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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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The abbreviation [V] after a Member's name indicates that they contributed by video call.

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

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

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

House of Lords

Tuesday 10 September 2024

2.30 pm

Prayers—read by the Lord Bishop of St Albans.

Introduction: Baroness Batters

2.38 pm

Minette Bridget Batters, DL, having been created Baroness Batters, of Downton in the County of Wiltshire, was introduced and took the oath, supported by the Duke of Wellington and Lord Soames of Fletching, and signed an undertaking to abide by the Code of Conduct.

Introduction: Baroness Harman

2.43 pm

The right honourable Harriet Ruth Harman, KC, having been created Baroness Harman, of Peckham in the London Borough of Southwark, was introduced and made the solemn affirmation, supported by Lord Kinnock and Baroness Smith of Basildon, and signed an undertaking to abide by the Code of Conduct.

Royal Assent

2.48 pm

Royal Assent was notified for the following Act:

Budget Responsibility Act.

Construction Sector: Cash Retentions

Question

2.49 pm

Asked by ***Lord Aberdare***

To ask His Majesty's Government what plans they have to end the practice of cash retentions in the construction sector.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Baroness Jones of Whitchurch) (Lab): My Lords, I pay tribute to the work of the noble Lord in championing this issue so successfully over the years. The Government are committed to amending the Reporting on Payment Practices and Performance Regulations 2017 to require firms to report on their policies and provide key metrics in relation to retentions. We intend to introduce legislation for this in 2024. We will consider whether further action on retentions is needed to deliver our manifesto commitment to tackle late payment.

Lord Aberdare (CB): My Lords, I am grateful to the Minister for that response. Cash retentions—withholding payments due to subcontractors for work done, often for an unreasonable period of time, or indeed for ever—have a highly damaging impact on the ability of small construction firms to invest, expand or even survive, and create pressure to cut corners on quality and safety. The Grenfell report is a shocking reminder of where that can lead.

There is a long-standing goal of ending retentions by 2025—I welcome what the Minister has said about the implementation of the reporting requirement—and widespread industry recognition that legislation is needed to achieve this. What plans do the Government have to introduce such legislation, thereby freeing thousands of construction SMEs to play their full part in delivering the Government's housebuilding goals?

Baroness Jones of Whitchurch (Lab): My Lords, we are prioritising bringing forward the statutory instrument to amend the Reporting on Payment Practices and Performance Regulations this year, with the aim of it coming into force in 2025. This will require large firms to report twice per financial year on their policies in relation to retentions, including standard terms for holding retentions and metrics in relation to payment performance for retentions. We believe that this information will be most useful to small firms in the supply chain, and this legislation was developed in conjunction with firms in the industry and their representative organisations.

Baroness Thornhill (LD): My Lords, this pernicious issue, interestingly, is not covered in the Government's construction playbook, which sets out exactly how public works projects are to be assessed, procured and delivered. Indeed, a number of government departments and arm's-length bodies continue to use retentions themselves. So would it be a good first step for this new Government to put their own house in order as soon as possible?

Baroness Jones of Whitchurch (Lab): The noble Baroness makes an important point about public procurement. There are steps that we can take to progress on this issue; it is a manifesto commitment that we will do so. Obviously, we will consult before we introduce any further legislation, but we are committed to reviewing our policies on this issue, to enable more smaller firms to be able to access public contracts.

Lord Johnson of Lainston (Con): My Lords, late payments in the construction sector hold developments back significantly, which hinders progress on the delivery of new homes. The previous Government took strong action on this and published a payment and cash flow review in November 2023. What assessment have the Government made of the impact of cash retention on housing delivery, and will the Minister commit to continuing the excellent work of the previous Government to tackle this issue?

Baroness Jones of Whitchurch (Lab): As the noble Lord has said, there have already been some changes made to this and we are following that up to introduce further changes. We will be addressing the value of payments and the level of invoices not paid because of disputes, but there is more work to be done on this and enforcement is obviously part of that. DBT has already written to 416 large companies not complying with the

[Baroness Jones of Whitchurch]
payment performance reporting requirements and 45% of firms written to have come into compliance. We have further follow-up action to make sure that those further transgressions are being addressed.

Baroness Donaghy (Lab): My Lords, I often think of Lord O'Neill of Clackmannan, who was a great champion of this issue, and I pay tribute to the noble Lord, Lord Aberdare, for following in his footsteps. Does the Minister agree with me that the present proposals do not get rid of the plain abuse of power that happens in subcontracting and contracting in construction? Late payment leads to bankruptcies in small and middle-sized firms and is part of the difficulty across the whole of the construction industry that leads to cutting corners in safety—and we have seen the results of that over many years. Does she agree that Lord O'Neill and the noble Lord, Lord Aberdare, who have been fighting for this for years, have been looking for something a bit more concrete?

Baroness Jones of Whitchurch (Lab): My Lords, as I have said, it is important that we seek the views of industry on any reforms. We will take further action and obviously we will welcome the views of Members of this House, as well as the construction industry, as part of that process. The noble Baroness and other noble Lords have talked about safety and we are acutely aware of the situation with the Grenfell Tower final report, which highlights the systemic failure of institutions and individuals to ensure building safety and the safety of construction products and materials. My honourable friend the Parliamentary Under-Secretary of State for Building Safety and Homelessness tabled a Written Statement on 2 September that commits the Government to a system-wide reform of the construction products regulatory regime. Those reforms will take account of the recommendations of the Grenfell Tower inquiry.

Baroness Lawlor (Con): My Lords, I thank the Minister for her replies so far. On her last answer, what proportion of businesses and organisations will be small or will represent small contractors and businesses in this trade? It is they who suffer most, which, as noble Lords have said, can lead to bankruptcies. If you are stuck with payments to make yourself for materials and supplies and you have not been paid by the overall contractor, you may go out of business. It is very important to bear in mind that we should give higher emphasis to the smaller contractors and businesses.

Baroness Jones of Whitchurch (Lab): The noble Baroness is right that the smaller businesses are getting squeezed at the end of the supply chain, but we are already making progress with the steps that have been taken, which will continue with the new regulations that we will introduce. There have already been improvements in payment performance since 2018: for example, the average time to pay invoices has come down from 45 to 32 days. We are doing this on a step-by-step basis and we are working with industry—the construction sector—to make sure that this is what people want and truly effective.

Lord Aberdare (CB): My Lords, the Minister mentioned taking the views of industry. The Government have been taking the views of industry since the completion of their consultation in 2020. The reason that they have not come to a conclusion is that there is no consensus with the industry. I greatly miss the contributions of Lord Stunell, who described seeking a consensus on this issue as being like asking lions and lambs to sit down together and agree on a menu for tea. There is no consensus between the larger and smaller firms, which is why the only solution seems to many in the industry to be legislation. Reporting is all very well, but it will not solve the problem on its own.

Baroness Jones of Whitchurch (Lab): My Lords, we have been working to resolve the problems associated with cash retentions through the Construction Leadership Council. As the noble Lord said, there are a wide range of views across the sector about the use and problems associated with retentions and how they might be addressed. Many in the industry are in favour of reform and are now calling for a legislative ban, in the way that the noble Lord described, but any policy solution must be sustainable and work for the whole of industry and its clients, addressing both the surety and fair payment issues that are thrown up.

Lord Pannick (CB): Does the Minister acknowledge that the vice of late payments is not confined to the building industry? Do the Government have any plans to address this mischief more broadly?

Baroness Jones of Whitchurch (Lab): Yes, my understanding is that the changes that will be introduced are not to affect only the construction industry. Certainly the late payments legislation that we are working on will be across the board and not specific to the construction sector.

Whitehall: Prioritising Performance

Question

2.59 pm

Asked by ***Lord Farmer***

To ask His Majesty's Government what assessment they have made of the report, *Making the grade: Prioritising performance in Whitehall*, published by Reform on 1 May; and what steps they are taking in response.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Baroness Twycross) (Lab): His Majesty's Government remain committed to attracting and retaining the most talented people to build a highly skilled and capable Civil Service. The recommendations contained within the Reform report are detailed and wide-ranging. Time is being taken to consider carefully all the recommendations. A number of activities are under way to continuously improve how talent recruitment and performance are managed.

Lord Farmer (Con): My Lords, I thank the Minister for that encouraging reply. Reform emphasises the need for greater cognitive diversity in the Civil Service

and a clear route for public service-minded and exceptionally talented applicants without a specific role to apply for. Will the Government set up a mid-career fast stream to bring in high-flyers experienced in other ways of working to help break the groupthink? Similarly, using "behaviours" in success profiles favours internal candidates, so will the Government scrap this and assess instead on skills and experience?

Baroness Twycross (Lab): Success profiles provide a common framework for recruiters to assess the key attributes for roles, including skills and experience. Behaviours are not compulsory. The Government People Group is due to review the content and application of, and support for, success profiles in 2025 as part of continuing work to improve the quality and openness of recruitment. The Government are reviewing the options for a mid-career scheme as workforce demands in the next spending review are established. Many roles are open to external recruitment at all grades, with talent schemes such as the Future Leaders Scheme available to support rapid progression through to more senior levels. Regarding diversity of thinking, currently around 10% of those on the Future Leaders Scheme declare as neurodiverse.

Lord Butler of Brockwell (CB): My Lords, having discovered that, in this context, Reform is a think tank rather than a political party, I warmly welcome the recommendations in the report for the identification and development of talent in the Civil Service. Does the Minister agree that the Civil Service is more likely to respond to positive and constructive leadership than to the scapegoating and bad-mouthing from which it too frequently suffered under the last Government?

Baroness Twycross (Lab): I thank the noble Lord for his clarification that this is the think tank, which might have been a useful clarification as a first point. The report looks at brand issues, and there is a quote within the report that the Civil Service brand is "battered". One of the things that the report makes very clear is that, as a Government, we need the best people to get the best results for the country. In Keir Starmer's message to the Civil Service on his succession to the role of Prime Minister, he made it clear that he knew how much civil servants believe in what they are doing for the country, and he said that they had taught him a great deal about what public service really means.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, one of the recommendations in the report is on the need for better succession planning for key roles and the need to keep an updated list ready for recruitment exercises. I urge the Minister to give due regard to this recommendation. This comes from my own experience with the Northern Ireland Civil Service. When you have a key person in a role performing an excellent job and he or she leaves, it can leave a huge gap, so this recommendation really is something to take on board.

Baroness Twycross (Lab): All of us have probably come across points at which people are treated as almost indispensable. Part of the value of people stepping back and having a report of this kind is that we can focus on what those critical single points of failure are. I will feed back the noble Baroness's comments to the relevant Minister.

Lord Wallace of Saltaire (LD): My Lords, the Minister mentioned that retention of the exceptionally talented is a problem. I have been distressed in the last five years to discover that some of the most talented civil servants I worked with in the coalition have given up and left the Civil Service, partly because of the rapid turnover of Ministers, partly because of the way in which some Ministers treated their officials, and also because a number of Ministers always seemed to prefer advice from consultants to that from civil servants. In that context, can the Minister explain why the Government have just given—perhaps she inherited the idea from her predecessor—a £200 million contract to KPMG to train civil servants? To my knowledge, KPMG is not particularly expert in training governmental officials, and it would be much cheaper and more effective to ask the university sector to train civil servants instead. I declare an interest as I used, as a university academic, to train civil servants.

Baroness Twycross (Lab): This is not an issue that I have got specific details on. I will go back and ask about it, but I assume that this would have been subject to a pretty rigorous procurement process.

Baroness Neville-Rolfe (Con): My Lords, the Reform report feels HR led. While I agree with some of the recommendations, for example on the induction of outsiders, I know from my experience in business, as well as in Whitehall, that this is not the route to success. In a sense, the fewer HR directors there are, the better the policy and outcomes. What the report does not bring out is that public sector performance has been very disappointing in certain areas, particularly following Covid. Important services like probate, driving tests, property registration and tax collection are all lamentably slow. This is in stark contrast to the private sector, where you go bust if you do not serve the customer and manage well; you will not be sustained. In that context, does the Minister agree that rewarding the public sector with a huge pay rise and bigger pensions, without any link to productivity improvement, has been a real missed opportunity? This is the chance we have to help the public services, which I very much support, to improve themselves.

Baroness Twycross (Lab): I previously quoted the report as saying that the Civil Service brand is "battered", and part of our reset as a new incoming Government must be to reset the relationship between the politicians and civil servants. All of us fortunate enough to come on to the Front Bench have been incredibly well supported over recent weeks and months by the Civil Service. I also do not think we should get into a battle about private sector good or private sector bad, or public sector good or public sector bad—that does not serve any of us well.

Lord Maude of Horsham (Con): My Lords, the Minister will be aware that concerns about a lack of rigorous performance management in the Civil Service,

[Lord Maude of Horsham]
which is not unique to the British Civil Service, have been around for decades. While valiant attempts have been made by Ministers on both sides and by officials to remedy this, where there has been success, it has not been sustained. Will she accept, from one of those who has tried, that this will never be achieved on a sustainable basis until there is a dedicated full-time head of the Civil Service who has a proven track record of system leadership and a real mandate from the Prime Minister, with his statutory power to manage the Civil Service, and who is held accountable to an independent body, which could be a strengthened Civil Service Commission that reports to Parliament? Until then, we will continue to be in a position where the only organisation that looks at the internal workings of the Civil Service is the Civil Service itself.

Baroness Twycross (Lab): As a relatively new Minister, I need to reflect on the noble Lord's experience; he makes some very interesting points. I will look into the points he raised and get back to him if that is acceptable?

Baroness Symons of Vernham Dean (Lab): My Lords, can my noble friend expand a bit further on what the role of KPMG is in this as regards the senior service? I declare my interest as a former graduate in the Civil Service and as a former general secretary of the First Division Association. It would be very helpful if the Minister could be more specific about the role that KPMG is undertaking.

Baroness Twycross (Lab): I will look into the role of KPMG further and I will revert to my noble friend on that point.

Autism Employment: Buckland Review

Question

3.09 pm

Asked by ***Lord Touhig***

To ask His Majesty's Government whether they intend to continue the work programme set out in the Buckland Review of Autism Employment.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Sherlock) (Lab): My Lords, we believe everyone should have an equal opportunity to work. In *Labour's Plan to Make Work Pay*, we committed to raising awareness of neurodiversity in the workplace. The Buckland review was independently led and explored the specific barriers that people with autism face when seeking employment and remaining in work, and it made some helpful recommendations to remove those barriers. We are exploring how to expand this to meet our commitment to provide the right support for all neurodiverse people to enter, remain in or return to employment.

Lord Touhig (Lab): My Lords, just three in 10 autistic people are in employment. A report for Autistica found that doubling the employment rate of autistic people could boost the economy by £1.5 billion. I am sure that my right honourable friend the Prime Minister, whose key mission is to kick-start economic growth, would welcome that. The Buckland report showed us a way forward, but recruitment of the task force to put forward the recommendations of the report was put on hold when the general election was called. Can the Government confirm that they will now go ahead and commence the recruitment?

Baroness Sherlock (Lab): My Lords, my noble friend is absolutely right about the shockingly low level of employment of autistic people. It is shocking to find that only about 35% of autistic employees feel able to be really open in work about being autistic—how can they develop, and how can the employers learn? We very much welcome the report from Sir Robert Buckland. The process had begun, in the sense that informal expressions of interest had been made about the task force, but the process was stopped by the general election. Ministers are meeting with Sir Robert Buckland next month to discuss the report's recommendations and to look at expanding the scope to cover neurodiversity in general and not just autism. Recruitment for the task force is paused for the moment, but my department is working with colleagues across government to look at each of the recommendations under the five themes and to find ways in which we can apply that learning to neurodiversity in general.

Lord Wigley (PC): My Lords, I pay tribute to the work that Sir Robert Buckland has undertaken in this sphere over many years. Can the Minister give any indication of how long the Government are likely to take to come to some positive conclusions regarding the report?

Baroness Sherlock (Lab): My Lords, obviously, having only just come into government, we have only just begun to look at this, but there are things in the report that the department was already doing that we can therefore develop. For example, the review pointed to the need to develop a digital service we have that is aimed at employers and supports employee health and disability. We are looking at other ways to make that more visible and easier to reach, because employers often want to engage people but need help in understanding the barriers so they can work out how to get better at this. We can start learning from that already, but we will move on to this as fast as we can.

Lord Addington (LD): My Lords, what are the Government doing about passporting when those identified in the education sector and training go into employment? If you have to reapply for support and help at any point, that puts on a further brake and, as this is not generally handled easily and quickly, it means the employer has extra costs. What are the Government doing in practical terms to address this? I remind the House of my declared interests.

Baroness Sherlock (Lab): My Lords, I confess that I have learned a lot about this in the last week. There is a huge range of schemes and support out there. For example, DWP has specialist coaches—people who

can support our work coaches and work with people with autism who want to move into jobs or develop them. We have schemes of all kinds, such as internship schemes for young people with autism and other disabilities. We have ways of working directly with people and supporting them. We have schemes with employers, and there is Access to Work, through which people can apply for support directly. DWP is trying to make all the work we do as tailored as possible to individuals, so that we can give people the support they need to get them into a job, keep it, progress in it and stay there.

Viscount Younger of Leckie (Con): My Lords, the previous Government saw it as a vital priority, on the back of the key recommendation from the Buckland review, to work with employers to encourage more employment of autistic people, which has been mentioned. How will the Government's recent decision to change the PIP and WCA assessments under the new Health Assessment Advisory Service affect such progress, particularly as the Minister's letter of 6 September states that there will be "an impact on service levels"?

Baroness Sherlock (Lab): My Lords, as I took over as Minister from the noble Viscount, I am sure that he is quite aware of the contracting issues that led to the decisions that were made in the department.

Probably the single most important thing when dealing with somebody with autism or another disability coming forward is that the person who assesses the health condition is properly trained and has the resources needed to make an appropriate assessment. As of yesterday, we have brought the educational material for all our healthcare assessors in-house, so that we can control the quality, make sure we train people well and support them well, so that when they are making these important decisions about whether someone is entitled to support or not, they are able to understand what they are hearing, and the person can come forward and get the best possible support at the next stage. We are committed to supporting disabled people of all kinds into work, and we will make that a reality.

Baroness Bull (CB): My Lords, I appreciate that I may be expanding the Question into the remit of her noble friend sat alongside her. Work experience is a vital window into the world of work for people with learning disabilities and autism, yet I am not sure we can be convinced that young people with such disabilities have the same experience of work through work experience programmes. What will this Government do to help employers provide work experience placements and to encourage them to offer this opportunity to all children, regardless of neurodiverse conditions?

Baroness Sherlock (Lab): My Lords, I confess that I do not have the details about what is being done about work experience, but we are developing the availability of supported employment, including for autistic people and those with other neurodivergent conditions, and across other disabilities. We are trying to tackle the problem of hidden worklessness. The idea is that we will start progressing towards the goal of a more collaborative, locally led approach to help people into work. Once it is fully rolled out, the aim is to support up to 100,000 disabled people, including people with health conditions and quite complex barriers. Eligible and suitable participants will get one-to-one support for up to 12 months, which will help them identify what they want to do, find a job that might be suitable, and get wraparound support. If we can get this right first time, we can support people to stay in work for a long time. That is a real benefit to the individual, and to the employer. I am hopeful that we can improve in this area over the months ahead.

