big data can be a very useful and powerful tool to be used for many positive purposes. However, we know that the quality of decision-making often depends on the quality of the data going in. A human is able to see whether something looks astray or wrong; there is a kind of intelligence that humans apply to this, which machines simply do not have the capacity for.

I pay credit to Justice, the law reform and human rights organisation which produced an excellent briefing on the issues around Clause 14. It asserts that, as it is currently written, it inadequately protects individuals from automated harm.

The noble Lord, Lord Bassam, referred to the Horizon case in the UK; that is the obvious example but, while we may think of some of the most vulnerable people in the UK, the Robodebt case in Australia is another case where crunching big data, and then crunching down on individuals, had truly awful outcomes. We know that there is a real risk of unfairness and discrimination in the use of these kinds of tools. I note that the UK has signed the Bletchley declaration, which says that

> "AI should be designed, developed, deployed, and used, in a manner that is … human-centric, trustworthy and responsible".

I focus particularly on "human-centric": human beings can sympathise with and understand other human beings in a way that big data simply does not.

I draw a parallel with something covered by a special Select Committee of your Lordships' House, last year: lethal autonomous weapon systems, or so-called killer robots. This is an obvious example of where there is a very strong argument for having a human in the loop, as the terminology goes. From the last I understood and heard about this, I am afraid that the UK Government are not fully committed to a human in the loop in the case of killer robots, but I hope that we get to that point.

When we talk about how humans' data is used and managed, we are also talking about situations that are—almost equally—life and death: whether people get a benefit, whether they are fairly treated and whether they do not suddenly disappear off the system. Only this morning, I was reading a case study of a woman aged over 80, highlighting how she had been through multiple government departments, but could not get her national insurance number. Without a national insurance number, she could not get the pension to which she was entitled. If there is no human in the loop to cut through those kinds of situations, there is a real risk that people will find themselves just going around and around machines—a circumstance with which we are personally all too familiar, I am sure. My amendment is an attempt to put a real explanation in the Bill for having that human in the loop.

Baroness Kidron (CB): My Lords, the number of amendments proposed to Clause 14 reflects the Committee's very real concern about the impact of automated decision-making on the privacy, safety and prospects of UK data subjects. I have specific amendments in groups 7 and 8, so I will speak to the impact of Clause 14 on children later. I will again be making arguments about the vulnerability of these systems in relation to the Government's proposals on the DWP.

Without repeating the arguments made, I associate myself with most the proposals and the intention behind them—the need to safeguard the prospects of a fair outcome when algorithms hold sway over a person's future. It seems entirely logical that, if the definition of solely automated decision-making requires "no meaningful human involvement", we should be clear, as Amendment 40 proposes, about what is considered "meaningful", so that the system cannot be gamed by providing human involvement that provides an ineffective safeguard and is therefore not meaningful.

I have sympathy with many of these amendments—Amendments 38A, 39, 47, 62, 64 and 109—and ultimately believe, as was suggested by the noble Lord, Lord Bassam, that it is a matter of trust. I refer briefly to the parliamentary briefing from the BMA, which boldly says that:

> "Clause 14 risks eroding trust in AI".

That would be a very sad outcome.

Lord Clement-Jones (LD): My Lords, we have heard some powerful concerns on this group already. This clause is in one of the most significant parts of the Bill for the future. The Government's AI policy is of long standing. They started it many years ago, then had a *National AI Strategy* in 2021, followed by a road map, a White Paper and a consultation response to the White Paper. Yet this part of the Bill, which is overtly about artificial intelligence and automated decision-making, does not seem to be woven into their thinking at all.

6.45 pm

All the Government have decided to do to is to water down the original Article 22 provisions in the GDPR. I find that somewhat baffling, particularly as we have heard about the importance of artificial intelligence and the algorithmic and automated tools that are increasingly being used across the public sector, in particular. The noble Baroness, Lady Bennett, talked about how it impacts on the welfare system, healthcare, policing, immigration and so on—many sensitive areas of individuals' lives—and in the private sector, in really sensitive areas such as financial services.

I do not think that, nowadays, we are unaware of the problems that arise in relation to decisions that are made solely by automated means. I think we are all aware, not just in the context of lethal autonomous weapons, that human oversight can help guard against the machine's errors, mitigate risk, such as encoded bias, and ensure that there are robust and rational reasons behind a decision.