Lord Sterling of Plaistow (Con): My Lords, over many years I and many others have said that when people are being trained to teach, we also need them to be trained to know what a meltdown is about and how to handle it. There are still not enough people who truly understand SEND and what really happens. I am more than interested in this because I have a grandson who is autistic, and I have followed this through many times. We need at least 2,000 educational psychologists to identify people at an early enough stage that they have an opportunity to put something back into society. The whole thing must be sped up. I know many people who are disabled—through Motability, which I co-founded many years ago—who would be delighted to be able to put something back into society after having been helped for so many years.

Baroness Sherlock (Lab): I thank the noble Lord for that question, and I pay tribute to his many years of work with Motability, a scheme which has helped many people. He makes an important point. I sometimes think that our system has had trouble, in that what looks like bad behaviour is in fact something quite different. One of the challenges for public sector professionals in all areas is to get the kind of training to understand what they see in front of them. If we do not have the experience or understanding, it is not unreasonable to misinterpret a pattern of behaviour we see. That is why DWP has put so much effort into trying to improve and develop the training. In any organisation, if we take the time to ask, we will find that many of our staff have relevant experience to bring and to share with their colleagues. I have no doubt that similar work is being done elsewhere. I know that my colleagues at the Department for Education are looking carefully at how the Government can better support SEND and children who are in that position.

I thank the noble Lord for that question—it is an important opportunity to highlight something about which there is too much misunderstanding. Many of the conditions we have talked about today are highly stigmatised. It is hard enough for people to deal with the consequences of a complex condition, without a total failure of the society around them to understand it.

Lord Laming (CB): My Lords, does the Minister agree that the transition from school to employment is critical in the lives of many of these young people; that there are some outstanding examples of how that transition is being managed, but, unfortunately, they are few in number; and that the real challenge is to make sure that what is exceptional becomes general across the whole country?

Baroness Sherlock (Lab): My Lords, it is typical of the extent of the noble Lord's strategic experience that he puts his finger on the question: how do we take best practice and turn it into something the entire system can learn from? We have some really good practice out there. For example, I know that autistic young people on their transition to employment can benefit specifically from supported internships, which are aimed at young people with a learning disability or autism who have an education, health and care plan. One of the things we could do is look at what works from that and how we can learn from it, and transfer it not just to other young people with autism but to a broader category of disabled young people trying to make those transitions. I thank the noble Lord for that very wise suggestion.

Pharmacies: Rural Areas

Question

3.20 pm

Asked by ***The Lord Bishop of St Albans***

To ask His Majesty's Government what plans they have to ensure that pharmacies are accessible to those living in rural areas.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Merron) (Lab): My Lords, pharmacies are key to our plans to make healthcare fit for the future, as we shift healthcare out of hospitals and into the community. We will expand the role of pharmacies, including the introduction of prescribing services. People's experiences of accessing pharmacies differ across the country; we will look closely at this. There are dispensing doctors in areas where pharmacies are not viable, and online pharmacies delivering medicines free of charge to patients.

The Lord Bishop of St Albans: I thank the noble Baroness for her response. However, analysis by the Independent Pharmacies Association has identified a £1.2 billion funding gap in this sector, which is leaving, in particular, pharmacies in rural and deprived areas very vulnerable indeed, at the very point when, as she said, we are looking for them to deliver more services. Given that 90% of their income comes from the NHS contracts and that most are unable to fill the funding gap through a retail outlet, what else can His Majesty's Government do to ensure that we have adequate coverage in rural areas?

Baroness Merron (Lab): I take on board the point that the right reverend Prelate makes. The analysis to which he refers shines a light on the fact that funding for community pharmacies was either cut or held flat over the last eight years, which amounted to a funding cut in real terms of some 28%. We are seeing the result of that. It is also worth saying that the consultation with Community Pharmacy England on the national funding and contractual framework arrangements for 2024-25 was not concluded by the previous Government, so I can say to your Lordships' House that we are looking at this as a matter of urgency. We look forward, through my colleague Minister Kinnock, to how community pharmacy can be best set to deliver on the ambitions that I have already outlined.

Baroness McIntosh of Pickering (Con): My Lords, I refer to my role with the Dispensing Doctors' Association; I am grateful to the Minister for paying tribute to it. The right reverend Prelate identified the problem of having equal funding in urban and rural areas, where the dispensing doctors she identified fulfil such a crucial role. Can she give the House a commitment that sufficient funds will be made available in the negotiation of the GP contract so that all the services that are available in urban areas will also be available in rural areas?

Baroness Merron (Lab): I know that the noble Baroness understands that there are some services which cannot be provided—for example, online services do an excellent job, as do dispensing doctors, but although I regard the online option as a very creative one that I would like to see expanded further, there are some things that require in-person attention and that will not be possible. We of course take account of situations across the country, in all the discussions, and that includes rural areas.

The Earl of Devon (CB): My Lords, I am chair of the Plunkett Foundation's inquiry into the state of rural retail, in particular the loss of wholesale supply chains essential to the survival of rural communities. Will the Government please undertake to review this highly discriminatory circumstance, which hits the rural poor the hardest?

Baroness Merron (Lab): I will be very happy to look at the work that the noble Earl refers to. If he would like to meet me to discuss it, I am sure that would be of great assistance as we look to the future.

Lord Scriven (LD): My Lords, there is a crisis in community pharmacies, as the Minister will know. Two weeks ago, the industry brought out a report that predicted that one in six community pharmacies could close within the next year. What urgent action will the Government take to ensure that that does not happen?

Baroness Merron (Lab): On the point that the noble Lord correctly raises, it is worth reflecting that there has already been a reduction in the number of pharmacies since 2017. There are now some 1,200 fewer pharmacies than we had in 2017 and 600 fewer than there were two years ago. This is a trajectory that we would rather was not the case. Support is available—for example, through the Pharmacy Access Scheme, which provides financial support to pharmacies in areas where there are fewer pharmacies. I can say that we are monitoring access to pharmacies. While it is the case that four in five people live within a 20-minute walk from a community pharmacy, we absolutely recognise that the experiences of patients differ. If we are to see pharmacies as key to future plans for the health services, we will have to address that.

Lord Kamall (Con): My Lords, we recognise that the current access to healthcare is based on an outdated model, where far too many patients are unable to book GP appointments online or by telephone in advance. They have to join the 8 am lottery to try to

get an appointment by phone, only to be referred later to a pharmacist or hospital. The Pharmacy First reforms introduced by the last Government attempt to unblock the GP surgery bottleneck by allowing patients to access treatment for common health conditions without the need for a GP appointment. To ensure that patients in rural communities equally benefit from the Pharmacy First initiative, is the Minister able to give the House a firm commitment that the Government will continue the Pharmacy First approach and look at how this could be accessed by more patients in rural areas?

Baroness Merron (Lab): I am pleased to say that, as I am sure the noble Lord is aware, prescribing pilots are going on in NHS England. These will look at what more pharmacies could do in this regard, in particular asking whether more minor illnesses could be dealt with, and whether the long-term management of conditions could be better managed through pharmacies. We will be very interested in what those pilots come up with. They are across the entire country, so will of course include rural areas. This is something that we will want to ensure is available in rural and urban environments.

Baroness Blackwood of North Oxford (Con): My Lords, the Commons Health and Social Care Select Committee pharmacy inquiry found that, while most medicines are in good supply, medicines shortages have doubled since 2021. This means that pharmacists spend time dealing with medicines shortages every day—some as much as four and a half hours. The committee recommended an independent review into how to improve resilience of the medicines supply chain, including looking at pharmacists' prescribing. Will the Minister commit to this, and if not, what will she do to improve the situation?

Baroness Merron (Lab): The noble Baroness makes a good point about the shortage of medicines; this has been raised many times in your Lordships' House. I will ensure that my colleague Ministers are aware of the points raised today, to build these into our consideration of how we support pharmacists and pharmacies to continue to do a good job and, indeed, expand their remit.

Lord Foulkes of Cumnock (Lab Co-op): Does the Minister agree that part of the problem around access to rural pharmacies is the massive deterioration of bus services under the previous Government? Since our Government are going to give powers to local councils to run bus services more efficiently and effectively, will that not improve access to local rural pharmacies? Can the Minister ensure that that is done as quickly as possible?

Baroness Merron (Lab): I welcome the announcement by the Secretary of State for Transport about ensuring that bus services can be more readily available, which will assist access to pharmacies. However, there are other options that we need to continue to look at. For example, there are 400 distance-selling pharmacies that deliver medicines which they dispense free of charge to patients, and provide other pharmaceutical services remotely, and, as we know, GP practices can dispense medicines to their patients. I mention those as examples of more creative ways in which we can support people in rural areas.

Lord Swire (Con): Another creative way is to locate some of these pharmacies where we still have community or cottage hospitals up and down the country, which has been done successfully. Will the Minister therefore undertake to look at where this is common practice to see if it can be expanded?

Baroness Merron (Lab): All these creative approaches will be considered as we look at what we will be doing to ensure that pharmacies are key to delivering on improved healthcare across the entire country.

Crown Estate (Wales) Bill [HL]

First Reading

3.31 pm

A Bill to transfer responsibility for the Crown Estate in Wales to the Welsh Government; and for connected purposes.

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

Universal Credit (Standard Allowance Entitlement of Care Leavers) Bill [HL]

First Reading

3.31 pm

A Bill to equalise the amount of the standard allowance included in an award of universal credit to which a claimant who has left care is entitled with the amount of that allowance to which a claimant aged 25 or over is entitled; and for connected purposes.

The Bill was introduced by the Lord Bishop of Manchester, read a first time and ordered to be printed.

Royal Albert Hall Bill [HL]

Motion to Resolve

3.32 pm

Moved by ***The Senior Deputy Speaker***

To resolve that the promoters of the Royal Albert Hall Bill [HL], which was originally introduced in this House in Session 2022-23 on 23 January 2023, should have leave to proceed with the Bill in the current Session according to the provisions of Private Business Standing Order 150B (*Revival of bills*).

Baroness Hayter of Kentish Town (Lab): I want to say a few words before we move to accept the Motion, which I fully support. It is right that the House knows a bit of the background. This appears as an unopposed Bill, but in fact objections were submitted to it so an Opposed Bill Committee was set up, on which I had

[Baroness Hayter of Kentish Town]
the privilege to serve for the first time under the chairmanship of the noble and learned Baroness, Lady Hale. However, when we met, the Bill's promoter, the Royal Albert Hall, contested the bona fides of the objectors to have any say, as they did not meet the very narrow definition in our rules of who has the right to be heard on a private Bill. The surprise—to me, at least—was to discover that the general public had no right to be heard.

To some extent that is mitigated by the Attorney-General's duty to put his or her view to the Opposed Bill Committee. In this case, the then Attorney-General expressed considerable disquiet about elements of the governance of the Albert Hall, as had the Charity Commission on a number of occasions, but she found no compelling reason to object to the Bill subject to the removal of the most contentious clause, which would have increased the number of privately owned seats whose owners would then be entitled to vote at general meetings and to elect members of the charity's council.

On the issue of procedure, rather than the merits of the Bill, our Opposed Bill Committee was forced to conclude that the objectors did not meet the somewhat strict criteria as to who could have their voices heard. Thus the objectors effectively disappeared, and with them the rationale for our committee, which was promptly dissolved as the Bill became an unopposed Bill and went straight to an Unopposed Bill Committee, which comprised the Senior Deputy Speaker sitting with counsel.

On 22 May he heard from representatives of the Albert Hall and agreed the Bill as amended by the removal of the contentious clause, which would have increased the number of privately owned seats that the owners can sell on the open market for performances. On that very day, but before the Bill had the chance to return to your Lordships' House for Third Reading, the election was called. The Motion before the House today is to permit the Bill to continue on its passage rather than start de novo. If agreed—and I hope it will be—there will be a Third Reading on a date yet to be set.

However, in the light of the debate in the then Opposed Bill Committee, led by the noble and learned Baroness, Lady Hale, its membership decided to draw the wider matter to the attention of your Lordships' House by way of a special report published on 25 April. This allowed us to put before the House the part of the Attorney-General's letter that expressed her

"disappointment that the Bill is not more ambitious"

and does not deal with the potential conflict between the private interests of seat-holding trustees and the hall's charitable objectives, an issue of concern to the Charity Commission. The Attorney-General had earlier urged the hall to resolve these conflicts, hence her regret that the Bill did not do so.

However, the Attorney-General cannot insist on changes to the Albert Hall's governance, and it is refusing to make the changes desired by the Charity Commission and others—an "impasse", as our committee noted. Today is the only opportunity for the committee to have these voices heard, which is why I am standing today. We concluded that

"these matters should be drawn to the attention of the House and of the Government",

including at further stages of the Bill,

"so that a way forward can … be found to address the concerns raised"

by the then AG.

As we said:

"The Royal Albert Hall plays an iconic part in the life of the nation and there is a strong public interest in ensuring that its governance"

is

"consistent with its charitable status".

That matter is not one for debate today, and I hope the Motion will be passed for the Third Reading of the Bill to take place. I have been advised that there is no Report stage—the amended Bill is, in fact, the report—and the Bill will come to your Lordships' House for Third Reading on a date to be agreed.

I thought it right to bring the matters raised by that committee to the attention of the House today, but I hope noble Lords will support the Motion.

Lord Hodgson of Astley Abbotts (Con): My Lords, I had the pleasure of sitting and watching the noble Baroness's committee in action over a lengthy period, and perhaps I may take up the story. I was not a member of the committee, but I have had a long-standing interest in the affairs of the Royal Albert Hall. I, along with other Members of your Lordships' House, am very concerned about the central problem of the governance of the Royal Albert Hall—not the operation of the hall, which is a great cultural institution, as the noble Baroness said, but the way it operates.

The group of which I am one is a cross-party group. There is no party-political angle on this; all parties agree that it needs careful further examination, as the noble Baroness said. No less significantly, we are supported in our endeavours by the Charity Commission, the sector regulator, which has been trying for some years to get the Royal Albert Hall to consider, reflect on and address this problem, so far without success.

The Royal Albert Hall has been a charity since 1967. A central tenet of charity law is that you should not benefit personally from the decisions you take as a trustee of a charity. The hall has a governing body of 25, 19 of whom—three-quarters—are seat-holders. It is they who decide which concerts the seats are to be retained for. They may then either use the seats personally or sell them externally for whatever price the market will bear. It has become an exceptionally profitable activity. For example, Members of your Lordships' House might like to attend this Saturday's Last Night of the Proms, for which they will pay up to £1,000 for a £100 ticket. If your enthusiasm takes you to want to buy a seat, which will have another 700 years to run on the lease, they are currently selling for about £300,000 each. This is a charity.

The Bill before us, which we will discuss in detail later, will not address any of these issues. In fact, some argue it will make them worse. So, the group of which I am a member will be tabling some amendments for discussion, to address the issues, as far as we can, within the provisions of the Long Title of the Bill, at Third Reading.

To conclude, I am astonished that the promoters of the Bill have decided to bring it back. It received an exceptionally rough ride at Second Reading on 19 October last year. The then Attorney-General in her report on the Bill expressed disappointment that more had not be done to resolve the conflict issue in this new Bill. As the noble Baroness said, our own in-house committee reported extremely unfavourably on the way the proceedings were handled. Those arguments are for another day, but in nodding the Bill through, I would like the House to be aware that a significant number of your Lordships are very concerned about what lies behind it.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, I am most grateful to the noble Baroness for her contribution and for informing me beforehand, and to the noble Lord, Lord Hodgson of Astley Abbotts, for doing so also. For private Bills, a revival Motion is a standard practice at the beginning of a Session where a carry-over Motion could not be passed at the end of the last, as set out in Private Business Standing Order 150B. The Bill passed a number of stages in the last session. The remaining stage in this House is Third Reading. Should Members wish to debate or object to the Bill, the appropriate time to do is, as has been advised, at Third Reading and on the Motion that the Bill do now pass and, as I think has been accepted, not on this Motion.

To assist noble Lords ahead of Third Reading, paragraphs 9.53 and 9.54 of the *Companion* state that any amendments proposed to be moved at Third Reading must be submitted at least two days in advance of the stage to my office or the Private Bill Office, and that it is a courtesy that any noble Lord who wishes to speak without proposing amendments notifies my office of their intention to do so. Such remarks should be made on the Motion that the Bill do now pass, not on the Motion for Third Reading. With those housekeeping matters for future stages, I beg to move.

Motion agreed.

Government Policy on Health

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 9 September.

"Unlike our predecessors, this Government cannot get enough of experts. We work with a wide range of stakeholders in developing policy, because that goes to the heart of our approach to mission-driven government. But I think the shadow Secretary of State was referring specifically to the right honourable Alan Milburn, so let me address him specifically. I walked into the Department of Health and Social Care on 5 July to be confronted with the worst crisis in the history of the National Health Service: waiting lists at 7.6 million, more than a million patients a month waiting four weeks for a GP appointment—if they could get one at all—the junior doctors still in dispute and on strike, and dental deserts across huge parts of our country, where people cannot get an NHS dentist for love nor money.

This Government are honest about the scale of the crisis and serious about fixing it, which means that we need the best available advice—it is all hands on deck to fix the mess that the previous Government left. If a single patient waited longer for treatment than they needed because I had failed to ask for the most expert advice around, I would consider that a betrayal of patients' interests. I decide whom I hear from in meetings, I decide whose advice I seek, and I decide what to share with them. I also welcome challenge and alternative perspectives and experience.

The right honourable Alan Milburn is a former Member of this House, a member of the Privy Council and a former Health Secretary. He does not have a pass to the department and, at every departmental meeting he has attended, he has been present at the request of Ministers. During Alan's time in office, he gave patients the choice over where they are treated and who treats them, as well as making sure that the NHS was properly transparent, so that all patients were able to make an informed choice—a basic right that we expect in all other walks of life but which only the wealthy and well connected were able to exercise in healthcare until Alan changed it. He gave patients access to the fastest, most effective treatment available on NHS terms, so that faster treatment was no longer just for those who could afford private healthcare. He made the tough reforms that drove better performance across the NHS and, along with every other Labour Health Secretary, delivered the shortest waiting times and the highest patient satisfaction in the history of the NHS. That is his record and Labour's record, and it is the kind of experience that I want around the table as we write the reform agenda that will lift the NHS out of the worst crisis in its history, get it back on its feet, and make it fit for the future once again".

3.42 pm

Lord Kamall (Con): My Lords, the Minister will know that there have been concerns over Labour's appointment of donors and party apparatchiks with little or no experience to senior Civil Service positions, which have led the Civil Service regulator to launch a review into Labour appointments.

I accept that this case is different. We understand that the Secretary of State is new to the role and inexperienced. We also know that Alan Milburn brings a huge wealth of experience in healthcare both in government and from personal consultancy, advising one of the largest providers of residential care for older people. I have also seen reports that he is a senior adviser on health for a major consultancy firm. I want to be clear, this is valuable experience and I applaud the Government for seeking such experience in the same way that noble Lords welcomed the appointment of the noble Lord, Lord Robertson, to review defence capabilities.

However, I am sure the Minister will also recognise the issue of real or perceived conflicts of interest—something that Labour Peers rightly questioned Ministers on when we were in government. So, in that spirit, I will ask the Minister a few questions about how the Government can look at potential perceived conflicts of interest and how they will be managed. Given Mr Milburn's consultancy interests, can the Minister tell us what his formal role is? Is it a paid role and, if so, how much does he earn? Which meetings does he attend? Does he attend meetings without Ministers

[Lord Kamall]
being present? Are notes taken for these meetings? How do the department and the Government ensure that he does not have access to commercially sensitive documents that could be of interest to his clients?

If the Minister cannot answer all these questions, I ask her to write to me and other noble Lords with answers and place a copy in the Library. Let me be clear, I completely understand why the Secretary of State appointed Mr Milburn—due to his experience in government and the private sector. It is valuable experience, from which a new Government could learn. I hope the Minister will accept my questions in the spirit of ensuring that the conflicts of interest are managed and there is real accountability, so that the Government can get the best out of Mr Milburn in his new role.

Lord Kennedy of Southwark (Lab Co-op): Before the Minister responds, I make it clear that these should be questions, not speeches.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Merron) (Lab): My Lords, to set out some key points in respect of the right honourable Alan Milburn, he has no formal role in the department. Therefore, the conflicts of interest the noble Lord referred to do not even arise. The main thing I would like to set out is that it is very important to make a distinction between the areas of business and meetings in the department about generating ideas and policy discussion—it is those in which Mr Milburn has been involved, at the request of the Secretary of State—and the very different meetings about taking government decisions. If I might summarise it for your Lordships' House: Ministers decide, advisers advise.

Lord Wallace of Saltaire (LD): My Lords, I declare a certain puzzlement at this Question. I recall, when the Conservatives were in office, reading regularly on the front page of the *Times* that donors had been talking to the Prime Minister or various Cabinet Ministers about government policy and expressing strong views on which direction they should take in various areas. As an academic, I am also well aware of the extent to which expertise comes into government through informal channels.

On one now famous occasion, which was not reported at the time, a number of experts on the Soviet Union whom I knew well were invited by Margaret Thatcher to an informal seminar in No. 10 to advise on whether the Foreign Office or Margaret Thatcher's advisers were correct in their attitude to the Soviet Union. A number of the academics suggested that the Third Secretary of the Communist Party, then a man called Gorbachev, was a good person to get to know. Mrs Thatcher took their advice rather than that of her advisers and it had a remarkably positive impact on British foreign policy. Do the Government accept that all informal contact with outside experts is desirable and that it is a good thing, where possible, that it should be reported?

Baroness Merron (Lab): It is right that people from outside government come into departments to lend their expertise and share their views and that Ministers make decisions without those people involved. That was the line I was trying to draw. The Secretary of State for Health is very fortunate to be able to turn to every living former Labour Health Secretary, from the right honourable Alan Milburn through to my noble friend Lord Reid, Andy Burnham and many others, because all of them have offered to roll their sleeves up and assist us. Perhaps I could remind your Lordships' House that, between them, they delivered the shortest waiting times and highest patient satisfaction in the history of the National Health Service. I hope that we will be able to do justice to their experience.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, does the Minister agree that this is very different, because the Minister is taking advice from people with huge experience, and it is open and above board? This is unlike when Boris Johnson was Prime Minister, and his wife Carrie Johnson apparently made a number of decisions, including the appointment of Ministers. Was that not something we ought to be worried about, rather than this open and sensible arrangement we have now?

Baroness Merron (Lab): My noble friend makes an important distinction, and I would certainly share that view. It is worth reminding your Lordships' House that ministerial meetings that are attended by third parties are declared in a quarterly transparency publication in the established way. Of course, this will be done. I can tell your Lordships' House that I had a meeting with the right honourable Alan Milburn, and it was very useful.

Baroness Finlay of Llandaff (CB): My Lords, I should declare an interest because I was on the Times Health Commission. We took evidence from a wide range of people, including the person mentioned. Can the Minister provide assurances that, whenever people are consulted, they are routinely asked to declare their interests; that any declaration of interest is repeated not only at the first meeting but whenever other people are present so that it is well known; that the consultation goes widely; and that there is no overreliance on a small number of people? We at the Times Health Commission found that, by consulting widely, we were able to hear very conflicting views, which was helpful and formative.

Baroness Merron (Lab): I thank the noble Baroness for sharing her experience of consulting widely. It is certainly entirely legitimate for government departments to do just that. However, those who do not have a formal role are not required to declare interests; it is different for those who have a formal role. Requiring them to do so would mean, for example, us sending forms in advance to Cancer Research UK before it comes in to talk to us about cancer and to assist us. Would we want that? We would not. Of course, where there is a formal role, we absolutely do that.

It is probably worth saying that a particularly high-profile invitation went from the Secretary of State to the noble Lord, Lord Darzi. He will report shortly on the true state of the National Health Service. He does not have a specific role in the department but he has

been invited by the Secretary of State to assist; I believe that he will assist both your Lordships' House and the other place.

Baroness Bennett of Manor Castle (GP): My Lords, when the Green Party consults on health policy, among the organisations it consults are the Socialist Health Association, Keep Our NHS Public and 999 Call for the NHS—all organisations that are greatly concerned about the continuing privatisation of the NHS. Can the Minister tell me whether the Secretary of State or she herself have had meetings with any of those three organisations since coming into government?

Baroness Merron (Lab): I cannot answer that, I am afraid. I would be very happy to look at it for the noble Baroness.

Lord Markham (Con): Although I understand completely the role of advisers—obviously Alan Milburn is a very reputable adviser—where is the line? My concern is that, when an adviser has a pass, has been in meetings without Ministers present and has perhaps directed civil servants in those meetings, a line has perhaps been crossed. I would welcome assurances from the Minister that this has not occurred and that there have not been any meetings where Alan Milburn has been there without Ministers—in effect, directing policy with no formal role.

Baroness Merron (Lab): The right honourable Alan Milburn has not been directing policy; he also has no pass. I hope that is helpful to the noble Lord.

Post Office Horizon: Redress

Statement

The following Statement was made in the House of Commons on Monday 9 September.

"With your permission, Madam Deputy Speaker, I would like to update the House on the Government's response to the Horizon scandal.

My priority as the new Secretary of State is to ensure that victims of the scandal receive the redress that they deserve. Over the past few weeks, I have begun meeting with some of the postmasters whose lives have been so badly damaged by those events. Their stories are harrowing, but their resilience and steadfastness in seeking justice are inspiring. I am also grateful for their candour in sharing insights on how the various compensation schemes can be improved.

May I make a personal point, Madam Deputy Speaker? I know I speak for honourable Members across the House when I say that it fills me with sadness to have to stand here today and address such a significant failure of the state. The role of government must be to do right, seek justice and defend the oppressed, yet Governments have too often had to be forced into action by brave, tireless and resilient campaigning. Once again, I pay tribute to the Justice for Subpostmasters Alliance, and to campaigners such as Jo Hamilton, Lee Castleton and Sir Alan Bates—incidentally, I add my personal congratulations to Sir Alan on his recent wedding. Without their tireless efforts, justice may well never have been done in this case. As we stand here today, in the shadow not just of this scandal but those of Grenfell, infected blood and several more, I know that it is the firm conviction of everyone in this House that we must do better. This is an issue not of politics but of justice.

In that spirit, I cannot speak of the new Government's work to address this wrong without again acknowledging and appreciating the work of Lord Arbuthnot and the new Lord Beamish—formerly the Member for North Durham—as well as that of my friend the honourable Member for Thirsk and Malton (Kevin Hollinrake) as Minister. The announcements that we make today are built on their efforts to hasten redress payments and quash wrongful convictions.

Earlier in the summer, the new Government announced the launch of the Horizon conviction redress scheme. I am pleased to report that the first payments have been issued and good progress made on processing the claims received to date. As was the case for the group litigation order compensation scheme, the department will be setting a target to make, within 40 working days, the first offer to 90% of those who have submitted a full claim. Additionally, the Post Office has now settled over 50% of cases on the overturned convictions scheme, with 57 out of 111 cases fully settled. The department has also now received over 50% of GLO claims and settled over 200 of them.

Progress has also been made on implementing the £75,000 fixed-sum awards on the Horizon shortfall scheme. As of 30 August, over 1,350 claimants who had previously settled below the £75,000 threshold have been offered top-ups to bring them to that amount, and the Post Office will shortly begin making fixed-sum offers to new claimants. Those interventions will have a significant impact on ensuring that postmasters can access redress swiftly and simply. However, we recognise that this option will not suit everyone and does not address all the concerns raised by postmasters and their representatives. That is why we are taking further action today.

The Horizon Compensation Advisory Board recommended last year that we introduce an independent appeals process for the Horizon shortfall scheme. Today I am pleased to announce that we have accepted that recommendation. That appeals process will enable claimants who have settled their claim under the HSS to have their case reassessed, with the benefit of any new information that they were not able to include in the original application. It will be delivered in-house by my department, and we will apply the lessons learned from redress schemes to date to ensure that the process is easy for postmasters to engage with and that outcomes are delivered at pace. We will announce further details in the coming months.

There will be no obligation for postmasters to appeal their settlement, and no doubt many will be content that their claims have been resolved fairly. I know that financial redress will never fully compensate victims for their suffering, but we want to help bring some closure to postmasters as soon as we can, which is why we will establish the new appeals process as quickly as possible.

In summary, the new Government will do everything in our power to deliver justice for postmasters, to bring them closure and to ensure that such a national tragedy is never allowed to happen again. I commend this Statement to the House."

3.53 pm

Lord Johnson of Lainston (Con): My Lords, I thank the Secretary of State for yesterday's Statement. It does not need to be repeated today but our team appreciated seeing a copy of it in advance. We share the view of this whole House that compensation must be delivered promptly and with minimum friction. We all, I think, welcome the new appeals process for those who have historically settled their claim under the Horizon shortfall scheme set out in this Statement. Clearly, we also welcome the implementation of the Horizon Compensation Advisory Board's work. However, we have a few questions coming from this Statement; I am sure that some have them have been covered in the intervening period but I would be grateful if the Minister could enlighten the House.

The new appeals process will, as we understand it, be open to claimants who have settled their claims but who have new information to present. However, all of us in this House know that these processes are cumbersome and complex. The question is whether the process can be open to all claimants and not just those with so-called new information—and of course the categorisation of new information is in itself complex. To clarify, if people choose the £75,000 top-up, can they still appeal? When will the appeals process be up and running, and can the Minister confirm that those individuals will be entitled to legal representation and general support? I appreciate that we may need to be written to in response to some of those questions.

On compensation payments, can the Minister comment on the fact that, as I understand it, only six claims have been offered through the Horizon convictions redress scheme? As I understand it, no full and final settlements have been reached, which is a bit extraordinary, and we should look very closely at this. I hope that the Minister does not mind the pressure that this House will bring to bear on her to answer that question.

I also understand that only 130 letters of around 700 quashing convictions have been sent. Can the Minister comment on this? Again, that seems an extremely low number, given that we were debating this issue three months ago and the Government then were very committed to sending the letters out as quickly as possible. I am sure that we fully understand that there are some people who may be hard to contact, or there may be specific issues around communication, but this is really the wrong way around. The last Government were working with Sir Gary Hickinbottom to be appointed across all schemes to expedite claims. I am not sure whether that has been confirmed; it may have been, but if the Minister could confirm that, it would be extremely helpful.

Finally, I am afraid that it is understood via my colleagues, and the extraordinarily strong work previously done by Kevin Hollinrake in the other place in communication with the victims of this situation, that the process is being slowed—as has historically been the case but really should not be the case now—by lawyers arguing with lawyers. Are we really moving fast enough, and do we have a proper culture among the public servants of the department, and in the Post Office and the various different organisations helping to expedite this process, to ensure that we are doing the right thing as rapidly as possible?

For all Members of this House, how we deal as a nation with this disgraceful scandal will be the mark to which we will be judged. No one party, Minister or official can carry the specific blame; it really was an entire system at fault—a statist culture of bureaucratic indifference of the worst sort. I hope that the Government will continue to look into the culture that allowed these sorts of situations to arise, and particularly into the role of various government departments, civil servants and the public prosecutor's office. Who at the top of the tree should bear responsibility for these actions, and what are we going to do, very importantly, to change the culture and the lines of the reporting?

I very much commit this side of the House—the Opposition—to work closely with the Government to make sure that we are as supportive and collaborative as possible, supporting the Minister in making sure that we get redress for the victims of this terrible tragedy.

Baroness Brinton (LD): My Lords, I echo the comments of the noble Lord, Lord Johnson, about the Government's Statement being very welcome and the attempt to try to unscramble some of the complexities of the scheme, but from these Benches too we are concerned about the low level of conclusion of cases, despite the process. I echo his questions about how this is being managed. Mindful that there are other inquiry redress processes that have hit problems and have had to repeatedly be redesigned, my first question to the Minister is to ask whether she is absolutely convinced that she has addressed all of them. I shall come on to a couple of specific points.

Chris Head, a former sub-postmaster who lost everything when he was wrongly accused of theft, has spoken up since the publication of the statements with some concerns, saying:

> "The remit of the appeal process cannot be restricted to only those that produce new evidence. Many people have been materially disadvantaged by not having access to legal advice and interim payments that were only introduced in November 2022. This appeals mechanism must be available to everyone that has settled claims since the scheme launched in 2020 to ensure they are properly compensated back to a position they would have been in had the scandal not happened".

Members of your Lordships' House, including the Minister, I think, have repeatedly raised concerns about the difference between these various schemes for different sub-postmasters and staff. While it is good that the Government want to have an independent appeals process for the HSS, I remind her that the complex redress schemes arising out of other tragic scandals have had to be adapted. It took the work done on the Victims and Prisoners Act to create the infected blood compensation scheme earlier this year—with an enormous amount of energy—to untangle all the different parts of that redress scheme. Does the Minister recognise

that Mr Head and others have valid concerns about inconsistencies between the schemes, and that trying to sort all this out now, at pace, as was done with the infected blood scheme, must be a priority?

I want to raise two other issues briefly. First, on the predecessor package to Horizon, known as Capture, I raised the issue of the postmasters and staff who lost their jobs because of Capture, some of whom were also prosecuted but many of whom were sacked. The *Independent* newspaper and ITN have given voice to these victims. When will the Government's own investigation into Capture be published and when will they update your Lordships' House on its findings? Should redress be due, will it be incorporated into the existing postmasters' scheme, or will there have to be a brand-new one?

Finally, in July, my noble friend Lord Fox raised again the issue of those not included in the overturning of convictions because they had appealed their cases and lost in the Appeal Court. Both he and I had helpful discussions with the previous Minister. The concern was expressed that the judiciary, in particular, had felt it was wrong for this group of victims to have their cases overturned under the legislation in the summer, because there was some merit to other parts of the cases brought against them. Yet, that question was not asked of any other case whatever, only those that went to appeal. Are the Government prepared to reconsider that? What now exists in the redress scheme is a small group of people who have to have an exceptionally high bar of going to the Criminal Cases Review Commission, hoping that it will refer their cases back to the Court of Appeal. This seems unfair and particularly long term, which means these victims will not get resolution for a long time to come.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Baroness Jones of Whitchurch) (Lab): My Lords, first, I thank the noble Lords for raising these points on what is clearly a very important issue. I have to say that it upsets me greatly to hear of the harrowing experiences postmasters faced over so many years. I understand and have the utmost respect for their wish for full, fair, speedy redress, for answers from the inquiry about what went wrong and for people to be properly held to account for what has happened. This scandal represents one of the biggest miscarriages of justice of our time, and it is crucial that we get redress for those affected as quickly as possible. This is what we are focusing on as a Government—fair and timely redress for postmasters—and we will continue to work with and support the Post Office Horizon inquiry as it carries out its vital work in establishing the facts about what went wrong in this scandal.

Before I turn to the specific questions raised, I pay tribute to the tireless campaigning of the Justice for Subpostmasters Alliance, to all the many postmasters who have championed this cause and to Sir Alan Bates and Lady Suzanne, whom I congratulate on their recent wedding. I also thank members of the advisory board, including the noble Lords, Lord Beamish and Lord Arbuthnot, who are members of the Horizon advisory board. I thank them for their advocacy for postmasters affected by the scandal over many years and for their hard work in helping the Government improve the delivery of redress. We shall continue to listen to their advice.

Turning to the subject in hand and the questions the noble Lord and the noble Baroness asked, we will look to establish the new Horizon shortfall scheme appeal process announced yesterday as quickly as possible. Postmasters' stories are harrowing, but their resilience and steadfastness in seeking justice are inspiring. The Government's priority is ensuring that the victims of the scandal receive the redress they deserve. We want to help bring some closure to postmasters as soon as we can. I cannot give an exact timeline today, but it is likely that it will be launched in the new year. We will keep postmasters updated on its development.

I can reassure noble Lords that legal advice will be available from the outset for those who enter the appeals process. We want the appeals process to be available to all those who are not satisfied that they received the correct amount of compensation. As in the case of the broader design of the process, we will engage with postmasters and the advisory board on the detailed approach before agreeing and setting out in due course details on eligibility criteria.

The appeals process is intended to support, in particular, those who have settled their claim but feel that they were unable to set it out in full in their initial application. There are a variety of reasons why postmasters may have been unable to do so, and these will be considered when designing the process and its eligibility criteria. It will also be open to more recent applicants who have not yet settled and are unhappy with the offer they have received from the Post Office. However, on the specific question from the noble Lord, those who have accepted £75,000 are not eligible for an appeal. They were told this at the outset, when they accepted the payment.

The Government are committed to ensuring that we support postmasters affected by the Horizon scandal to get the redress they deserve. We plan to continue to work in a cross-party way on this important national priority, which of course was highlighted so well by the ITV drama "Mr Bates vs. The Post Office" earlier this year, and in last night's follow-up documentary.

The noble Baroness asked about the investigation into the Capture software. We expect to receive this report shortly, and the conclusion of this exercise will support the Government in determining whether postmasters faced detriment due to the Capture system and what steps should be taken based on the conclusions of the investigation.

The noble Lord asked how many payments have been made for the Horizon convictions redress scheme. As of 30 August, we have made six interim payments totalling £1.2 million. As of 6 September, 178 letters have been issued by the MoJ. On the issue of the MoJ letters, as the Secretary of the State said yesterday, the state of the records has, sadly, delayed the process. This is a real frustration, but I hope that noble Lords will understand that, after everything people have been through, we should not take the risk of sending out a letter incorrectly. The Government are grateful for the support of the HSS appeals mechanism.

To all those who think that this is not moving fast enough, I can reassure them that we are moving at speed on this issue. There are a huge number of technical

[Baroness Jones of Whitchurch]
and legal issues that we are still ironing out, but we understand the need to move and resolve these issues at speed.

In response to the noble Lord's point about cultural issues, I agree they are important, and I hope they will come out in the final phase of Sir Wyn Williams's inquiry. Hopefully, we can follow it up and act on it.

4.08 pm

Baroness Berridge (Con): My Lords, I served on the Select Committee on the Inquiries Act, and, as outlined by the noble Baroness, Lady Brinton, it is clear that there are a number of schemes set up in a number of ways. Although, as in court cases, the compensation arises from very different circumstances, there could be standard tariffs or set amounts in certain instances. Can the Minister assure us that there are meetings between the departments running these schemes, and that we are not going to see headlines about the care of someone in a home, saying they got this amount from one scheme and that amount from another? We need to make sure that every avenue is sealed off, so that the compensation is fair.

Baroness Jones of Whitchurch (Lab): The noble Baroness makes a very fair point. We do have a number of schemes with different eligibility criteria. We are doing everything we can to standardise them and to make sure that people are treated fairly. Of course, people are at different stages in the process. Some have already started their applications, while others have yet to do so. We are doing everything we can to make sure that everyone is treated fairly and in the way they should be, following this terrible scandal.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank my noble friend the Minister for her very detailed Statement in relation to this egregious issue that goes back so many years. So many sub-postmasters were wrongly convicted and wrongly maligned.