It is important that we hold at the front of our mind that we are trying to ensure that there are core ethical duties in place when we encounter artificial intelligence. We now know that that is going to become even more important with the recent Budget with considerable capital expenditure promised to public services. The Secretary of State for DSIT has stated that the Government intend to revolutionise our public services using AI. That makes this kind of provision

and the changes being made to Article 22 of even greater significance. As the noble Lord, Lord Bassam, mentioned, the Post Office Horizon scandal has demonstrated the disastrous consequences that can occur when faulty technology is not used responsibly and safely by the humans involved. I was very interested in the example from Australia raised by the noble Baroness, Lady Bennett.

The Government's data consultation response acknowledged that,

"the right to human review of an automated decision was a key safeguard".

Currently, Sections 49 and 50 of the DPA and Article 22 of the UK GDPR provide a right not to be subject to a decision based solely on automated processing, with some narrow exemptions. Even that is pretty limited; it is "solely" and obviously we are going to have a bit more argument about whether it should be a bit wider than that. Despite that, Clause 14 would reverse the presumption against solely automated decision-making and would permit ADM—as I think we should call it—in a much wider range of contexts. This is being done without any evidence that the current prohibition on ADM is not working as intended, when we should be enhancing rights in the first place.

Clause 14 would mean that solely automated decision-making would be allowed, unless it is a significant decision and is based on special categories of personal data, in which case specified conditions must be met. The conditions are that the automated decision-making is required or authorised by law or that the data subject has explicitly consented. As part of this change, solely automated decisions that do not involve sensitive personal data are now permissible, so that is quite a change. The burden is now shifted to the individual to complain, requiring controllers to provide information and have measures in place which enable individuals to contest and make representations to a human.

Automated decisions can have significant effects on people's lives without involving sensitive personal data. Examples include decisions concerning access to financial products, educational decisions such as the A-level algorithm scandal, or the SyRI case in the Netherlands, where innocuous datasets such as household water usage were used to accuse individuals of benefit fraud.

It is also unclear what will meet the threshold of a "significant decision". Big Brother Watch has identified local authorities that use predictive models to identify children deemed at high risk of committing crimes and include them on a database. Whether a decision to include someone on a database meets the threshold of a significant decision is simply not known, leading to uncertainty for decision-makers and data subjects.

These changes would mean that solely automated decision-making is permitted in a much wider range of contexts. It is especially concerning given that many high-impact algorithmic decisions do not involve processing of special categories of personal data, which is a narrow and specific category. Further, the proposed changes would mean that Article 22 will no longer be cast as a right not to be subject to solely automated decision-making, but rather as a restriction on solely automated decision-making.

There are quite a number of amendments in this group. Many of them speak for themselves, but the whole idea, particularly of the amendments relating to "meaningful automated processing", is to try to reverse the way that Clause 14 operates so that, if there is meaningful involvement by automated decision-making, these rights arise under the clause. The amendments seek not only to maintain but to improve the current level of protection, so that public authorities that use automation even partially to make decisions must ensure that safeguards for data subjects' rights and freedoms are in place.

I do not think that I can read out all the amendments, but a number of them would ensure that those decisions are qualified by this concept of "meaningful" automated processing. The review must not be superficial, and the person performing it must have appropriate training, competency and authority to change the decision.

Amendment 43 seeks to ensure that restrictions on automated decision-making in Clause 14 apply to all categories of personal data, not just sensitive personal data. The amendment would ensure similar levels of protection around automated decision-making to those we currently have. It would do this by widening the scope of the restrictions in new Article 22B so that they restrict automation based on all kinds of personal data, not just automation based on special category data.

We very much support Amendments 36 and 37, proposed by the noble Baroness, Lady Jones, on profiling. My 10 minutes are running out very quickly so, sadly, I must leave it there.

Viscount Camrose (Con): As ever, I thank the noble Baroness, Lady Jones, and the noble Lord, Lord Clement-Jones, for their detailed consideration of Clause 14, and all other noble Lord who spoke so well. I carefully note the references to the DWP's measure on fraud and error. For now, I reassure noble Lords that a human will always be involved in all decision-making relating to that measure, but I note that this Committee will have a further debate specifically on that measure later.

The Government recognise the importance of solely automated decision-making to the UK's future success and productivity. These reforms ensure that it can be responsibly implemented, while any such decisions with legal or similarly significant effects have the appropriate safeguards in place, including the rights to request a review and to request one from a human. These reforms clarify and simplify the rules related to solely automated decision-making without watering down any of the protections for data subjects or the fundamental data protection principles. In doing so, they will provide confidence to organisations looking to use these technologies in a responsible way while driving economic growth and innovation.