Will sub-postmasters in Northern Ireland be eligible to apply to this appeals system? They were similarly affected and some of them were similarly prosecuted. Also, some sub-postmasters have said to me that the original compensation scheme has been too slow in reaching them. So I would like assurances that the appeals system, where it applies, is acted on expeditiously.

Baroness Jones of Whitchurch (Lab): Again, my noble friend makes a very important point about speed. I think I have reiterated that we absolutely get and understand that message. I hope that, when people come to look back on the actions we have taken, further delays will not be one of the criticisms that come to mind, because I really feel that we are acting at the absolute top rate that we possibly can.

With regard to where there are specific arrangements in Northern Ireland, I apologise that I do not know the answer to that. I will write to the noble Baroness.

Lord Bellingham (Con): My Lords, in my capacity as an MP in the other place, I came across a number of cases of sub-postmasters and sub-postmistresses who were investigated and subject to the most enormous amount of stress and financial hardship, but then simply handed in their lease because they had had enough. They have since been completely vindicated. Many of this particular cohort appear to be falling by the wayside in terms of compensation. What do HMG plan to do about them?

Baroness Jones of Whitchurch (Lab): My Lords, I hope that the individuals to which the noble Lord refers will be picked up by one of the number of schemes we now have. We now have what I hope is a comprehensive set of schemes that apply to all circumstances, so my understanding is that people who left because they were suffering hardship while not necessarily having a conviction should be covered by the scheme.

Lord Leong (Lab): I beg to move that the House be adjourned for a period of five minutes.

4.12 pm

Sitting suspended.

Lords Spiritual (Women) Act 2015 (Extension) Bill [HL]

Second Reading

4.17 pm

Moved by ***Baroness Smith of Basildon***

That the Bill be now read a second time.

The Lord Privy Seal (Baroness Smith of Basildon) (Lab): My Lords, this is a rather straightforward Bill that does not seek to make any fundamental changes or reforms to the composition of your Lordships' House. Its only effect is to extend by five years the arrangements in place for the appointment of Lords spiritual contained in the Lords Spiritual (Women) Act 2015. Like the 2015 Act, the Bill has been introduced at the request of the Church of England and I look forward to hearing today from the Convenor of the Lords spiritual, the right reverend Prelate the Bishop of St Albans, and the right reverend Prelate the Bishop of Derby. I think all noble Lords will agree that we are grateful to the right reverend Prelate the Bishop of St Albans for the letter about the Bill that he sent to all Peers who are speaking today.

As your Lordships are probably well aware, the 26 bishops in your Lordships' House are determined under a process set out in the Bishoprics Act 1878. Five seats are automatically allocated to the most reverend Primates the Archbishops of Canterbury and York and the right reverend Prelates the Bishops of London, Durham and Winchester. The remaining 21 seats are filled on the basis of seniority—that is, the length of tenure in post. As your Lordships also know, changes to allow women to become bishops were made in 2014. Because of the rules of seniority, we would have had to wait many years before these women would have been eligible to receive their Writs of

Summons, become Lords spiritual and be welcomed into your Lordships' House. As the most reverend Primate the Archbishop of Canterbury pointed out in 2015, this would have created a situation whereby women were prominently involved in the Church leadership but unrepresented in your Lordships' House.

While the pre-2015 rules of seniority would have eventually enabled female bishops to receive their summons to our seats, the process would have taken an unacceptably long time. To address this, and at the Church's request, the House passed legislation in 2015 to fast-track female bishops to these Benches. Since its passage, the 2015 Act has helped to deliver, in a timelier fashion, the greater balance of voices that these Benches need. This has complemented the Church's own efforts to diversify its leadership over the years, particularly since it agreed to the consecration of female bishops in 2014.

As Ministers, the noble Baroness, Lady Garden of Frognal, and the noble Lord, Lord Faulks, spoke eloquently on the merits of the 2015 Act when the House debated it almost 10 years ago under the coalition Government. Since it was enacted, its value has been demonstrated. We have seen the benefits of the 2015 Act materialise by way of the six female bishops who have sat in your Lordships' House earlier than they otherwise would have done. Within six months of the commencement of the 2015 Act, the House had the pleasure of welcoming the right reverend Prelate the Bishop of Gloucester. She broke new ground in two important respects—by becoming the first female diocesan bishop and first female Lord spiritual. I welcome her presence and that of the other female bishops who have since joined this House. I am sure that your Lordships will agree that they have all made valuable contributions to the role of this House.

While significant progress has been made through legislation, there remain only six female bishops on the Lords spiritual Benches today. The 2015 Act is due to expire in 2025, so the five-year extension provided for in today's Bill allows more time for the original legislation passed in 2015 to operate. The Bill means that if any of the 21 Lords spiritual seats allocated on the basis of seniority become vacant between now and 2030, they will be filled by the most senior eligible female bishop if any are available at that point. Without the Bill, the provisions of the 2015 Act would expire in May 2025.

Five years represents an appropriate length of time to allow the positive effects of the 2015 legislation to continue. It will enable a longer period in which to accelerate the appointments of female Lords spiritual, while recognising the progress that has been made by the Church so far. This will help to ensure that we continue to address an historic disadvantage: the barriers faced by women with respect to the Church and, by extension, membership of this House.

At Second Reading of the 2015 Act, the most reverend Primate the Archbishop of Canterbury said that the 2010 Parliament would be

"the last Parliament where any Bench of either House is occupied solely by men".".—[*Official Report*, 12/2/15; col. 1366.]

I am glad to say that his prediction was correct. I look forward to today's debate and I beg to move.

4.20 pm

Baroness Neville-Rolfe (Con): My Lords, I thank the Leader of the House for her clear introduction, which I will not attempt to repeat. Like her, I also thank the Church of England for making the request. I look forward to hearing from the right reverend Prelate the Bishop of St Albans, Convenor of the Lords Spiritual, and the right reverend Prelate the Bishop of Derby.

I say straightaway that we support the Bill on this side of the House. It rightly rolls forward the arrangements debated and agreed without a Committee stage in 2015. This is an even shorter Bill—it simply extends the sunset clause that was agreed then and provides that female bishops will join the Lords spiritual slightly sooner than they would otherwise have done.

Of course, the presence of the Lords spiritual reflects the enduring constitutional arrangement of an established Church of England, with our monarch and Head of State as its supreme governor. Since the last debate, we have a new monarch, following the sad death of our much-loved Queen Elizabeth II and the accession of King Charles just two years ago. I was delighted at church on Sunday to hear our vicar thank the Government for making a fine portrait of our new King available for free to his and other churches across the country. I pass on these thanks to the Minister and to those in the Cabinet Office, who I know have been working so hard on this appropriate memento of the new Carolean era.

We also thank all those women bishops who have served in our House since 2015, including the now retired Bishop of Newcastle, who became a friend. We are appreciative of all they have done, leading us in prayer as well as bringing a new perspective to debates.

Looking back at the debate on the last Bill on 12 February 2015, I see there was some discussion about whether it was right to leave untouched the five ex officio sees—those led from the historic cities of Canterbury, York, London, Durham and Winchester. I think it is right that these sees should remain open to a wider pool of experience and I note with approval that, since the last debate, these have come to include both a female Bishop of London and a former Archbishop of York.

There was also concern about fairness in the debate, particularly in relation to those senior clerics, such as the then Bishop of Lincoln, whose elevation to Parliament might be delayed. But there was agreement that there was a generosity of spirit from him and others that meant this would not be a problem in the event. I am so sorry that my noble friend Lord Cormack, who was taken from us so suddenly, is not here to contribute and bear witness to the success of the changes that he was very concerned about. On a wider note, he loved Lincoln Cathedral and helped to get it to the top of a national poll of favourite cathedrals. My own favourite, Salisbury Cathedral, also did well. One of my greatest pleasures as a DCMS Minister was to visit the many cathedrals for which the last Government provided funding under the First World War centenary cathedral repairs fund and to hear some of our wonderful cathedral choirs.

Other absent friends who spoke included Baroness O'Cathain, Baroness Perry and Baroness Trumpington. I mention them because all three charted an important

[Baroness Neville-Rolfe]
path as female flag-bearers and mentors. They understood the vital role women priests have played in keeping the Church of England afloat in challenging times, making the position of women bishops in the House of Lords particularly important.

It was agreed at the time that the 10-year span of the previous Bill was sufficient to provide the space needed to look at how well this legislation was working and what would happen thereafter. In the event, this was insufficient, and the result is today's Bill, which I fully support; hopefully, this is the last such request. With six women bishops now in our House, fewer I suspect than expected, my only gentle question to the noble Baroness the Lord Privy Seal, and to those speaking for the Church, is why a five-year extension has been chosen rather than 10. Does this presage work taking place on some alternative pattern of reform and, if so, what is envisaged? I feel we should be told. Certainly, it would be wrong to find ourselves being asked for another extension in just five years' time.

4.27 pm

Baroness Brinton (LD): My Lords, I remember with real excitement Petertide in 1994, because my school friend Angela Berners-Wilson was ordained and, because of the timing of the ordination service and the fact that her name began with B, she was the first woman ordained that day and is deemed to be the first woman ordained in the Church of England.

I was equally excited the day that the right reverend Prelate the Bishop of Gloucester joined your Lordships' House as the first woman diocesan bishop. Rachel Treweek started a new part of history for women in our country. However, it would be more correct to say that women spiritual returned to your Lordships' House because, even before Magna Carta and the King's Council, it was noted by Gurdon, in his antiquities of Parliament, that

"ladies of birth and quality sat in council with the Saxon Witas".

In Wighfred's great council at Becconfeld in AD 694, abbesses sat and deliberated. Five of them signed decrees of the council, along with the king, bishops and nobles.

More significantly, during the reigns of Henry III and Edward I, four abbesses were summoned to Parliament. They were from Shaftesbury, Barking, Winchester, and Wilton. Noble Lords may wonder why I go back so far in history. I grew up near Shaftesbury and my mother was involved in the archaeology at Shaftesbury Abbey around that time and we, as a family, were brought up on the story of the Abbess of Shaftesbury.

It is important to note the contribution of our women Bishops. I believe they strengthen the Spiritual Benches and your Lordships' House through a combination of wisdom and bringing their own worldly experience to the House.

It is such a shame that the Church of England has to revisit this issue, as it was hoped back in 2015 that 10 years would be long enough to ensure that there were enough women diocesan bishops that the Lords spiritual would have some semblance of a gender balance. As somebody who had to organise gender balance among parliamentary candidates in my party, I realise that it is never an exact science. While there is welcome progress, the Lords spiritual still have the lowest proportion of females in the main groupings, at 24%.

It is a most unusual situation and arrangement to have places in a nation's legislature determined by a process within a Church and by an external organisation, albeit one whose rules pass in this Parliament. Gender balance of the composition of the legislature is reliant on that process working, so unusual is perhaps a bit of an understatement.

My concern is that one has to reflect on whether extending the law will work or could in fact be a perverse incentive not to appoint women as diocesan bishops. Is this one of the reasons that only two of the last 11 appointments have been women? Without the extension, only men on the Lords spiritual waiting list would join the House, but even with the Bill we could end up with only men. In the next five years there are 14 retirements due, and the replacements—bar the Bishop of Peterborough, who will replace the right reverend Prelate the Bishop of Worcester—would be men. Surely that would be unfortunate, to say the least. Two of the last three vacancies have failed to appoint.

Surely this is also avoiding the well-overdue question of how many bishops, if any, should be in Parliament—a matter last considered in 1878, which is recent history for your Lordships' House. One cannot also ignore that there are 31 Church of England bishops if one includes the retired archbishops and bishops on the Cross Benches: one of Oxford, one of London, two of Canterbury and one of York. A possible solution might be to celebrate the 150th anniversary of the 1878 Act with either a sunset clause of this Bill in 2028 or a review, which would give the Church time to sort out the process. It has 10 years under its belt; another five might help.

Also, frankly, given the aims of the current Government, it is a good point to review the composition of the Lords more generally. If His Majesty's Government achieve their aim, the hereditary Peers will no longer be here and perhaps it will be time to move on to the next stage of reforms for your Lordships' House.

4.32 pm

The Lord Bishop of St Albans: My Lords, I am grateful to the Minister for her opening remarks. I put on record my personal thanks and those of the Church to His Majesty's Government for securing time to bring this Bill forward, and to the Opposition for giving their support to the proposal. I hope that this will be a relatively simple and straightforward piece of business and that we may not need to detain the House for too long.

The Bill, if passed, will extend the Lords Spiritual (Women) Act 2015, due to come to an end in 2025, for a further five years to 2030. In our view, this is a reasonable extension to a successful piece of legislation. Prior to the 2015 Act, the 26 bishops who sat in this House were determined by the Bishoprics Act 1878: the most reverend Primates the Archbishops of Canterbury and York, the right reverend Prelates the Bishops of London, Durham and Winchester, followed by the 21 longest-serving diocesan bishops in the Church of England.

The 2015 Act altered the operation of the 1878 Act, providing that, for the next 10 years, any time a vacancy arose among the 21 Lords spiritual whose places are determined by seniority, the vacancy would be filled by the most senior female diocesan bishop available, effectively allowing women to jump the queue ahead of men.

The General Synod approved legislation allowing women to become bishops only at the end of 2014. If the usual operation of the 1878 Act had continued, it would have been a considerable number of years before any female diocesan bishops—having had to wait a long time before they were able to take up these senior roles—had been able to enter this House. That was the rationale behind the introduction of the original 2015 Act, which we are now seeking, with the support of the Government, to extend for a further five years.

As a result of the original legislation passed in 2015, we now have six female diocesan bishops sitting as Lords spiritual in this House. Apart from the right reverend Prelate the Bishop of London, they have all come in under the existing Act. We have been able to benefit from the exceptional insights and wisdom of the likes of my right reverend friends the Bishops of Gloucester, Bristol, Chelmsford, Derby and, most recently, Newcastle. My right reverend friend the Bishop of Newcastle's predecessor, Christine Hardman, whom I am sure many noble Lords will remember, became a bishop quite late in life. Had she had to wait in the queue, as per usual rules, she would never have come here at all. We are now awaiting the arrival of another woman, Debbie Sellin, Bishop of Peterborough, within the next few weeks.

To come to the point, which is the five-year extension of the Act, I think it prudent to confess that we in the Church have made slower progress than we had hoped when it came to ensuring that our senior clergy are representative of the diverse congregations we serve. This is true both of women and of ethnic and racial minorities. We do not yet have proportionate representation of female bishops on these Benches, or in our diocesan bishops. Were the provision in the Act to come to an end next year, as was the original plan, I fear we would not have achieved our goal of corrective action when it comes to the long delays to women's ministry and appointments to senior positions within the Church of England.

At the time of the 2015 Act, the most reverend Primate the Archbishop of Canterbury commented that the duration of the Act's provisions was a matter of judgment and that we could not entirely predict or foresee the pattern of appointments over the coming years. Unfortunately, that pattern has not consisted of as many female bishops as we had hoped, and we humbly ask this House to grant us a little longer to ensure that our excellent and qualified women bishops have enough time to overcome this barrier.

However, the pipeline is crucial. If you look at the statistics, the number of women incumbents in our parishes has been steadily increasing. The numbers of women archdeacons, cathedral deans and suffragan bishops are increasing. Like many professions, we have the problem of getting the pipeline right when making these changes. If the pipeline was going in a different direction, I would be very concerned. It is, at the moment, going in the right direction.

The view of the Church is that we intend this to be a one-off and do not anticipate needing a further extension to the Act, although of course we are at the service of this House. Personally, I strongly hope to see in five years a proportionate number of our female colleagues in post as diocesan bishops and in the pipeline for vacancies in this House, and the usual rules of the 1878 Act to resume.

4.37 pm

Lord Birt (CB): My Lords, no one will stand in the way of promoting greater gender equality in any grouping in this House, but I would like to express my disappointment that a new, and so far decisive, Government are not preparing a comprehensive, holistic and long-overdue approach to the overall reform of this House, including the representation of the established Church—a process hinted at by the noble Baroness, Lady Brinton.

I support the plan to end the birthright of hereditary Peers to sit in this House—it is a feudal anachronism. That said, many individual hereditaries reach here on personal merit, as we all know, and I hope that a way can be found to retain those who make a most distinguished contribution to our proceedings.

The guaranteed representation of the Church of England in this House is a second feudal legacy, embedded centuries before the notion of democracy gathered pace. Its representation produces many peculiarities. For instance, it is essentially the Government who appoint bishops. I used to work at No. 10 alongside a most delightful and extraordinarily able civil servant, one of whose jobs, when a bishopric fell vacant, was to take soundings in the diocese—and more widely—and recommend who should be appointed as its bishop. Accordingly, No. 10, not the most reverend Primate the Archbishop of Canterbury, announces the appointment of a new bishop. Church and state are very definitely not separate.

As this proposed legislation underlines, Bishops take their turn to sit in this House—except in the case of what I think is a bizarre anomaly. We heard the example earlier: if you are appointed the Bishop of Winchester, you are automatically and immediately entitled to a seat in this House. That is extraordinary.

Moreover, the Anglican Church may be represented in this House but it denies its clergy the right under law passed in this House and enjoyed by the rest of the citizenry to enter a gay marriage. Thus, that charming and witty national treasure, the Reverend Richard Coles, was denied the right to marry the man he loved. That is a shocking, unholy, indefensible anomaly.

There are other and very fundamental reasons why embedding representatives of a single church in this House is no longer appropriate. In the 2021 census, almost everyone—56 million people—answered the question about their religion. Less than half of the UK's population declared themselves even to be Christian, and 22 million people declared themselves to be of no religion. In other surveys, more people say that they do not believe in God than believe in one. Of those who identify as Christian, only 21% are Anglican. More claim to be Catholic than Anglican.

The reality is that we are now an incredibly diverse society—a society comprising people embracing many faiths and none. We should not embark on a long-overdue

[Lord Birt]
radical reform of this House without recognising that fact, and that embedding the Church of England in our legislature is an indefensible, undemocratic anomaly.

That said, the greatest strength of this House is its diversity—its range of expertise, perspectives and experience. I have the greatest possible respect for the individual qualities and inherent goodness of the many leaders from many faiths whom I have met in my time. I think, for instance, of the outstanding and sensitive work of Bishop James Jones in leading the inquiry into the Hillsborough tragedy. I hope and expect to see faith leaders of every kind represented in a reformed House, but appointed on individual merit, not as exercising a right existing in one form or another for half a millennium.

Finally, I say to the new Leader of the House, another person whom I greatly respect, that piecemeal reform in any domain does not produce effective and enduring solutions. May we please consider the many ways in which this House needs reform, and consider them all together and in the round?

4.42 pm

Lord Scriven (LD): My Lords, I wish to bring a secular voice to the debate on this Bill. If 26 of the established Church's Bishops continue to get automatic rights to sit in the UK Parliament then, as a matter of principle, equality for women to sit here has to be central to that to deal with the institutional misogyny that has created a lack of equality and opportunity for women in the Church of England, and to which new Bishops are appointed to this House. But what a fascinating and interesting position the country finds itself in that the Parliament of the UK must give legislative time to deal with the established Church's centuries of discrimination against women taking senior roles and the slow progress it has made in ensuring that women Bishops have equal rights in this House.

We need to look a bit further at why the established Church has been so slow to deal with this discrimination, to see whether it is really committed to equality for women within its structures and to ensure that it is really committed to dealing with the misogyny and believes in the true equality of women within its structures, which is the basis the Bill is established on.

I ask noble Lords to imagine if a colleague of theirs, due to his deeply held beliefs, refused to follow this manager's instructions simply because that manager was a woman. What would happen? In almost all cases, this would be unacceptable. Places of work would not tolerate it, and would probably find themselves on the wrong side of the law if they did. Although both sex and religion or belief are protected characteristics under the Equality Act 2010, the law is clear that individuals cannot discriminate against their colleagues just because their religion says they should.

However, that discrimination still exists within the established Church, with a whole system that allows this to happen. The language used to describe and hide it is almost poetic. The CofE calls it "mutual flourishing". Does that not conjure up a warm and sunlit world, one of equal relationships where all sides are equal and can flourish and reach their full potential based on mutual respect regardless of their sex or who they are?

In practice, it is far from that. There has been a total abdication of responsibility by the leaders of the established Church since 2014, when women bishops were agreed to by the General Synod. A system has been set up to appease the misogyny—a system that is more about keeping the Church of England together rather than one built on mutual respect and equality for all. It is a system that the present leadership of the Church of England encourages and supports. It is not mutual flourishing but a system of institutionalised misogyny.

In practice, what "mutual flourishing" means is that individual churches can refuse to accept women as priests or vicars. The CofE also permits churches to reject the authority of a female bishop. So the state Church affirms women as equal while at the same saying that it is alright for some churches not to accept them. In fact, nearly 600 churches reject the authority of women and flock under the frocks of what are referred to as "flying bishops". Individual churches are permitted to refuse female vicars and are given the right to be overseen by flying bishops who also oppose women's ordination, instead of their local bishop, male or female, who ordains women.

In fact, the right reverend Prelate the Bishop of London, who has been in her position since 2018, was on occasions required to delegate her authority to the Bishop of Fulham, a more junior bishop. Women in London, as well as elsewhere in the country, have pointed out that churches will not accept their applications for the post of vicar, and it is almost impossible for women to be appointed vicar at some large churches in the capital of this country.

How can it be in 2024 that the state Church is still discriminating against women, who represent about two-thirds of its congregation and half the population of this country? Does the Leader of the House feel it is correct that, ultimately, the Church of England should end its exemption under the Equality Act and stop legitimising the theology that some of its churches use to limit women's ministry and equality when this Parliament is giving time to ensure that women Bishops can sit in this House more equally as a matter of principle? The Church of England loves to give the impression that the battle over women's ministry is all sorted now but let us be clear: there is a long way to go.

From a secular point of view, this raises the wider question of why in 2024, as alluded to by the noble Lord, Lord Birt, some 26 seats in this Parliament are in the automatic gift of the state Church. As the Reverend Canon Ian Gomersall said in an illuminating letter in the *Times* yesterday:

> "The anomaly of having Church of England bishops in the House of Lords is compounded by the fact that the clerics in the Lords are from only one church of only one of the four nations of the United Kingdom. On top of this, the Church of England is not the largest worshipping community in the UK".

In fact, less than 1% of the adult population attends a CofE service on a regular basis.

As the Reverend Canon Gomersall went on to say, removing the Bishops from the House of Lords

> "would be not only an act of fairness and justice but also a step towards developing democracy in parliament. Their removal from the Lords would also give the bishops more time to focus on their diocesan duties at this time when the Church of England is in significant decline".

Any serious proposals to reform the House of Lords must address the unjustified privilege of the state Church Bishops' Bench. Indeed, 62% of the population, when asked, say that no religious clerics should have an automatic right to seats in the House of Lords. That would not stop the contribution of Bishops to this House, if they were appointed on their own merit as life Peers, but, after a century of decline in religious attendance in Britain, the claim that Bishops or any other religious representatives speak for any significant constituency is unwarranted and does not stand up to scrutiny.

Bishops do not have any special insight. The idea that Bishops or any other religious leaders have a monopoly on issues of morality is offensive to many non-religious citizens. Those of us who profess no religion are no less capable of making moral and ethical judgments. Furthermore, tell the victims of child abuse in the state Church—whose most senior leaders turned away from them, refused to believe them, told them to move on and systematically did not deal with the perpetrators of such abuse—that senior Bishops in the state Church have a superior moral compass.

In a democracy, no religion or its leaders should have a privileged role in the legislature. If the Government are serious about reforms to this House, then the Bench that dare not speak its name in such reform—the Bishops' Bench—has to be part of that reform. I ask the noble Baroness the Leader of the House whether the Bishops' automatic right to sit in this House will be part of the consultation that the Government are going to undertake on Lords reform.

4.52 pm

Lord Murphy of Torfaen (Lab): My Lords, about 12 years ago, when I was a Member of the House of Commons, I spoke on the Bill that brought in women bishops for the Church of England. In fact, I went to the Library earlier today to ensure that what I said 12 years ago would chime with what I shall say today and that I had not changed my mind in that decade—and I have not.

It was unusual for me to take part in that debate at that time for two reasons, one of which still is the case. The first is that I am a Roman Catholic—my mother's family were Anglican, but I am a practising Catholic—so what business is it of mine to take part in a debate about whether the Church of England should do this or that? The other reason was that I was an MP representing a Welsh constituency, and the Church in Wales has been disestablished for over 100 years. There are no Welsh bishops represented in the House of Lords. As a Catholic Welsh MP, I decided over a period of nearly 25 years not to take part in debates on these issues because of those two reasons.

However, I decided 12 years ago that I should do so, not necessarily because I agreed with women bishops, although I think I agree with women priests. It will take an awfully long time for my church to get to that position; it needs to get married priests before it gets women priests. I once talked to an eminent Catholic archbishop who said to me, "Well, if you have women priests then the logic says you will have women bishops after that", and I agreed with that. So, when that Bill came before the House of Commons, I supported it, as I support this one and as I support the right of the 26 Bishops to be Members of this House.

I could not agree less with what the noble Lords, Lord Scriven and Lord Birt, said. I respect their views, but I do not agree with them, for a number of reasons. In the first instance, the contributions made to our House by our Bishops are first-class. No, they do not have a monopoly on morality—no one has that—but they talk on issues that are important and they bring a perspective that is different. Women Bishops in particular give a certain perspective that we ought to listen to. Our debates on whole areas, including international affairs and national affairs, are excellent when it comes to the contributions made by our colleague Bishops.

I believe that the Anglican Church is a force for good in our country and in the world. I recall when I was the Secretary of State for Northern Ireland, and before that when I was helping to chair the peace process in Northern Ireland, that the churches—which had over the years a lot to answer for for what happened in that part of our country—were making a particularly important contribution to the peace process. I pay tribute in this place particularly to the noble and right reverend Lord, Lord Eames, who was then the Archbishop of Armagh, and whose contribution to peace in Northern Ireland is second to none. So I do not agree that the contributions are not good; they are good and benefit the people of our country and benefit this House as well.

I also believe it is right to bring a Christian perspective to this House. I suppose when I entered the House of Commons in 1987 more people classified themselves as Christians than they do today, but nearly half of our population still does. I also think that, in the same way that non-Christian people from other faiths attend Church of England and Catholic schools because they believe that there is a moral education that they can get from those schools, so it is that the religious point of view can be expressed through the 26 Bishops on these Benches just below me.

I classify myself as a Christian Socialist—both designations can be unfashionable these days, but they do go together. It was Morgan Phillips, a great Welshman and secretary of the Labour Party, who said that the Labour Party owes more to Methodism than it does to Marx, and I believe he was right. When I joined the Labour Party just 60 years ago next month, there were Labour Party branches in south Wales which opened with a hymn. I am not going to pretend to sing "Cwm Rhondda" in the House of Lords before we conclude this debate, but what I will do is wish this Bill well, wish our Bishops well and wish them continuing membership of this House in the years to come.

4.57 pm

The Earl of Devon (CB): My Lords, it is an honour to speak on this short Bill, which seeks to extend by five years the period in which vacancies among our Lords spiritual are filled predominantly by female Bishops. I support the effort to increase the gender diversity of Lords spiritual and agree that we should seek to increase the diversity of this House more generally so that it better reflects the nation and allows a breadth of opinion to be brought to our legislative efforts.

[The Earl of Devon]

I should note my own interests. I was a one-time Cambridge theologian, I am patron of a number of Anglican parishes in Devon, I am an irregular churchgoer and I am a member of a family with long clerical connections. We count many churchmen—and indeed, I can tell the noble Baroness, Lady Brinton, that my research suggests a couple of churchwomen, including Adelicia, the foundress of Forde Abbey—in the family tree: there are Bishops of Norwich, London, Exeter and Winchester, and even an Archbishop of Canterbury, whose coat of arms as Richard II's Chancellor appear just to the left of the Throne.

I thank the Convenor of the Lords Spiritual, the right reverend Prelate the Bishop of St Albans, for his letter, which was received last night; the detail and background were instructive. Along with him, I wish to put on record my appreciation for the contributions of those female Lords spiritual who have made it into the House as a result of the provisions of the Lords Spiritual (Women) Act 2015, which we are extending with this Bill. The right reverend Prelate's letter also provided helpful statistics, including the fact that 33% of ordained ministers were female in 2020—a number that I hope has increased since. I wonder whether the right reverend Prelate the Bishop of Derby could confirm that.

I also agree with the right reverend Prelate's sentiments when it comes to the number of female bishops as a whole. He states:

"it is my view that the overall number of women appointed as diocesan bishops since 2014 remains too low, and there is continuing work to do to rectify the longstanding historic imbalance".

In considering this Bill, we should be provided with a better understanding of why the Church has not done more to promote female bishops since 2014. For example, it is notable that, of the five episcopal sees with automatic seats in this House—namely, Canterbury, York, London, Durham and Winchester—only one is currently held by a woman. It would be helpful to know what particular efforts the Church of England is making to ensure gender equality amongst its own leadership and what the barriers that the right reverend Prelate the Bishop of St Albans references actually are.

I would be pleased if the right reverend Prelate the Bishop of Derby could provide us with an update on that issue when she speaks. It should not be for Parliament to spare the Church of England's blushes if it is not able to promote female leadership within its own ranks and of its own accord.

Secondly, while I support the efforts to increase gender equality within the Lords spiritual, this Bill does nothing necessarily to increase the diversity of thought or belief within our House. All bishops, be they male or female, as we have heard, will still be Anglican bishops and the voices of other religious faiths will be no louder as a result of this Bill. Do the Government, given their passion for Lords reform, have any plans to broaden the creed of those sitting in the spiritual seats of your Lordships' House, or do they otherwise intend to increase the presence of non-Anglican Church leaders upon our red Benches?

On equality and diversity through Lords reform, it is obviously appropriate to increase female presence amongst the Lords spiritual. At the same time, the Government are undertaking other elements of reform that will result in better gender parity in this House. I refer to the Government's ambition to abolish the remaining 92 hereditary Peers, all of whom, since the retirement of the great and noble Countess of Mar, are now male. Therefore, there is a hereditary Bench occupied only by men, which is unfortunate. This is a valid and very real criticism of the hereditary peerage, but it is the fault not of the hereditary Peers themselves but of the arcane rules of succession to which we are subject. Here I note my interests as an Earl of Devon.

For a number of years, I, along with honourable Members in the other place, have been seeking to introduce by way of a Private Member's Bill a Bill to permit female succession to hereditary peerages, but we have been unsuccessful in our efforts to date. I am the youngest of four children, as was my father before me, and my grandfather was the only boy among six siblings. The law of succession to the Crown was changed without incident over a decade ago and, as we have heard, female bishops have been allowed since 2014. So at least two of the three feudal mainstays of our constitution, the Crown and the Church, have been permitted to embrace gender equality. It is therefore shocking that, in 2024, the heirs to hereditary titles remain subject to such explicit gender discrimination, both the eldest daughters, who might wish to inherit a title, and younger sons, who might have had something better to do with their lives.

It would appear to be grossly discriminatory of Parliament not to act upon this, leaving us to wallow unwillingly in patriarchy. Noble Lords may suggest that such a move would be a waste of time, given hereditary Peers' impending abolition, but I am mindful that hereditary titles will retain some presence and status within Britain even after we are no longer active legislators, particularly in those parts of the country, often rural, which have retained a traditional social fabric—our much-loved rural parishes, for example, where the local baronet retains social and economic significance. I expect also that hereditary titles will long remain a fascination for popular culture, as a focus of fashion and social magazines, popular film and literature. If the Government can find legislative time to promote gender equality among the Lords spiritual, could it not also find time to change the rules for hereditary succession so that within a generation, half those titles would be held by females in their own right? It would be a lasting legacy upon which to depart your Lordships' House.

I end by reiterating the importance of diversity to this Chamber and to our work, and regret that the abolition of a hereditary presence in Parliament will remove some notable diversity that is not found amongst Lords spiritual, nor among many of the appointed life Peers, who tend to be people of excellence either in politics or society more widely.

Recent hereditary additions to the Cross Benches have included a veterinary practice manager, an inner-city state schoolteacher, a nuclear engineer and even a modest American IP litigator, none of whom are necessarily leaders in their fields nor the most ambitious. They are here to serve, in the way their forebears have done for centuries, with neither fear nor favour. The irony of removing the purportedly elitist hereditary

peerage is that we will lose some of the more normal and perhaps modest Members of your Lordships' House. I hope the Government will reflect upon that.

5.04 pm

The Lord Bishop of Derby: My Lords, I feel I should declare an interest as the only speaker in this debate who has benefited from the provisions of the Lords Spiritual (Women) Act 2015; thank you.

I know something of the challenges of being a woman in senior ministry, not least as I hold the distinction of being the first woman to be appointed and consecrated as a bishop in the Church of England, as Bishop of Stockport. I subsequently entered the House under the terms of the 2015 Act when I became Bishop of Derby, the fifth woman to sit on these Benches.

On balance, I support the Bill to extend this provision, and I add my thanks to those of my right reverend friend the Bishop of St Albans to the Leader of the House and to the Government for making time for it. I trust that this short and time-limited Bill to enable the existing Act to continue for a further five years will receive the same cross-party support that enabled the original Bill to progress through both Houses swiftly and without amendment in early 2015.

It has been a privilege to contribute to the work of your Lordships' House for five years. I was introduced in 2019 and made my maiden speech during Covid lockdown, being beamed into the Chamber from my diocesan office by the magic of Zoom. That speech was, and much of my work in the House since has been, informed by my role as vice-chair of trustees for the Children's Society, a charity doing significant work for children and young people at risk and on the margins. I remain a trustee.

Coming into your Lordships' House as you take on responsibility as a diocesan bishop is not for the faint hearted. The Act has required it of the women who have come here under its terms, and it has meant getting to grips simultaneously with the demands of diocesan episcopal leadership and learning the wonderful ways of Westminster. As we have heard, that is not unique to us. The five senior Lords spiritual, the archbishops and the Bishops of London, Durham and Winchester, also take on membership of the House at the same time as they become bishops of those sees. It can be done, and as many of my colleagues have shown, be done very well.

This House has benefited greatly from the wisdom and service of those women who have been Lords spiritual under the term of the Act. There have been six in total so far, with my right reverend colleague the Bishop of Peterborough very soon to become the seventh. My right reverend friends have sought to speak for a wide range of people and causes. I note my right reverend friend the Bishop of Gloucester's work on prison reform and the treatment of women in the criminal system, my right reverend friend the Bishop of Bristol's work on the victims of modern slavery, and my right reverend friend the Bishop of Chelmsford's work on refugees and good housing.

Had the original Act not gone through, I would have only just joined and still be finding my feet. As we have heard, the contribution of Christine Hardman, the former Bishop of Newcastle, would not have been available at all. Without that provision, most of the women serving from these Benches now would not yet be among us or, like me, would have only just been introduced. Instead of this, since the Act was passed the total number of years of service offered to this House by women on these Benches has exceeded two decades-worth. This is a cause for celebration. I look forward to what a further five years might bring.

I am really glad that this debate has provided an opportunity for us to hear from colleagues across the House about wider issues, including the role of the Lords spiritual and the place of women in public ordained ministry. Although they are not within the scope of this narrowly drawn Bill, they are none the less important.

I am not going to respond in detail to the arguments about the continuing place of the Lords spiritual; that may come in future debates when we consider the questions of membership of the House and future reform. We see ourselves primarily as servants of this House, in an extension of our vocation as bishops in the established Church: to serve the nation and all its communities. It is for Parliament to decide whether and in what capacity we continue to serve here. For my part, I recognise the privilege it is to occupy this space; I will continue to do so to the best of my ability, in and beyond this Chamber, as long as I am summoned.

There are mixed views on the Lords Spiritual (Women) Act among my colleagues, the women and men on these Benches, and across the wider College of Bishops. That is partly for the practical reasons I have named and partly because of the concern, which I share—it has already been touched on in this debate—about the wider landscape for the appointment of bishops in the Church of England. In the decade since the General Synod and Parliament passing the legislation to enable women to become bishops, many remarkable women have followed in my footsteps, but the overall number remains too low. At the beginning of November, there will have been a total of 36 women appointed as bishops, with five retired. I was asked about percentages—I am sorry, but I cannot do the maths in my head that quickly, though somebody else may be able to work it out.

Attention is being given to how the Crown Nominations Commission deliberates and selects candidates to senior posts, given the rate of appointment of women to such roles and our intent on greater diversity overall. My right reverend friend spoke of the pipelines we now have of gifted, experienced women in ministry; there are real questions about why they are not being appointed to diocesan roles more quickly. Although these matters concern me, and clearly others in your Lordships' House, they are separate from the matter before us today.

I conclude that this Bill to extend the Lords Spiritual (Women) Act for a limited period is welcome for the effect it will have of continuing to improve gender diversity on these Benches, which will be to the wider benefit of this House and a small correction to a long-standing inequality. It will also bring greater prominence to the excellent contribution made to our shared national life by women in senior roles in the

[The Lord Bishop of Derby]
Church of England through this particular public ministry. I dare to hope it might mean that the time comes more quickly when women sometimes are in the majority on these Benches. I therefore commend it.

5.13 pm

Lord Wallace of Saltaire (LD): My Lords, the Church of England moves slowly, but not as slowly as the reform of the House of Lords.

I grew up in the heart of the Church of England, as a chorister at Westminster Abbey, when it was very much a male Church. I then found myself taking my children to a local church with a very traditional vicar who did not believe that women should be allowed in the chancel during a service—something that shook my daughter to the point where she has not gone to church since. Happily, we have slowly moved forward. We have also moved forward on the Church working with other Churches and other faiths.

When I sang in the Coronation as a small boy, the cardinal archbishop who had been invited to attend the service in the abbey refused to give his recognition to what was going on in this Protestant ceremony by coming inside the building and sat in a gallery outside. At the 50th anniversary service, his successor for cardinal archbishop read the first lesson, with representatives of other churches sitting behind him in the chancel and representatives of Britain's other faiths sitting in the lantern. I have attended services in the abbey in which there have been readings from the Koran by an imam, and another in which the choir for a Sunday evening service was provided by the Belsize Square Synagogue.

We have managed to move forward in a number of ways. One of the most difficult things for the abbey, which I have been involved in through conversations over many years, has now at last been resolved, and we have a girls' choir, the St Margaret's Choristers. One of the young women who sings in it is the daughter of a senior member of the Lords staff. I have heard them once and look forward to hearing them again.