The Government also recognise that AI presents huge opportunities for the public sector. It is important that AI is used responsibly and transparently in the public sector; we are already taking steps to build trust and transparency. Following a successful pilot, we are making the Algorithmic Transparency Reporting Standard—the ATRS—a requirement for all government

[VISCOUNT CAMROSE]
departments, with plans to expand this across the broader public sector over time. This will ensure that there is a standardised way for government departments proactively to publish information about how and why they are using algorithms in their decision-making. In addition, the Central Digital and Data Office—the CDDO—has already published guidance on the procurement and use of generative AI for the UK Government and, later this year, DSIT will launch the AI management essentials scheme, setting a minimum good practice standard for companies selling AI products and services.

Lord Clement-Jones (LD): My Lords, could I just interrupt the Minister? It may be that he can get an answer from the Box to my question. One intriguing aspect is that, as the Minister said, the pledge is to bring the algorithmic recording standard into each government department and there will be an obligation to use that standard. However, what compliance mechanism will there be to ensure that that is happening? Does the accountable Permanent Secretary have a duty to make sure that that is embedded in the department? Who has the responsibility for that?

Viscount Camrose (Con): That is a fair question. I must confess that I do not know the answer. There will be mechanisms in place, department by department, I imagine, but one would also need to report on it across government. Either it will magically appear in my answer or I will write to the Committee.

The CDDO has already published guidance on the procurement and use of generative AI for the Government. We will consult on introducing this as a mandatory requirement for public sector procurement, using purchasing power to drive responsible innovation in the broader economy.

I turn to the amendments in relation to meaningful involvement. I will first take together Amendments 36 and 37, which aim to clarify that the safeguards mentioned under Clause 14 are applicable to profiling operations. New Article 22A(2) already clearly sets out that, in cases where profiling activity has formed part of the decision-making process, controllers have to consider the extent to which a decision about an individual has been taken by means of profiling when establishing whether human involvement has been meaningful. Clause 14 makes clear that a solely automated significant decision is one without meaningful human involvement and that, in these cases, controllers are required to provide the safeguards in new Article 22C. As such, we do not believe that these amendments are necessary; I therefore ask the noble Baroness, Lady Jones, not to press them.

Turning to Amendment 38, the Government are confident that the existing reference to "data subject" already captures the intent of this amendment. The existing definition of "personal data" makes it clear that a data subject is a person who can be identified, directly or indirectly. As such, we do not believe that this amendment is necessary; I ask the noble Lord, Lord Clement-Jones, whether he would be willing not to press it.

Amendments 38A and 40 seek to clarify that, for human involvement to be considered meaningful, the review must be carried out by a competent person. We feel that these amendments are unnecessary as meaningful human involvement may vary depending on the use case and context. The reformed clause already introduces a power for the Secretary of State to provide legal clarity on what is or is not to be taken as meaningful human involvement. This power is subject to the affirmative procedure in Parliament and allows the provision to be future-proofed in the wake of technological advances. As such, I ask the noble Baronesses, Lady Jones and Lady Bennett, not to press their amendments.

7 pm

Amendments 39, 47, 51, 56, 60 and 64 to 68 appear to restrict public authorities' use of automated decision-making by introducing a new definition of decisions that meaningfully involve automated processing. Our reforms clarify that a solely automated decision is one that is taken without any meaningful human involvement going beyond a cursory or rubber-stamping exercise. These amendments seek to bring in an entirely separate threshold for the use of automated decision-making by public authorities and controllers acting on their behalf. We consider this unnecessary as the Article 22 safeguards, as they apply to solely automated decisions, are robust and provide strong protections to all data subjects. These safeguards are applicable to all controllers whether they are or act for a public authority. As such, we believe that the reforms in the Bill will benefit society by allowing public authorities to use automated decision-making with appropriate safeguards in place.

Amendments 43 and 62 seek to extend the limitations on the use of special categories of data to all automated decision-making. Such restrictions would be unnecessary and would impede the use that controllers can make of this technology. We believe that the safeguards set out under Article 22C and Section 50C, which entitle data subjects to information about decisions taken about them, to make representations to contest decisions and to obtain human review, provide sufficient protection for personal, non-sensitive data. As such, we do not believe that these amendments are necessary; I ask the noble Lord, Lord Clement-Jones, not to press them.