I am an antidisestablishmentarian, unusually for my Benches. I believe, as Tom Holland's recent book suggests, that a Christian culture and our national identity are deeply intertwined, and that the Church of England, in all its messy uncertainty, represents the sort of consensus that we need. The noble Lord, Lord Murphy, called himself a Christian socialist. I call myself a liberal Christian. Doubting Thomas is my patron saint, and the Church of England in that sense represents doubting Thomas's view of Christianity —that we should not be too sure that we know what is right and what is wrong, and that we should always be questioning everything. That is a liberal faith.

I have happily watched the progress of women in the Church of England. The quality of the women priests we now have is remarkably good. It has strengthened the Church, which continues to do very valuable local work—I see it in Yorkshire, as well as in London—and to hold the community together.

When radical reform finally reaches this House—perhaps when my grandson is middle-aged—I have no doubt that we shall have to reconsider the role of the Bishops. I note that we already have some representation of other Churches and faiths in the House. I remind the House that my very distant cousin, the noble and learned Lord, Lord Wallace of Tankerness, was Moderator of the Church of Scotland last year. We had the Chief Rabbi on our Cross Benches, and we have had those who speak for the Sikh faith as well. That is also, perhaps, in a reformed House, part of what would then be the appointed element, in what I would hope will be a predominantly elected House. I hope that we eventually move that far, but I fear that we will move towards reform only by a series of shuffles, rather than by radical reform. Having said that, I welcome this small shuffle and hope that the Bill will pass easily.

5.18 pm

The Lord Privy Seal (Baroness Smith of Basildon) (Lab): My Lords, I thank all noble Lords for their contributions to this debate. I loved the phrase about the shuffle to reform; we have become aware of that in many areas of life.

I take on board the comments that noble Lords across the House have made about the diversity of your Lordships' House. I think we all welcome increased diversity, but diversity comes in a number of forms: it is about age, about gender, about class, about skills, about ethnicity, about background, about experience and about those of faith and those not of faith, who we welcome to bring different views to our debates.

I was interested in what was said about members of the Church of England speaking for certain faiths. I thought the right reverend Prelate the Bishop of Derby made a particularly powerful speech, and I am grateful to her for that. She was clear that she does not speak in this House for the Church of England and that, as a representative of the Church of England, she is speaking with her experience for the nation, and she looks to represent a particular constituency. I have listened to the words from the Bishops' Benches on many occasions, and I think we should be proud of the contribution they make.

This is a very narrowly focused Bill. The debate has stretched more widely than the content of the Bill, but that is not unusual in your Lordships' House when we are discussing anything internal to the House of Lords; there is a tendency to have a wider debate. I thank the noble Baroness, Lady Neville-Rolfe, for her support for the Bill. She has heard quite significantly from the bishops themselves about why it is five years, and about the work they are undertaking. The Bill was brought forward at the request of the Church of England, and the point she makes is valid: show us the progress you are making. Other noble Lords made similar comments, and we heard their determination and commitment about wanting to see progress and why five years seems to be an appropriate time.

I thank the noble Baroness, Lady Brinton, for the historical context. She spoke about her friend Angela Berners-Wilson, who was the first woman Church of England priest to be ordained in 1994. I understand her pride. She will understand the pride on these Benches when the noble Baroness, Lady Sherlock, was ordained into the Church of England in 2019. It is important that we recognise, within your Lordships' House, that we all have different faiths and values.

I have to say that I take issue with the noble Lord, Lord Scriven: I do not think anyone is suggesting that those who have a religious faith have a monopoly on values, commitment or morality. I do not think that our bishops or those of other faiths in the House would suggest that. We all bring our values and our concept of morality to the debates we have, and I think it is right that we do so.

As the noble Baroness, Lady Brinton, said, the onus of responsibility to make this work is on the Church of England, which is the established Church. We all welcome those who come into your Lordships' House who are of a religious faith, or not of a religious faith, and the values they bring. To comment on other points that were made during the debate, I thought it was interesting that the noble Lord, Lord Birt, in talking about the diversity of society, used the phrase "undemocratic anomaly". One thing we did not touch on was the retirement age of your Lordships' House. In fact, the only Bench that has a retirement age for its members is the Bishops' Bench, which has a retirement age of 70. We are getting ourselves into a tizz over 80—or 86 at the end of a Parliament—yet the Bishops' Benches have quite smoothly moved towards that retirement age. I am sure that when that debate comes, and when we are consulting on that issue in this House, their Benches will have something to say on it. The noble Lord, Lord Murphy, made an interesting comment, as a Welsh Catholic, about how much he supports the Bill and values the contribution of those Benches.

The noble Earl, Lord Devon, raised the issue of diversity more generally. He has raised the issue of succession with me previously, in other meetings, and I have some sympathy. I have had an initial look, and it is quite complex. It is not just about membership of your Lordships' House; it is a complex issue and not at all something we can deal with in the Bill, but I hear what he has to say and I know he spoke about it some time ago. I have to say to him that I do not think this House is comfortable with the fact that at the moment there are no women on the hereditary Peers register to come forward. We greatly miss the Countess of Mar, who made an enormous contribution, including making sure that new Members did not transgress the rules of the House. Those who did, as I found to my expense—I received a sharp tap on the back on one occasion—were reminded of exactly what the rules of debate are.

All noble Lords—perhaps with some exceptions—have been supportive of this piece of legislation. I note the two noble Lords who have more concerns. It is right that we respect the debate we have had and recognise that the Bill is a small step forward that allows the Church of England to continue its progress towards more women bishops. The right reverend Prelate the Bishop of Derby should take back to her colleagues how much support she has from Benches across the House who want to see more women bishops.

Those of us in political parties should not get too complacent about this. We have all had challenges about women's representation in Parliament, in councils and, indeed, in your Lordships' House. We should be proud that, since 2000, seven of the Leaders of this House from across the parties have been women and only four have been men. Sometimes progress happens without being noticed, but it is good that it happens.

I am grateful for noble Lords' contributions. I think there are a number of comments that the right reverend Prelates will take on board. I hope the House will want the Bill to go forward—I get the sense that it will. It has been a privilege to be engaged in this debate. A number of issues around Lords reform have been on the agenda since I have been Leader, and I welcome hearing from noble Lords on a range of those issues. I am grateful to those who have already engaged with me in a very constructive way. This debate has been a privilege, and it is with pleasure that I beg to move.

Bill read a second time and committed to a Committee of the Whole House.

Foreign Direct Investment to the UK

Question for Short Debate

5.27 pm

Asked by ***Lord Harrington of Watford***

To ask His Majesty's Government what measures they intend to implement to attract more foreign direct investment to the United Kingdom.

Lord Harrington of Watford (Non-Afl): My Lords, I requested this debate on a subject on which I spent most of last year and produced what is somewhat modestly called the *Harrington Review of Foreign Direct Investment*—it is probably the only volume that will ever bear my name, so it means a lot to me.

I was asked to do this review by the former Chancellor of the Exchequer, Jeremy Hunt, but it certainly became very much a cross-party matter. I made sure, as it was my job to do, that the then Opposition, now the Government, were plugged in to it during the course of the review, because I did not want it to become a political matter. I am pleased to say that in the Autumn Statement last year, the Chancellor accepted the recommendations. The then shadow Business Secretary, now the Business Secretary, at a separate event at PwC, also accepted it. I really did not want this debate to become a list of criticisms of the last Government for not implementing it, or criticisms of the current Government for the same, because I have had a lot of good will from both.

However, I feel that this House should really know a little about what the recommendations were, because we still have a fundamental problem with foreign direct investment. On the surface of it, the numbers are reasonably good. We do better in terms of volume than many other comparable countries. But when the numbers are analysed deeply, as I do in the report, the situation is not as rosy as it seems. This is shown when we strip out renewables—noble though they are, it is just that the taxpayer is subsidising foreign manufacturers to come in and supply energy, which, while all very good, is not investment in the other way—and if we strip out what I call share swaps, which are basically US private equity and others legitimately taking stakes in companies, which does not really mean new investment.

The cause célèbre that led to me being asked to do this was the AstraZeneca deal, when AstraZeneca took the decision, after 14 months, to move not to

[Lord Harrington of Watford]
Macclesfield, Cheshire, but to Dublin, Ireland. It is easy for people with my personal political views to say it is because of Brexit, and it is easy for other noble Lords who maybe think a little differently on the political spectrum to say it is because of corporation tax. Actually, when we took evidence from about 200 companies, sovereign wealth funds, pension funds and others, the situation was far more complex than that.

AstraZeneca lent us its management team and we went through the whole process in great detail. We found that patterns emerged across the spectrum, which I will briefly outline. I have only 10 minutes so I cannot do it too deeply, although copies of the review are available if anyone would like to read it. It showed that signals we send to investors, particularly about consistent changes of policy, were a big one, and I quote several examples in the review. For example, the big ones are HS2 and the road to net zero. Originally it was 2050 for no further production of internal combustion engines, then it was changed to 2030, then to 2035. There are lots of such examples across the whole spectrum of government which investors look at and get worried, because they do not know where the next policy is going to come from.

The second was the availability of money. This is not just a question of the Government not having enough money to help investors. There is quite a bit of money, but it is in so many different pots, challenges, funds and departments that it is so complicated to access, and this puts a lot of companies off. That is before we get to the main hurdles to business investment: the clichéd—but true—planning and getting sites through planning permission; connection to the grid, which can take up to 20 years; skills provision; visas; and a whole list of obstacles to investment. I am sure all noble Lords will know of these.

We have to compare our performance with that of other countries, and other countries have changed and got very well-organised investment operations. For example, AstraZeneca—and many others—go to other countries and are given a written offer by those Governments, in the same way a bank would. The offers say, "Here's the deal, here's the money, here's the site with planning permission, here's how you get your visas, here are the skills that we are planning to provide". It is then much easier to decide whether to make the investment, subject obviously to a lot of due diligence.

We really do mess such companies about. We have government departments with policy objectives which are often not compatible with other ones. This leads to people who do a very good job at their own job—which might be reducing the number of visas, because that is their policy—going directly against what another department wants, because it is trying to encourage investment.

Lots of recommendations came out to try to deal with this, some of which I will very briefly mention before I ask the Minister about them. He has been most helpful. We had a cup of tea yesterday to discuss this matter, and I hope he will be able to answer the questions that I gave him. I recommended that a government investment committee be set up to lay out a business strategy for prospective investors, like a bank or financial institution would. It would not say that we can do everything, because we do not have the money nor the resources, but it would identify which areas we are going to use to attract more people. These could be missions, to use the current Government's statement, or the five areas identified by Jeremy Hunt in the Conservative Government equivalent.

I will give a brief example—I will just pick one out of the hat. In this country, we are very good at aircraft wing manufacturing. The question then is: how do we attract more aircraft wing manufacturers, and, above all, how do we make it possible for them to have their suppliers in the supply chain cluster around them? There is a government investment strategy—if you like, that is the equivalent of the board of a financial institution—which lays out the strategy. Beneath that, we have someone who—again, if it were a financial institution—is akin to a chief executive: a Cabinet-level Investment Minister. We had an extremely competent and capable Investment Minister in the previous Government, who, as it happens, is sitting on the Opposition Front Bench now. I felt that he definitely should have been promoted and made the Cabinet-level Investment Minister. I do not think that the current Government have filled the post, but I can think of someone who is very competent to do that.

The position itself is important. Why should that person attend Cabinet? First, if you look at all the big sovereign wealth funds and others, their bosses attend Cabinet, and have the regular ear of the Prime Minister, President or whomever it might be—that is very important. Secondly, in our own Government, that person has to have overriding powers over other departments. That is very important, because when a prospective investment is signed off, real clout is needed over other departments to get all these things done.

Beneath that, my recommendation was to use the existing Office for Investment and to make it significantly greater. It is very good, but it has 25 people, which, in Civil Service terms, is like a corner shop compared with a whole country. It needs to expand dramatically and to be proactive by hunting out the kinds of companies that the strategy from the board above has given it and finding out what it will take to entice them to this country. It is very important.

Finally—I say "finally", but there are 150 pages of recommendations—beneath that there needs to be a one-stop shop for prospective investors. They get tired of trooping from department to department and being told the Civil Service vernacular that this policy is "owned" by this or that department. The sort of organisation that other countries have for a one-stop shop is very important.

In the little time I have left, I note that there was progress in the previous Government, inasmuch as the Civil Service seems very tuned into this report. I received a very kind message from our trade commissioner in Singapore, whom I met only once at the beginning of the review. I then went to Singapore, where he said, "You should know that lots of your recommendations are being implemented outside the country, in the posts".

The ministerial top-level investment committee was due to meet, I think, on the day that the election was called, but it has still not met. I ask the Minister—who

is a very accomplished businessman in his own right, so I hope he has some sympathy with what I am asking—what progress has there been in implementing the report? Will the government investment committee with all the Secretaries of State sit? Will a Cabinet-level Investment Minister be appointed? Does the Office for Investment have the additional resources that I asked for? What progress has there been for a one-stop shop for prospective investors?

5.38 pm

Baroness O'Grady of Upper Holloway (Lab): My Lords, I congratulate the noble Lord, Lord Harrington, on his review. As a former TUC leader, I hope to add a workforce perspective to the debate.

In my view, the key objective of driving up investment, from whatever source, is simple: the Government's goal must be to create more prosperity and to ensure that that prosperity is shared fairly, not least in the form of better-quality jobs in the parts of the country that need them most. There is a bigger picture on UK investment, of which the current concern about falling FDI is just one part. Britain languishes near the bottom of the OECD business investment league. Productivity is sluggish and well below the US, France and Germany, with too little invested in innovation, new kit and equipment.

For many years, the TUC has argued that the root cause of low investment is the British disease of short-termism and that this is facilitated by an outdated corporate governance regime which glorifies shareholder primacy while actively excluding workers' experience and expertise from the boardroom. The former Prime Minister, Theresa May, once agreed with us. It would be interesting to hear whether the noble Minister agrees too.

More positively, I welcome the identification by the noble Lord, Lord Harrington, of the UK's key growth industries. This is not about picking winners; it is about accelerating success. I support his view that not all wisdom resides in Whitehall. The devolved authorities —and local unions and businesses—have a vital role to play in attracting place-based investment.

But a word of warning: we must guard against the UK's nations, regions and cities wasting time and public money competing against each other for FDI rather than co-operating for the common good. Also, we must be clear that we cannot and will not seek to attract foreign investment on the grounds that the UK offers cheaper labour and weaker workers' rights. Those days are over.

Instead, our prospectus must be built on a determination to transform the UK's offer on skills and talent. That means not only cherishing our universities but practical action to address the Cinderella status of further education institutions and that of their learners and staff. Investors, both foreign and domestic, will be encouraged by our Government's commitment to planning reform and to public investment in national infrastructure, including through the launch of Great British Energy, which will help to contain energy costs, and a national wealth fund. A proper industrial strategy will boost confidence too. Crucially, we must invest more in people. Improving the health, skills and creativity of the workforce will help to make the UK a more attractive destination for foreign investment and ultimately pay dividends for us all.

5.42 pm

Lord Leigh of Hurley (Con): My Lords, I am delighted to take part in this debate and congratulate my noble friend Lord Harrington on his excellent review. I draw your Lordships' attention to my register of interests, which discloses that I am a senior partner of Cavendish Corporate Finance. As such, I have had a 35-year career in attracting investors into UK businesses, mainly from overseas buyers, and thus have some experience in this area. I have very little experience on the greenfield side of FDI, as we typically act for mature businesses. I note that this report is, quite rightly, very heavily focused on greenfield.

It is worth noting that academic research suggests that just 4% of local business units in the UK are foreign-owned but that they account for nearly 40% of UK turnover. Some research by Jonathan Haskel, the son of the noble Lord, Lord Haskel, shows that foreign-owned companies which invest in the UK are about 50% more productive than domestically owned ones, not least due to the knowledge spillover, so this really is important.

Despite all the talking down by some, FDI has remained very strong in the UK post-Brexit. No less a person than Warren Buffett told the *FT* in 2019 that he was

"ready to buy something in the UK tomorrow"—

a marvellous endorsement. We take 17.3% of Europe's FDI investments into the UK and are only second in Europe at so doing. To my surprise, the official figures record only 985 FDIs in the UK in 2023, which is very low. It amounts to £83 billion into our current stock of £2 trillion. Only 985 implies that not all the figures are properly recorded. It also misses a huge swathe of inward investment, which is private equity.

We should not forget that, according to a recent BVCA report, private equity and venture capital investment by UK firms in 2023 for global investment raised some £60 billion, of which £20 billion went into the UK alone. Of that £20 billion, over 80% comes from outside the UK; so that is overseas investors—largely American but not exclusively—coming in through private equity straight to UK businesses. This is, if you like, foreign indirect investment, but, none the less, it makes a massive difference to the UK economy.

The review has some excellent ideas on how we can do better. I will focus on recommendation 4.6, on a long-term approach to tax. The Government have been exceptionally helpful to UK businesses through the tax system, with R&D credits of some £6 billion a year and the expensing of capital allowances, but it would be very helpful if the Minister could pass the message to the Treasury that we need certainty on the availability of both capital expensing and R&D credits for overseas investors.

If the new Government are serious about growth, pushing the wealth creators out of the UK is not the way to do it. The lead item in Saturday's *Times* shows that they are leaving in droves, frightened by the proposals on non-dom tax; the previous Chancellor's

[Lord Leigh of Hurley]
proposals were quite modest in comparison. There is also the disastrous proposed rise in capital gains tax. Why would anyone who is footloose want to stay in the UK? These actions completely contradict the stated objective of growth. If businesspeople do not want to live in the UK, or will not live in the UK, how on earth do we expect them to invest in the UK? It would be tragic if these excellent ideas from the noble Lord, Lord Harrington, are wasted because people such as non-doms and investors are encouraged almost to leave the country by these tax proposals.

I know that the noble Baroness, Lady O'Grady, will not agree with me, but I must add that overseas investors and, in particular, US investors, who are typically the most significant, are aghast at the proposed employment changes. They have invested in the UK way ahead of European countries because they see the current flexibility in employment legislation that facilitates employing people. Can the Minister please confirm that an impact statement will be prepared, showing the likely impact of any proposed employment laws on FDI and PE investment in the UK?

5.46 pm

Lord Londesborough (CB): My Lords, I will, first, thank the noble Lord, Lord Harrington of Watford, both for securing this debate and for producing such a thorough and insightful review on FDI—I read all 120 pages at pace. As the report quite rightly underlines, FDI is all the more critical to the UK because of our continuing low levels of investment in both private and public sectors, which is the major factor behind our lost growth and productivity. We start from a much lower investment base than other G7 countries, however well we are ranked in terms of FDI attractiveness.

I appreciate that the big-ticket foreign investments of £100 million or more grab the headlines and drive much of our promotion and policy, as these projects typically account for about 70% of FDI inflows. But I would like to see much more focus on FDI in the £1million to £5 million and £50 million to £100 million brackets, on which there is curiously little data. That is a comment I often hear from investors themselves, and where, incidentally, the UK underperforms. On this subject, I ask the Minister, first, what data we have on FDI in SMEs, and is it broken down by size of investment and sector? Secondly, how, and to whom, is this data distributed?

I ask because, from my anecdotal experience, the impact of FDI on, particularly, medium-sized businesses, is proportionately far greater than for many of the large projects in terms of growth rates, jobs created, innovation and, indeed, return on investment. Some 52% of our private sector output comes from SMEs; and, more importantly, scale-ups, defined as enterprises growing at 20% on average per year, account for over a fifth of that turnover—that is almost £500 billion per annum—despite representing just 1% of all SME businesses. In terms of generating GDP growth, these scale-ups play a vital role both locally and nationally.

I should perhaps declare an interest, in that I founded and ran one of these scale-ups for 20 years, before we landed what is called an accidental investment from a US investor group, which made an eight-figure commitment and took a strategic stake. With foreign backing and advice, we managed to innovate, expand our overseas markets and double the size of our workforce in four years, and we saw a huge impact on productivity and growth rates. The point of this anecdote is less about the economic impact and more about the accidental aspect: the investors found us via Google. I am now an investor and adviser to start-ups and scale-ups, and continue to see the sporadic, accidental aspect of foreign investment. We need to be far more systematic.

This brings me back to the issue of data. In the sub-£100 million investment market, and especially the sub-£25 million investment market, we need to ramp up our data and research, and make this more accessible to foreign investors, if we are serious about gaining a bigger share of FDI.

Finally, we should also take heed of the FDI-SME multiyear project, which is conducted by the OECD in collaboration with the EU. It focuses on how to develop linkages between FDI and local enterprises, and on how to create more opportunities of productivity and innovation spillovers for local economic development. It would be good to have a UK equivalent.

5.51 pm

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I very much welcome the opportunity to speak in this debate on an issue that is so vitally important to the well-being of the United Kingdom. I congratulate the noble Lord, Lord Harrington, not only on securing this debate but on the completion of his review. There is no doubt that the UK as a whole remains a leading investment destination, but there is no room for complacency, and there is certainly space for improvement and innovation.

In my seven years as the Northern Ireland Minister for Enterprise, Trade and Investment, I was always incredibly proud of the amount of foreign investment we attracted to my talented and skilled part of the United Kingdom. We had our challenges, not least that our nearest neighbour, the Republic of Ireland, had a corporation tax rate of 12.5%—which, to be fair to it, it has relentlessly promoted to gain the eyes and ears of potential investors, especially those from the United States, looking for a base in or close to Europe for their "follow the sun" model of operation. The noble Lord, Lord Harrington, talked about consistency of policy: it has had that tax rate for 25 years.

I have long believed that lowering the CT rate across the UK, but especially in Northern Ireland, would have brought huge dividends. As an Executive in Northern Ireland, we argued the case with the Brown and Cameron Governments. We were successful with the latter, and the Corporation Tax (Northern Ireland) Act 2015 granted to the Executive the power to set a lower rate of corporation tax through the Northern Ireland Assembly. However, the rate has not been lowered, as the European Union state aid rules mean that the cost of lowering the rate would have to be taken out of the block grant to Northern Ireland from Westminster. Post-Brexit, as state aid rules from Europe still apply to Northern Ireland, this effectively means that the Northern Ireland Executive will be unable to lower the rate of corporation tax. The whole idea of lowering corporation tax was to make Northern

Ireland more competitive with our nearest neighbour, but I am sad to say that European overreach has killed this idea.

I still believe that having a lower rate for the whole of the UK would benefit all parts of the country. It is a great door-opener to foreign investors, and then the different parts of the UK can add their own special parts to the pitch.

In Northern Ireland, we have a very strong education system, and our bright young people are always our starting point. Northern Ireland still has a grammar school system, and I have always had such a positive reaction to our school system from international investors. We have the best maths results in Europe and are rated sixth in the world. It is a great story for employers interested in the skills of our young people.

Vocationally too, because of our size, we can quickly adapt to the needs of the global economy and particular employers. I used to say that Northern Ireland was big enough to do the business but small and flexible enough to care about the individual companies that were coming. In conjunction with our partners in higher and further education, we were able to set up skills academies, specifically to deal with gaps identified by incoming employers. This was a win-win scenario, for the company and for our young people seeking a career.

The triangular working of government, academia and industry was a tangible success for Northern Ireland and its inward investment offering. I welcome the comments from the noble Lord, Lord Harrington, about aircraft wings production. I have no doubt that he was thinking of Belfast—Bombardier and now Spirit AeroSystems.

I want to finish with a best practice example for the Minister. I note the comments of the noble Baroness, Lady O'Grady, about devolved Administrations and metro mayors not being in competition with the Westminster Government, and I think that is right. When I was Enterprise Minister in the devolved Administration, the now noble Lord, Lord Swire, was Minister of State in the Northern Ireland Office and I had the privilege of working with him on a number of initiatives. One was a joint trade mission that he and I made to the Middle East, where we worked together to present Northern Ireland's offering from a UK Government point of view and a devolved Administration point of view. It worked well and is a model that should be looked at. I ask the Minister to look at it from the point of view of the devolved Administration and that of metro mayors.

Baroness Wheeler (Lab): My Lords, I remind noble Lords that speeches are limited to four minutes.

5.56 pm

Lord Petitgas (Con): I will do my best.

My Lords, I commend my friend the noble Lord, Lord Harrington, for his report, and for tabling today's debate. I know what it takes to harness FDI in the UK. During my stint at No. 10, I worked across Whitehall on several major foreign direct investments. Together with my noble friend Lord Johnson we led the 2023 Global Investment Summit, which beat every investment and attendance record.

Our country has in recent years been a magnet for both capital and talent, topping global rankings. That said, reading the press and hearing from CEOs and entrepreneurs, I fear we have a boom in gloom—investor sentiment is shifting and souring. This is a pressing topic because investor confidence and conviction underpin our national growth priority. We need more investment.

Let me share three observations. First, FDI is a competitive sport, as the noble Lord, Lord Harrington, rightly said. This country has a tremendous hand to play, but there are serious concerns and we face global competition. Investors want stability and common sense. On the former, the Government can no doubt play up their strong majority in Parliament, which is welcome. On the latter, the market is very worried that we will not stay competitive on tax and labour laws. The Government need to back up their pro-business claims with pro-business policies. Business scepticism is now rampant.

Secondly, FDI is not the only capital in town. Our domestic pensions system is woefully under-indexed in both our UK stock market and infrastructure. It needs to get into the game alongside FDI and foreigners. This will boost investment and should also help pensions returns. Moreover, given that FDI often—or always—gets a government subsidy, it will ensure that pensions, not just foreigners, benefit from government largesse.

Thirdly, FDI is about talent—people—not just capital. Let me ask noble Lords which entrepreneur, British or foreign, is going to choose the UK if rumoured levies on capital through CGT, carry and inheritance taxes become uncompetitive. We need wealth creation to pay for our welfare state. We have a mismatch, I fear, between the rhetoric about attracting investment to drive growth on the one hand and policy actions or ideology that will drive entrepreneurs and investors away. I am sorry to be alarmist.

I therefore ask the Minister three questions. First, can he provide an update on the International Investment Summit and the appointment of the Investment Minister? Secondly, can he update us on the pensions review and reform, which is tied to FDI? Thirdly, can he say whether an analysis of the impact on FDI of the likely new tax and labour laws will be made in the Budget?

5.59 pm

Baroness Hamwee (LD): My Lords, the introduction to the debate from the noble Lord, Lord Harrington, was very compelling. I am speaking personally—not that I think my Liberal Democrat colleagues would intervene on and disagree with me, but many of them have expertise in these issues, as, of course, do others in today's debate, which I do not.

When I saw the title of the debate, I thought: what makes a country attractive? It must include a focus on people. Some of this is soft—similar to soft power. Does the UK give the impression of being welcoming and send out a message of welcoming individuals? Is it open-minded about who would contribute to our society, demonstrating that it is itself interested in and imaginative about contributing energetically and effectively to global society?

The language is important, the Government's language especially, as it reflects attitudes. So is being warm and welcoming in practical terms. Almost my first thought

[Baroness Hamwee]
was immigration policy, including the visa regime. Do we indicate that we are a country which characterises short-term labour needs—shortage occupations—as more important than people's inherent value and, indeed, their values? Do we say, "Your family members can come with you, provided they are not dependants"?

I give as another example adult dependant relatives. I have heard so many examples of difficult decisions and the distress of high-flyers who have been working here for many years and are very anxious about elderly parents in their country of origin. They have the means to support them in the UK but, crudely, no visa is available unless the parent is so unfit that they are, in fact, not fit enough to travel. I have heard many examples of high-flyers leaving the UK so that they can care for their parents.

In the interregnum between the GLC and the GLA—so 30 years ago, but I do not think that people's nature change—I chaired the London Planning Advisory Committee, and I did come to realise that planning cannot solve everything and that it can cause problems. We undertook a major piece of work on London as a world city, involving academics and, crucially, the business community. It considered London's strengths and weaknesses alongside cities such as New York, Paris and Tokyo.

A major conclusion was the importance of London being attractive and liveable if it is to attract foreign investment. When companies consider where to locate, they consider what is important to their staff: good transport, accommodation, air quality, culture—obvious qualities when attracting and retaining staff. If you are bringing your children you need to be assured that it is a good place to bring up children, so it is about living conditions as well as working conditions—not that you can separate them entirely. When I opened the conference to launch the report, the slides—it was that long ago—stuck. They got going when I was talking about the attractions of London's ceremonial events, and showed a refuse cart; actually, that is important too.

In summary, I am advocating a life in the UK test —not the one for citizenship, which gives too many applicants the feeling they are not wanted, but one for policymakers across the board.

6.03 pm

Lord Birt (CB): My Lords, investment is the lifeblood of an economy. What will attract investment into ours?

First and foremost, we need to recognise that the investor community, amassing funds of trillions, is truly global, has untrammelled freedom of choice, can invest anywhere, and will place its funds only where it is convinced that it will make good returns—and reliably—in a predictable and non-volatile political, fiscal and financial environment. In other words, a necessary if not sufficient condition for attracting investment is stability, as the noble Lords, Lord Harrington and Lord Petitgas, eloquently underlined.

Where we score highly on stability is our widely admired and trusted legal and regulatory systems, and in the City we possess a world-class financial centre, but, in the past 10 years or so we have failed badly to offer the political stability the investor community looks for. We have exposed investors to the chronic uncertainty of Brexit, religious wars in the ruling party, five Prime Ministers, and the Liz Truss moment of madness, with the Bank of England forced to ride to the rescue of the UK's pension funds.

A new Government should strain every sinew to restore political calm, to foster a stable currency and to ensure internationally comparable interest rates. Beyond stability, we have to offer investors high returns, so a new Government must also work to remedy the enduring weaknesses that contribute to the UK's low productivity: underinvested road and rail infrastructure, a planning system that moves at a snail's pace, skills shortages at every level and too few people in productive work.

I neither have, nor have I ever had, a stake in a private equity fund, but I have chaired companies invested in by PE, and I have been much exposed to global investors. The UK has the greatest private equity firepower in Europe but a high proportion of those working in the sector are not UK citizens and they, and the funds they manage, are highly mobile. Personally, PE professionals can benefit handsomely if they produce high returns for their investors, but if they fail, which happens, they receive nothing, and the risk of that is recognised globally in establishing tax regimes for when they do succeed.

The UK is not an outlier but somewhere in the middle of the pack in the tax regimes applied to PE by the US and leading EU countries—less generous than some, more generous than others. But I hope the Government will be truly wary of the very real flight risk of both funds and professionals, and the consequent dangers for the economy, if our rates are materially increased, as the noble Lord, Lord Leigh, himself underlined.

It is vital that the new Government celebrate and incentivise the spirit of enterprise—a critical route to growth, to increasing individual prosperity, to expanding the tax take, and to beginning the process of re-investing in our mightily challenged, underfunded public sector.

6.07 pm

Lord Wigley (PC): My Lords, I am grateful to the noble Lord, Lord Harrington, for the significant work he undertook in his review of foreign direct investment. We in Wales are still in the process of moving away from an economy based on heavy industry to one in which we have to pay our way in the world by the export of sophisticated goods and services.

My industrial career was with three American-owned manufacturing corporations: Ford at Dagenham, Mars at Slough, and Hoover Ltd—where I was financial controller of its washing machine factory—employing 5,000 people at Merthyr Tydfil and which, three decades later, was tragically closed down. With all three, I worked on inward investment projects, with ultimate decisions being taken in America.

I later chaired a small company manufacturing in the biomedical sector, which we set up near Caernarfon. It was a business we started from scratch and that grew to employ 50 people, before being taken over by the Diagnostic Products Corporation of Los Angeles,

whereby it grew to employ more than 200 people in a new factory, built by the Welsh Development Agency, at Llanberis. It is now part of the Siemens Healthineers division, employing 500 people there, producing test kits for medical conditions, largely for export. Recently, 100 well-paid research and development jobs were transferred from America, to be filled by people largely recruited locally.

There are three types of inward investment that I would like to highlight. The one I have mentioned bought into an existing business and, by dint of investment, access to research, worldwide networks and additional markets, improved the prospects for its own operation. The second type is those that set up in Britain from scratch, gaining market access to the UK, or—as was—to the European home market. In this regard, Wales benefited hugely from the Welsh Development Agency. I pay tribute to the excellent work of our late colleague, Lord Rowe-Beddoe. The WDA persuaded 50 Japanese companies to base their European operations in Wales; sadly, some of them have now moved on. It is a tragedy that the WDA was abolished. We need such agencies.

The other huge FDI contributor to Wales has been the United States. In 1974, the year I entered Parliament, the report *Overseas Investment in Wales* noted that Wales had 90 wholly owned American companies employing some 44,000 people. At its peak, it is estimated that there were over 200 American companies and operations in Wales.

The third category is of one investing in and possibly taking over a business that already exists in the UK—perhaps helping it to expand, as was our experience. However, there is always a danger of a takeover in its original country of origin, leading to jobs being moved away from these islands, as happened with Hoover, and at worst leading to asset stripping and a loss of control of intellectual property.

Overseas investment in Britain, properly harnessed to work in partnership, still has a huge role to play in our economic recovery. However, we need agencies such as the WDA to make sure that the right things are happening in the right places on the ground. I hope that the new Government will find ways to eliminate artificial tariff or technical barriers between ourselves and our continent, create economic stability at home and bring a new approach to foreign direct investment. I hope they will co-operate with the devolved Governments to harness our resources, work in harmony and give our universities and our young people the chance to play their part in these matters.

I hope this report presents a starting point from which we can move forward.

6.10 pm

Lord Bilimoria (CB): My Lords, in November 2023 the *Harrington Review of Foreign Direct Investment* made recommendations about how the UK could attract more cross-border investment. Thankfully, the new Labour Government have set tackling barriers to investment as a priority. I thank my friend the noble Lord, Lord Harrington, for initiating this debate and for his excellent review, which made several recommendations. The City of London has said clearly:

> "Overall, by far the largest FDI share comes from financial services, with £588bn attributable to that industry".

According to it:

> "The USA is the largest FDI investor followed by Holland, Belgium, Luxembourg, Germany … Japan, Switzerland, France, Spain and Canada".

Noble Lords might have noted that most of those countries are EU countries. There is no question about it: Brexit has harmed Britain's attractiveness as an inward investment destination. Before Brexit we were a magnet for inward investment; we were one of the highest in the world and were seen as a gateway to Europe. Can the Minister confirm that we are going to get closer and closer to the European Union? I would go so far as to say: let us join the single market as soon as possible. That will power FDI ahead.

I am a member of the GREAT campaign's private sector council. I am delighted to hear that the Minister of State without Portfolio and Labour Party chair Ellie Reeves MP has been appointed the Minister for GREAT within the Cabinet Office. As an example of the impact of GREAT, £900 million-plus of foreign direct investment came from 32 investment projects setting up operations in the UK during 2023-24.

What better example of the power of inward investment could there be than by looking at India? Grant Thornton, the firm of accountants, has an annual India Meets Britain Tracker report. The 2024 report says that almost 1,000 Indian-owned companies are based here in the UK. For example, Tata owns Tata Steel and Jaguar Land Rover, which turn over a combined £68 billion, employ almost 120,000 people, and pay taxes of £1.17 billion.

To be attractive to inward investment, we need a flexible labour market. Britain has always had the strength of a flexible labour market, unlike France, which is hampered by not having one. Can the Minister assure us that we will not do anything to remove the flexibility that we have?

On immigration, there is no question that the previous Government portrayed a hostile approach to immigration. We have labour shortages in almost every sector. Can the Minister confirm that we will have business-friendly immigration?

What better example of foreign direct investment could there be than international students? I have just finished my 10-year tenure as chancellor of the University of Birmingham and continue to be co-chair of the All-Party Parliamentary Group on International Students. International students bring £42 billion a year into this country, yet the previous Government—including, I am sorry to say, my friend Rishi Sunak, the former Prime Minister—had a hostile approach to international students and wanted to remove the two-year post-graduation work visa. I am delighted that Bridget Phillipson, the Secretary of State for Education, with whom I shared a platform at King's College recently, has said that we are going to retain the two-year postgraduation work visa and that we welcome international students.

To be attractive to inward investment, we must have an attractive tax environment. Once again, I said to Rishi Sunak when he was Chancellor and I was president of the CBI, "Don't raise taxes". What did he do? He put up corporation tax from 19% to 25%. That is

[Lord Bilimoria]
not good for foreign investment. He also put up taxes to the highest level in 70 years and now we are scared that the Labour Government in the Budget next month are going to put up capital gains tax, widen inheritance tax and affect non-doms—68,000 people who pay £9 billion in taxes in this country and spend and invest in this country. Please can the Minister remove this fear that we all have; otherwise, capital will fly from this country.

I conclude that fundamentally this country has all the ingredients for fantastic foreign direct investment. We have the best combination of hard and soft power—manufacturing, financial services, universities, creative industries, our judges, our courts—let us not hamper it. Let us encourage foreign direct investment.

6.15 pm

Lord Jones (Lab): My Lords, I too thank the noble Lord, Lord Harrington, and it is always instructive to hear the noble Lord, Lord Bilimoria. I want to see more foreign direct investment and see it invested in Wales's remaining steel industry. I want to see the global company, Tata, invest ever more urgently and very considerably in what remains of Britain's steel industry, specifically in Wales, particularly at Shotton, which is a small gem in Tata's steel crown, and now especially—strategically, substantially and very urgently—in the still-mighty Port Talbot works, which is still just perhaps a fully integrated steel plant. I welcome the green steel fund and the Government's timely emergency funding. However, I am a long-standing parliamentary witness to the contracting and dying agonies of the steel plants in Wales—Ebbw Vale, Cardiff's East Moors, Newport's Llanwern, north-east Wales's Shotton, Brymbo in Wrexham, and Trostre and Velindre in the south. As a youthful Minister and shadow Secretary, I visited most of them.

I declare an interest as I once was a common labourer on the furnace stage of No. 2 blast furnace when the fully integrated Shotton works was in its heyday with a workforce of 14,000. My tools were a crowbar, a pickaxe, a shovel, a six-foot ladle for sampling the blinding-orange, hot running metal, and a wheelbarrow for my hundredweight of moulding sand. I operated from the roaring mouth of the furnace across the stage, along the runner to the drop to the receptacle that received the metal below. There was no Health and Safety at Work etc. Act—Michael Foot's historic legislation was a generation away—but I had a helmet and salt tablets.

I took my breaks in an echoing, greasy, cramped cabin and my workmates were men of no fixed abode, probationers, ex-prisoners and no-hopers. We were all equals and the furnace keeper was a hugely experienced, brave, careful man. He wore clogs and had his sweat towel at his brass-buckled belt. I say that the steelworker always works in a challenging environment, seeking to avoid injuries and deafness. I would like to see the Welsh steel industry, especially in beleaguered Port Talbot, have its generous, urgent direct foreign investment from Tata Steel.

I note that that clock says I have spoken for two minutes 24 seconds, but I think it had a breakdown and I must honour the four-minute limit.