Amendment 109 seeks to preserve and amend Section 14 of the Data Protection Act relating to automated decision-making authorised by law. The Government believe that the same uniform safeguards should be applicable across all processing conditions, including the processing of special category data, to simplify and clarify the obligations of controllers. Having different safeguards and obligations depending on the lawful ground of processing would lead to uncertainty among controllers as well as among data subjects. The Government aim to simplify and clarify the rules to ensure clear understanding of organisations' obligations to protect data subjects' rights. Furthermore, this amendment would also require data subjects to receive a personalised explanation of decisions reached following the automated processing of their data. Article 22C(2)(a) already requires controllers to provide data subjects with information about decisions taken

about them. As such, we do not believe that this amendment is necessary; I ask the noble Baroness, Lady Jones, not to press it.

I shall return briefly to the rollout of the Algorithmic Transparency Reporting Standard. To date, we have taken a deliberatively iterative and agile approach on ATRS development and rollout with the intention of generating buy-in from departments, gathering feedback, informing the evidence base, and improving and adapting the standard.

Lord Clement-Jones (LD): That means no compliance mechanism.

Viscount Camrose (Con): I am not sure I agree with that characterisation. The ATRS is a relatively new development. It needs time to bed in and needs to be bedded in on an agile basis in order to ensure not only quality but speed of implementation. That said, I ask the noble Lord to withdraw his amendment.

Lord Clement-Jones (LD): The Minister has taken us through what Clause 14 does and rebutted the need for anything other than "solely". He has gone through the sensitive data and the special category data aspects, and so on, but is he reiterating his view that this clause is purely for clarification; or is he saying that it allows greater use of automated decision-making, in particular in public services, so that greater efficiencies can be found and therefore it is freeing up the public sector at the expense of the rights of the individual? Where does he sit in all this?

Viscount Camrose (Con): As I said, the intent of the Government is: yes to more automated data processing to take advantage of emerging technologies, but also yes to maintaining appropriate safeguards. The safeguards in the present system consist—if I may characterise it in a slightly blunt way—of providing quite a lot of uncertainty, so that people do not take the decision to positively embrace the technology in a safe way. By bringing in this clarity, we will see an increase not only in the safety of their applications but in their use, driving up productivity in both the public and private sectors.

Lord Bassam of Brighton (Lab): My Lords, I said at the outset that I thought this was the beginning of a particular debate, and I was right, looking at the amendments coming along. The theme of the debate was touched on by the noble Baroness, Lady Bennett, when she talked about these amendments, in essence, being about keeping humans in the loop and the need for them to be able to review decisions. Support for that came from the noble Baroness, Lady Kidron, who made some important points. The point the BMA made about risking eroding trust cut to what we have been talking about all afternoon: trust in these processes.

The noble Lord, Lord Clement-Jones, talked about this effectively being the watering down of Article 22A, and the need for some core ethical principles in AI use and for the Government to ensure a right to human review. Clause 14 reverses the presumption of that human reviewing process, other than where solely automated decision-making exists, where it will be more widely allowed, as the Minister argued.

However, I am not satisfied by the responses, and I do not think other Members of your Lordships' Committee will be either. We need more safeguards. We have moved from one clear position to another, which can be described as watering down or shifting the goalposts; I do not mind which, but that is how it seems to me. Of course, we accept that there are huge opportunities for AI in the delivery of public services, particularly in healthcare and the operation of the welfare system, but we need to ensure that citizens in this country have a higher level of protection than the Bill currently affords them.

At one point I thought the Minister said that a solely automated decision was a rubber-stamped decision. To me, that gave the game away. I will have to read carefully what he said in *Hansard*, but that is how it sounded, and it really gets our alarm bells ringing. I am happy to withdraw my amendment, but we will come back to this subject from time to time and throughout our debates on the rest of the Bill.

Amendment 36 withdrawn.

Amendments 37 to 40 not moved.

Amendment 41

Moved by ***Lord Bassam of Brighton***

41: Clause 14, page 26, line 21, at end insert—

"A1. The data subject may not be subject to any decision based on data processing which contravenes a requirement of the Equality Act 2010."

Member's explanatory statement

This amendment to new Article 22B of the UK GDPR, aims to make clear that data processing which contravenes any part of the Equality Act 2010 is prohibited.

Lord Bassam of Brighton (Lab): My Lords, this group, in which we have Amendments 41, 44, 45, 49, 50, 98A and 104A and have cosigned Amendments 46 and 48, aims to further the protections that we discussed in the previous group. We are delighted that the noble Lord, Lord Clement-Jones, and others joined us in signing various of these amendments.

The first amendment, Amendment 41, is a straight prohibition of any data processing that would contravene the Equality Act 2010. All legislation should conform to the terms of the Equality Act, so I expect the Minister to confirm that he is happy to accept that amendment. If he is not, I think the Committee will want to understand better why that is the case.

Amendment 44 to new Article 22B of the UK GDPR is, as it says, designed,

"to prevent data subjects from becoming trapped in unfair agreements and being unable to exercise their data rights",

because of the contract terms. One might envisage some sensitive areas where the exercise of these rights might come into play, but there is nothing that I could see, particularly in the Explanatory Notes, which seeks to argue that point. We have no knowledge of when this might occur, and I see no reason why the legislation should be changed to that effect. Special category data

[LORD BASSAM OF BRIGHTON]
can be used for automated decision-making only if certain conditions are met. It involves high-risk processing and, in our view, requires explicit consent.

The amendments remove performance of a contract as one of the requirements that allows the processing of special category data for reaching significant decisions based on automated processing. It is difficult to envisage a situation where it would be acceptable to permit special category data to be processed in high-risk decisions on a purely automated basis, simply pursuant to a contract where there is no explicit consent.

Furthermore, relying on performance of a contract for processing special category data removes the possibility for data subjects to exercise their data rights, for example, the right to object and the ability to withdraw consent, and could trap individuals in unfair agreements. There is an implicit power imbalance between data subjects and data controllers when entering a contract, and people are often not given meaningful choices or options to negotiate the terms. It is usually a take-it-or-leave-it approach. Thus, removing the criteria for performance of a contract reduces the risks associated with ADM and creates a tighter framework for protection. This also aligns with the current wording of Article 9 of the UK GDPR.

Amendment 45 changes the second condition to include only decisions that are required or authorised by law, with appropriate safeguards, and that are necessary for reasons of substantial public interest. The safeguards are retained from Section 14 of the DPA 2018, with amendments to strengthen transparency provisions.

Amendment 49 seeks to ensure that the protections conferred by Article 22C of the UK GDPR would apply to decisions "solely or partly" based on ADM rather than just "solely". This would help to maximise the protections that data subjects currently enjoy.

Amendment 50 is another strengthening measure, which would make sure that safeguards in the new Article 22C are alongside rather than instead of those contained in Articles 12 to 15.

Our Amendment 104A would insert a new Section into the 2018 Act, requiring data controllers who undertake high-risk processing in relation to work-related decisions or activities to carry out an additional algorithmic impact assessment and make reasonable mitigations in response to the outcome of that assessment.

I ought to have said earlier that Amendment 98A is a minor part of the consequential text.

An improved workplace-specific algorithmic impact assessment is the best way to remedy clear deficiencies in Clause 20 as drafted, and it signals Labour's international leadership and alignment with international regulatory and AI ethics initiatives. These are moving towards the pre-emptive evaluation of significant social and workplace impacts by responsible actors, combined with a procedure for ongoing monitoring, which is not always possible. It also moves towards our commitment to algorithmic assurance and will help to ensure that UK businesses are not caught up in what is sometimes described as the "Brussels effect".

7.15 pm

The impact assessment should cover known impacts on work and workers' rights and the exercise of those, combining the best of audit technology and legal impact assessments. There would also be a duty to respond appropriately to the findings of that assessment. One of the simplest and most effective ways to boost transparency and consultation provisions is to attach them to these improved impact assessments by requiring disclosure of the assessment, at least in summary form, and permitting requests for additional information relevant to that assessment.

In our view, the definition of "high risk" in the Bill should be deemed to include significant impacts on work and workers. For clarity, this includes: any impact on equal opportunities or outcomes of work, access to employment, pay, contractual status, terms and conditions of employment, health and well-being, lawful association rights, and associated training. This could be done by a discreet deeming provision at several places in the Bill. These factors would also provide for a threshold for the more rigorous workplace assessment.

In our view, the core components of that assessment are: a requirement to establish a process for undertaking impact assessments; a requirement to assess significant impacts on work and employees; a requirement to involve those affected, including employees, workers and official representatives; a requirement to take appropriate steps in response, or, in other words, to mitigate and impose safeguards; and a requirement to disclose metrics, methods and mitigation taken.

In many ways, Amendment 104A is a continuation of the debates on the DMCC Bill on changing uses of technology in workplaces and the potential for workers to be disadvantaged by the decisions produced by software. Given the risks, we feel that there should be more protections in data legislation rather than fewer, and transparency and consultation are key.

We support Amendment 46 because it offers a further measure of protection to children's rights. We believe that, in this area, we should retain the existing legislative framework from the 2018 Act, and we cannot see any case for weakening those protections. Amendment 48 largely echoes our Amendment 49. The amendment of the noble Lord, Lord Holmes, is in this group, although he is not here. To our way of looking at things, it seems eminently sensible. I look forward to the opportunity to listen to him talk to that at a later stage of the Bill. I beg to move.

Baroness Kidron (CB): My Lords, the amendments in this group highlight that Clause 14 lacks the necessary checks and balances to uphold equality legislation, individual rights and freedoms, data protection rights, access to services, fairness in the exercise of public functions and workers' rights. I add my voice to that of the noble Lord, Lord Clement-Jones, in his attempt to make Clause 14 not stand part, which he will speak to in the next group.

I note, as the noble Lord, Lord Bassam, has, that all the current frameworks have fundamental rights at their heart, whether it is the White House blueprint, the UN Secretary-General's advisory body on AI,

with which I am currently involved, or the EU's AI Act. I am concerned that the UK does not want to work within this consensus.

With that in mind, I particularly note the importance of Amendment 41. As the noble Lord said, we are all supposed to adhere to the Equality Act 2010. I support Amendments 48 and 49, which are virtually interchangeable in wanting to ensure that the standard of decisions being "solely" based on automated decision-making cannot be gamed by adding a trivial human element to avoid that designation.

Again, I suggest that the Government cannot have it both ways—with nothing diminished but everything liberated and changed—so I find myself in agreement with Amendment 52A and Amendment 59A, which is in the next group, from the noble Lord, Lord Holmes, who is not in his place. These seek clarity from the Information Commissioner.

I turn to my Amendment 46. My sole concern is to minimise the impact of Clause 14 on children's safety, privacy and life chances. The amendment provides that a significant decision about a data subject must not be based solely on automated processing if

"the data subject is a child or may be a child unless the provider is satisfied that the decision is in, and compatible with, the best interests of a child",

taking into account the full gamut of their rights and development stage. Children have enhanced rights under the UNCRC, to which the UK is a signatory. Due to their evolving capacities as they make the journey from infancy to adulthood, they need special protections. If their rights are diminished in the digital world, their rights are diminished full stop. Algorithms determine almost every aspect of a child's digital experience, from the videos they watch to their social network and from the sums they are asked to do in their maths homework to the team they are assigned when gaming. We have seen young boys wrongly profiled as criminal and girls wrongly associated with gangs.

In a later group, I will speak to a proposal for a code of practice on children and AI, which would codify standards and expectations for the use of AI in all aspects of children's lives, but for now, I hope the Minister will see that, without these amendments to automated decision-making, children's data protection will be clearly weakened. I hope he will agree to act to make true his earlier assertion that nothing in the Bill will undermine child protection. The Minister is the Minister for AI. He knows the impact this will have. I understand that, right now, he will probably stick to the brief, but I ask him to go away, consider this from the perspective of children and parents, and ask, "Is it okay for children's life chances to be automated in this fashion?"

Lord Clement-Jones (LD): My Lords, I will speak to my Amendment 48. By some quirk of fate, I failed to sign up to the amendments that the noble Lord, Lord Bassam, so cogently introduced. I would have signed up if I had realised that I had not, so to speak.

It is a pleasure to follow the noble Baroness, Lady Kidron. She has a track record of being extremely persuasive, so I hope the Minister pays heed in what happens between Committee and Report. I very much hope that there will be some room for manoeuvre and that there is not just permanent push-back, with the Minister saying that everything is about clarifying and us saying that everything is about dilution. There comes a point when we have to find some accommodation on some of these areas.

Amendments 48 and 49 are very similar—I was going to say, "Great minds think alike", but I am not sure that my brain feels like much of a great mind at the moment. "Partly" or "predominantly" rather than "solely", if you look at it the other way round, is really the crux of what I think many of us are concerned about. It is easy to avoid the terms of Article 22 just by slipping in some sort of token human involvement. Defining "meaningful" is so difficult in these circumstances. I am concerned that we are opening the door to something that could be avoided. Even then, the terms of the new clause—we will have a clause stand part debate on Wednesday, obviously—put all the onus on the data subject, whereas that was not the case previously under Article 22. The Minister has not really explained why that change has been made.

I conclude by saying that I very much support Amendment 41. This whole suite of amendments is well drafted. The point about the Equality Act is extremely well made. The noble Lord, Lord Holmes, also has a very good amendment here. It seems to me that involving the ICO right in the middle of this will be absolutely crucial—and we are back to public trust again. If nothing else, I would like explicitly to include that under Clause 14 in relation to Article 22 by the time this Bill goes through.

Viscount Camrose (Con): I thank noble Lords and the noble Baroness for their further detailed consideration of Clause 14.

Let me take first the amendments that deal with restrictions on and safeguards for ADM and degree of ADM. Amendment 41 aims to make clear that solely automated decisions that contravene any part of the Equality Act 2010 are prohibited. We feel that this amendment is unnecessary for two reasons. First, this is already the case under the Equality Act, which is reinforced by the lawfulness principle under the present data protection framework, meaning that controllers are already required to adhere to the Equality Act 2010. Secondly, explicitly stating in the legislation that contravening one type of legislation is prohibited—in this case, the Equality Act 2010—and not referring to other legislation that is also prohibited will lead to an inconsistent approach. As such, we do not believe that this amendment is necessary; I ask the noble Baroness, Lady Jones, to withdraw it.

Amendment 44 seeks to limit the conditions for special category data processing for this type of automated decision-making. Again, we feel that this is not needed given that a set of conditions already provides enhanced levels of protection for the processing of special category data, as set out in Article 9 of the UK GDPR. In order to lawfully process special category data, you must identify both a lawful basis under Article 6 of the UK GDPR and a separate condition for processing under Article 9. Furthermore, where an organisation seeks to process special category data under solely automated

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decision-making on the basis that it is necessary for contract, in addition to the Articles 6 and 9 lawful bases, they would also have to demonstrate that the processing was necessary for substantial public interest.

Similarly, Amendment 45 seeks to apply safeguards when processing special category data; however, these are not needed as the safeguards in new Article 22C already apply to all forms of processing, including the processing of special category data, by providing sufficient safeguards for data subjects' rights, freedoms and legitimate interests. As such, we do not believe that these amendments are necessary; I ask the noble Baroness, Lady Jones, not to press them.

7.30 pm

Amendment 46, in the name of the noble Baroness, Lady Kidron, intends to prevent solely automated decisions that have significant effects on children unless they are in a child's best interest. I absolutely recognise the intent behind this amendment; indeed, the Government agree with the noble Baroness that all organisations must take great care when making solely automated decisions about the use of children's data.

The Bill already includes a range of safeguards relating to solely automated decision-making that would protect children and adults alike, including ensuring that children and their parents are provided with information related to significant decisions that have been taken about them through solely automated means and given the opportunity to make representations and seek human review of those decisions. Where the processing involves children, organisations will need to provide the information in a clear, age-appropriate manner to ensure that they comply with their transparency obligations. The Government do not want solely ADM to be used when it negatively impacts children, nor do they believe that it should be; this is in line with lawfulness, fairness and the other data protection principles.

Baroness Kidron (CB): Can the Minister give me an indication of the level at which that kicks in? For example, say there is a child in a classroom and a decision has been made about their ability in a particular subject. Is it automatic that the parent and the child get some sort of read-out on that? I would be curious to know where the Government feel that possibility starts.

Viscount Camrose (Con): In that example, where a child was subject to a solely ADM decision, the school would be required to inform the child of the decision and the reasons behind it. The child and their parent would have the right to seek a human review of the decision.

Baroness Kidron (CB): We may come on to this when we get to edtech but a lot of those decisions are happening automatically right now, without any kind of review. I am curious as to why it is on the school whereas the person actually doing the processing may well be a technology company.

Viscount Camrose (Con): It may be either the controller or the processor but for any legal or similarly significant decision right now—today—there is a requirement before the Bill comes into effect. That requirement is retained by the Bill.

In line with ICO guidance, children need particular protection when organisations collect and process their personal data because they may be less aware of the risks involved. If organisations process children's personal data they should think about the need to protect them from the outset and should design their systems and processes with this in mind. This is the case for organisations processing children's data during solely automated decision-making, just as it is for all processing of children's data.

Building on this, the Government's view is that automated decision-making has an important role to play in protecting children online, for example with online content moderation. The current provisions in the Bill will help online service providers understand how they can use these technologies and strike the right balance between enabling the best use of automated decision-making technology while continuing to protect the rights of data subjects, including children. As such, we do not believe that the amendment is necessary; I ask the noble Baroness if she would be willing not to press it.

Amendments 48 and 49 seek to extend the Article 22 provisions to "predominantly" and "partly" automated decision-making. These types of processing already involve meaningful human involvement. In such instances, other data protection requirements, including transparency and fairness, continue to apply and offer relevant protections. As such, we do not believe that these amendments are necessary; I ask the noble Baroness, Lady Jones, and the noble Lord, Lord Clement-Jones, if they would be willing not to press them.

Amendment 50 seeks to ensure that the Article 22C safeguards will apply alongside, rather than instead of, the transparency obligations in the UK GDPR. I assure the noble Baroness, Lady Jones, that the general transparency obligations in Articles 12 to 15 will continue to apply and thus will operate alongside the safeguards in the reformed Article 22. As such, we do not believe that this amendment is necessary; I ask the noble Baroness if she would be willing not to press it.

The changes proposed by Amendment 52A are unnecessary as Clause 50 already provides for an overarching requirement for the Secretary of State to consult the ICO and other persons that the Secretary of State considers appropriate before making regulations under the UK GDPR, including for the measures within Article 22. Also, any changes to the regulations are subject to the affirmative procedure so must be approved by both Houses of Parliament. As with other provisions of the Bill, the ICO will seek to provide organisations with timely guidance and support to assist them in interpreting and applying the legislation. As such, we do not believe that this amendment is necessary and, if he were here, I would ask my noble friend Lord Holmes if he would be willing not to press it.

Amendments 98A and 104A are related to workplace rights. Existing data protection legislation and our proposed reforms provide sufficient safeguards for

automated decision making where personal data is being processed, including in workplaces. The UK's human rights law, and existing employment and equality laws, also ensure that employees are informed and consulted about any workplace developments, which means that surveillance of employees is regulated. As such, we do not believe that these amendments are necessary and I ask the noble Baroness not to move them.

Lord Clement-Jones (LD): I hear what the Minister said about the workplace algorithmic assessment. However, if the Government believe it is right to have something like an algorithmic recording standard in the public sector, why is it not appropriate to have something equivalent in the private sector?

Viscount Camrose (Con): I would not say it is not right, but if we want to make the ATRS a standard, we should make it a standard in the public sector first and then allow it to be adopted as a means for all private organisations using ADM and AI to meet the transparency principles that they are required to adopt.

Lord Clement-Jones (LD): So would the Minister not be averse to it? It is merely so that the public sector is ahead of the game, allowing it to show the way and then there may be a little bit of regulation for the private sector.

Viscount Camrose (Con): I am not philosophically averse to such regulation. As to implementing it in the immediate future, however, I have my doubts about that possibility.

Lord Bassam of Brighton (Lab): My Lords, this has been an interesting and challenging session. I hope that we have given the Minister and his team plenty to think about—I am sure we have. A lot of questions remain unanswered, and although the Committee Room is not full this afternoon, I am sure that colleagues reading the debate will be studying the responses that we have received very carefully.

I am grateful to the noble Baroness, Lady Kidron, for her persuasive support. I am also grateful to the noble Lord, Lord Clement-Jones, for his support for our amendments. It is a shame the noble Lord, Lord Holmes, was not here this afternoon, but I am sure we will hear persuasively from him on his amendment later in Committee.

The Minister is to be congratulated for his consistency. I think I heard the phrase "not needed" or "not necessary" pretty constantly this afternoon, but particularly with this group of amendments. He probably topped the lot with his response on the Equality Act on Amendment 41.

I want to go away with my colleagues to study the responses to the amendments very carefully. That being said, however, I am happy to withdraw Amendment 41 at this stage.

Amendment 41 withdrawn.

Amendment 42

Moved by ***Viscount Camrose***

42: Clause 14, page 26, line 22, leave out from "on" to "may" in line 23 and insert "processing described in Article 9(1) (processing of special categories of personal data)"

Member's explanatory statement

This technical amendment adjusts the wording of new Article 22B(1) of the UK GDPR to reflect the terms of Article 9(1).

Amendment 42 agreed.

Amendments 43 to 52A not moved.

Committee adjourned at 7.40 pm.