6.19 pm

Lord Gadhia (Non-Afl): My Lords, I commend the noble Lord, Lord Harrington, on securing this short debate. It is especially timely ahead of the International Investment Summit and the Budget scheduled for next month. The Harrington review was a thorough and comprehensive report grounded in evidence from a wide range of stakeholders. Its six headline recommendations provide a thoughtful and practical road map for improving the UK's attractiveness as an investment destination. Indeed, I referenced the review during the King's Speech debate, describing its proposals as necessary hygiene measures to revive investment, alongside the reinstatement of the Industrial Strategy Council.

Although the previous Government commissioned the report and made warm noises about its conclusions, they ultimately ran out of time to make meaningful progress. I hope the new Government will fully embrace this agenda. Global investors do not care much for domestic political tribalism. In fact, if anything, they are looking for the opposite: predictability, certainty and consistency—the three most coveted words for investor confidence. So, if the new Administration are serious about sending a positive signal to prospective investors, which I believe they are, then they would do well to show some continuity in this area.

However, we do have to face up to three broader issues regarding FDI. First, we are no longer the gateway into the EU, which was a previous tail-wind underpinning inward investment flows. The data speaks for itself: since 2016-17, we have seen a 30% drop in the number of FDI projects. The picture would be much worse if it were not for greenfield investments in renewables, notably offshore wind.

Secondly, taxation matters—not just corporate taxes but those levied on investors themselves. Even though headline corporation tax rates have increased, full expensing of capital expenditure, now permanent, should produce positive results over time. In contrast, on personal taxation, I believe we have miscalculated the impact of the latest changes to the so-called non-dom tax regime, which is often intertwined with FDI decisions made by high net worth individuals. The Treasury modelling will have made assumptions about the number of people expected to leave the UK. There is now substantial evidence that the assumed leaver rate has been far exceeded. We will, therefore, face the double whammy of losing Exchequer revenue and adversely impacting FDI. I ask the noble Lord, Lord Leong, whether the Treasury is monitoring this situation and whether the Treasury and the OBR are still confident that the measures announced in the March 2024 Budget will still raise £2.7 billion a year by 2028-29. I also fear that we are about to make matters worse through changes to the capital gains tax regime in the forthcoming Budget. The politics of envy is seductive but economically destructive. I hope that rationality will prevail. This is certainly the reputation of the current Chancellor, and the October Budget will be a big test of her judgment and instincts.

This leads neatly to the third factor influencing FDI: namely, general investor sentiment towards the UK. This is the ultimate intangible and not easy to pin down but arguably one of the most important ingredients determining the flow of FDI. Sentiment can be influenced

by the smallest of issues, which is why the noble Lord, Lord Harrington, was right to call for the streamlining of cumbersome processes, removing obstacles such as planning delays and grid connections. Another issue that frequently comes up from inward investors is their poor experience at Heathrow Airport. It is literally the UK's shop window, and we should be far more imaginative in making passport control a pleasant experience for incoming visitors, especially those bringing their cheque-books.

In conclusion, I am convinced that the UK can lead the world in attracting capital, but to do so we must regain our self-belief, natural pragmatism and fall in love again with wealth creation.

6.23 pm

Lord Mountevans (CB): My Lords, I add my congratulations to the noble Lord, Lord Harrington, on his splendid review. Noble Lords may know the City is close to my heart. I spent my career in global shipping markets. But my ship really came in, as it were, when I was elected as Lord Mayor. In that role, I represented UK plc around the world, promoting UK exports, particularly financial and professional services, and highlighted the attractiveness of the UK as a place for international investment. It is with that background that I turn to the subject at hand.

Following the views of the then Chancellor, the review focused on five key growth sectors in the UK: green industries; advanced manufacturing; life sciences; digital technology; and creative industries. The list does not include financial and professional services, arguably Britain's most important and successful sector. I urge the new Government not to overlook it. I wonder if sometimes Governments have felt that FPS can look after itself. It must be high among Government's promotional priorities; a dynamic FPS is fundamental to successful business.

At the forefront of our minds must be the UK's competitors, from Ireland to Singapore and those in the Middle East—each with powerful investment agencies focused on attracting FPS. By contrast, here in the UK, there are a wide range of organisations promoting FPS and other FDI. A change in targeting support could give these organisations far stronger impact. We know that improving FDI helps growth. For example, in 2023 the UK attracted FDI in 222 FPS sector initiatives involving 177 foreign companies valued at £1.1 billion. FDI in 2022 alone created nearly 15,000 jobs. Over half of the jobs created in 2021—the last year for which I could find figures—were outside London.

City of London Corporation research indicates that improving support for financial and professional services within FDI could significantly increase growth, adding an additional £0.7 billion to the economy by 2030. The UK has a great potential in FPS. We have our skills and expertise; we are a great place to connect to global talent and markets; we have strength in sustainable investment and green finance; and we have our pioneering fintech sector. This means that the UK has a strong offer across the FPS piece.

I offer four ideas for how we can expand and strengthen the position. First, there is the FCA's innovation of a sandbox, where companies can experiment with new ways of doing business while under close, agreed regulatory oversight. The UK has led the way in creating new opportunities for services firms to innovate. This helps to attract growing and vibrant business to the UK. The UK can be a world leader again by establishing multijurisdictional sandboxes, which would help develop regulatory approaches across jurisdictions in response to emerging technologies. This would act as a catalyst for increased foreign investment in the UK.

Secondly, we should be embracing emerging parts of the services industry, such as carbon markets. These markets have the potential to position the UK as a global centre for carbon market activities. With this comes the opportunity to attract foreign investment in UK professional services, capital markets and trading activities. The City of London Corporation's UK carbon markets forum seeks to highlight the importance of this sector.

Thirdly—perhaps the Minister will be attracted by this proposition—we should create as a pilot an FPS investment hub as the first step to creating a stand-alone cross-sector national investment agency. This should be established as a joint venture or public-private collaboration. It should be arm's length from the Government. This would create focus for foreign investors wanting to direct investment to the UK.

Fourthly, the much-applauded review of FDI from the noble Lord, Lord Harrington, shines a light on how the UK might strengthen and deepen its attractiveness to FDI, but perhaps we could go further. The establishment of a financial and professional services strategy would help UK and overseas businesses to see a road map of how the Government may offer help and support. By having a single codified strategy, foreign investors might be galvanised into directing their investments to the UK.

6.27 pm

Lord Livingston of Parkhead (Non-Afl): My Lords, I share my thanks to my noble friend Lord Harrington for his outstanding report; it is an excellent read.

I will give a view on the UK's position in respect of FDI. I speak not just as someone who was previously Minister for Trade and Investment, but also as either a CEO or director of companies that have invested around the world. The UK's position is not bad. We have suffered because of Brexit, which has had an impact. We have also suffered from instability. Businesses cannot put a number on instability. It increases risk and they do less investment when it exists. They want to see long-term stability if they are making long-term investments.

We have so much in the UK that we can build upon, as mentioned in the report: English, GMT zero, the rule of law, financial centres, et cetera. If I could add to the report, I would add universities. We have four of the best universities in the world within 100 miles of here. They are important, not just for skills and research, but also many future business investors will have gone to university in the UK and have become pro-UK. Investment in universities and foreign students is a win-win, and we really need to encourage it.

People also want to live here. Encouraging employees to come and work and live here is an important part of the investment decision, as is labour flexibility. We are talking here about good companies which train well,

[Lord Livingston of Parkhead]
invest well, recruit people and promote them. They want to see labour flexibility. I know that there are a number of countries in the EU that people will not invest in because it is so difficult to change their position after they have done it.

The noble Lord, Lord Harrington, raised a number of issues; I will pick up on just a few of them. I find one of them deeply depressing because it was an issue when I was a Minister, so obviously I did not solve it: opening bank accounts. It is remarkable that it still has not been solved. It seems to be easier to open a bank account if you are a fraudster than if you want to come to the UK and give out jobs or if you are a Peer. It is a Catch-22 situation: you cannot open a bank account because you are not here, and you cannot be here because you cannot open a bank account. Although the noble Lord, Lord Harrington, made some points on this, I challenge the Minister to go further. Why do the Bank of England, the Treasury or the PRA not give some cover to the banks—do a bit of research and say, "Okay, you can give open accounts for the next 12 months while you do the work"—and try to clear people up front? Banks will be risk averse because of the nature of the regulations.

On visas, we are usually going to grant visas to people who want to create lots of jobs. Let us make it easy, do it up front and be proactive. As an example, when I was a Minister a car plant was opened here; one of the key reasons was that we presented a visa from the Home Secretary saying, "We want you to be here, and here's a number for your top people to contact when you want to come and visit the factories". The important part is that people want to feel wanted.

One of the other important things is consistency. We have had so many changes. Everyone in government, including the Treasury, has to understand that these things do not turn around in a year. You cannot keep on changing funding for support mechanisms or programmes; these things are built up over many years. The people we are speaking about today may be making investments in five or 10 years, not five or 10 months.

Finally, although this report is about FDI, it makes so many great suggestions that also apply to domestic investment. FDI is not instead of domestic investment but as well as it. We should apply the same rigour to making great investment decisions, whether from abroad or from companies in the UK.

6.31 pm

Lord Johnson of Lainston (Con): I congratulate the noble Lord on his appointment and welcome him to his place. He is a credit to the seldom seen, pragmatic approach that Labour should take if it wants to genuinely grow this economy.

I also pay homage to my friend and mentor, the noble Lord, Lord Harrington. His review is unquestionably first class. He is a genuine leader in his field, and I was incredibly grateful to him for the enormous amount of work he did in compiling his evidence. The Government commissioned his report and we endorsed his findings, as he said. His list of actions—all of them—will help this country win more foreign investment.

We need this money. As the noble Lord, Lord Petitgas —another of the true national heroes in this area—said, without FDI we cannot achieve any of our goals for net zero, AI, advanced manufacturing, housing or infrastructure. This is not a "nice to have" but the very essence of the survival and progress of our nation. If the goal of a Government is to give their citizens a longer, happier life, improving our investment environment is the only way, frankly.

When the Conservatives were in government, the landscape looked different—optimistic and powerful. I always believed that, if you took a hot-air balloon up into the sky on a clear day, you would look down and see herds of tech unicorns galloping across our green fields, the sunlight glinting off their golden horns and hooves. Now I worry that, under Labour, we would see only a few lonely unicorns, their ribs showing through and their coats shabby. You might even text them some money, since I am afraid that Labour, for all it says, does not really understand what it takes to create an attractive environment for investment. We live in a competitive world where capital, like water, flows where it likes. You cannot force it. You cannot fake it. The opportunities have to be real and the economic framework has to be conducive to generating the right level of return, as we have heard.

The Government, I am afraid, are talking down our nation, our abilities and our people. I find it quite bizarre, and I would like to ask the Minister to comment on whether his colleagues will actually start saying nice things about this country and positive things about the economy. Under the Conservatives, in our long tenure, contrary to what you read in the papers, we achieved record amounts of FDI, putting us, as we heard, in the top three destinations for FDI in the world for overall stock, second only to the US. In greenfield ESG-related investments, I think we were first in the world. The week of the global investment summit last year, to which the noble Lord, Lord Petitgas, referred, saw pledges to invest £50 billion in just one week, and the Northern Ireland investment summit to which the noble Baroness, Lady Foster, referred was also an enormous success. I should like to hear a little more on the Government's plans for their own summit, if I may. What are the targets for this event, in terms of pledges? How much is it costing, and when will we know who is coming?

One cornerstone feature of our economy is the flexibility of our workforce, which is now under threat from a set of proposals designed to enhance the power of the unions over business. What sort of message does that send? This is an issue and it has been raised before: many of the investors I dealt with told me how they preferred the UK to France precisely because the restrictive labour practices there made it so hard to manage a business.

This Government are also mulling significant tax rises on capital, which means, effectively, tax on investment returns. I repeat the request for the impact assessments of these changes when it comes to assessing inward investment into the country. I also want to press the case for further or better regulation to remove barriers to investment. We talked about the growth mandate in a debate yesterday, and I was not sure whether the Minister had really committed to adhering to it and trying to drive regulators to behave accordingly.

I turn to the point about financial services, which was raised successfully and succinctly just now. The FCA, CMA and PRA all think they are doing a great job, but yesterday Michel Barnier published a fabulous report that pointed out the important need to restructure some of those bodies to adapt to the modern need for huge capital pools, if we are to survive as a society.

In conclusion, can the Minister please tell us how committed his colleagues really are to garnering foreign investment? When will he commit to publicly endorsing the Harrington review with improved resourcing for the Office for Investment and a Chancellor-led Cabinet committee? When will he and his colleagues start talking up, rather than down, the amazing opportunities of this country and its regions? When, if I may ask, will he find someone brave enough, generous enough and, frankly, kind enough to stand in as their Minister for Investment?

6.36 pm

Lord Leong (Lab): My Lords, I am pleased to respond to this Question for short debate on behalf of the Government. I take this opportunity to thank all noble Lords who have spoken, and I start by paying tribute to the noble Lord, Lord Harrington. He has done valuable work in this space to help make the UK more attractive for inward investment, and I thank him for his kind words. Before coming to this House, I had always been an entrepreneur; I have set up businesses and been on beauty parades to seek investments. Since then, I have sold my businesses and become an investor, so I am well versed on what is required to bring in investment, and on the situation we have to portray to attract inward investment.

The noble Lord's recent review has generated much discussion about how we can facilitate more investment through more channels, both here in Whitehall and in the private sector; indeed, some of his recommendations have since been implemented. I also pay tribute to the noble Lord, Lord Johnson, for his recent tenure as Minister for Investment. He was an energetic and vocal champion for UK PLC, and I have no doubt that his personal efforts helped to facilitate more inward investment into the United Kingdom.

Several noble Lords asked when we are going to have a Minister for Investment. All I can say is that the Government will make that announcement in due course. We want to find the right individual, who can drive our investment agenda right across government—that is the individual we are looking for. I shall endeavour to answer as many of the questions asked as possible within the time limit of 12 minutes, and if I do not answer them all, I shall go through *Hansard* and write to noble Lords.

The Prime Minister, the Chancellor and the Business Secretary have all emphasised the importance of inward investment to this new Government: it is a key driver of productivity growth, which enables innovation and efficiency in the wider economy. This in turn creates jobs, opens up opportunities for communities and spurs economic growth. Investment drives growth, productivity, employment and a higher standard of living. We know that investment is one of the principal drivers of growth, as the noble Baroness, Lady O'Grady, mentioned, yet for quite some time the UK has suffered the lowest investment share as a percentage of GDP in the G7. We ranked 27th out of 30 in the OECD league table last year. With five Prime Ministers, seven growth strategies and 10 Business Secretaries under the previous Government, stability was sorely lacking. Businesses have not had the confidence to invest, as mentioned by various noble Lords, to adopt new technology, to upskill their employees or to plough money into research and development. We are determined to change that.

One of our principal ambitions is to boost those sectors in which the UK is a world leader and which therefore have the greatest potential for generating the growth that we need. They include our green industries, advanced manufacturing, life sciences, digital technology and, let us not forget, our world-beating creative industries, our financial and professional services and aviation, as mentioned by various noble Lords and the noble Baronesses, Lady Foster and Lady O'Grady. While these sectors have been attracting much investment, they are at risk of stagnating because of the policies and action, or lack thereof, of the last Government. If we do not work hard to attract this investment and capital, we know that our European partners in France, in Germany and even in our nearest neighbour, Dublin, will attract them. As for Singapore, Bahrain and the UAE, we have to compete with them. Attracting foreign direct investment is a global, competitive business. We have to be out there, seeking out those companies and sovereign funds to make the UK the investment destination—we have to bring them here.

To hit the ground running, the Prime Minister has already announced plans for a new international investment summit in October, as mentioned by some noble Lords, to bring together businesses and big-hitting investors. We want to drive home the benefits of our plans for a new industrial strategy and, of course, our national wealth fund, both of which we will lay out in more detail over the coming months. Launched shortly after we took office, the national wealth fund will explore the possibility of aligning key financing institutions, such as the UK Infrastructure Bank and the British Business Bank, to offer a compelling proposition for investors, including to scale up or invest in SMEs. It will mobilise billions more in private investment and generate a significant return for taxpayers. Over £7 billion has already been allocated in additional funding so that investments can start being made immediately, focusing on further priority sectors and catalysing private investment at a greater scale.

As part of our bold plan for growth in the places where it is needed most, our industrial strategy will drive investment into crucial sectors across all parts of the United Kingdom, including working with the devolved Administrations and combined authority mayors. It will build a resilient economy that can stand on its own two feet, increase opportunities for all and make Britain a clean energy superpower.

It will also be through planning reform. I hear this time and again from investors: we need to unshackle the things that prevent planning and building factories. To get Britain building again we need planning reform and to end the ban on offshore wind, prioritise brownfield land for development and renew green-belt boundaries. This will attract more much-needed investment into construction, engineering and clean tech.

[LORD LEONG]

These increased investment opportunities will be vital for putting capital into skills and education, as has been mentioned by many noble Lords. Indeed, our new body, Skills England, was launched in July, alongside our commitment to transform further education into technical excellence colleges. Working with local businesses, this will accelerate the upskilling of the workforce and act as a vital skills bridge between industry, small businesses, trade unions, schools, training providers and our universities.

We will bring in the expert voices needed to form a fully independent Industrial Strategy Council, placing it on a statutory footing to send a clear message to businesses and international investors that we are a pro-growth Government of certainty, consistency and stability.

The Business Secretary has already spoken to hundreds of businesses and he has assured private sector leaders of our commitment to accessibility and a pro-enterprise approach. Both the Department for Business and Trade and the Treasury are working closely to provide cross-Whitehall governance on investment. This is taking shape through our growth mission boards—the first of which met in July—the Industrial Strategy Council and the national wealth fund, ensuring joint accountability in securing new investment and removing structural barriers to priority areas. I know this was a recommendation from the noble Lord, Lord Harrington, in his review last year, so no doubt he is pleased to see it taking shape.

We also know how critical the pensions industry is to investment, as mentioned by several noble Lords. They are intrinsically linked, but we know that there is much more that we can harness. That is why we are undertaking a pensions investment review, with the ambition of unlocking the potential of the £360 billion in local government pensions schemes.

We will continue to utilise the expertise of the Office for Investment, as mentioned by several noble Lords, and its dedicated concierge services provided to the world's most strategically important investors, complementing the wider work of the Department for Business and Trade. The OfI has a strong track record of securing highly transformative investments into key sectors in the UK, and we will continue to leverage its knowledge and relationships to land-critical investments.

I mentioned earlier that FDI is a global competitive business. We have got to compete with the likes of Singapore, with its Economic Development Board, and likewise with Bahrain and the USA. We will seek investment from Africa to Australia, and from the USA to the UAE. We have to be at the beauty parade to promote the UK as the destination for investment. For higher-value investments, we offer bespoke assistance, including project and account management, and guidance to help navigate the UK landscape and develop innovative solutions to help overcome barriers such as planning and access to the grid.

My time is up, so I am going to conclude, but I will write to noble Lords after I have read *Hansard*.

Lord Leigh of Hurley (Con): My Lords, will the Minister confirm that he will write to noble Lords, four or five of whom have specifically asked for impact assessments on employment laws and on potential changes to taxation? Will he confirm that he will specifically address those issues?

Lord Leong (Lab): I assure the noble Lord that I will definitely write. For those issues relating to the Treasury, it is a bit above my pay grade but I will definitely speak to my colleagues to get some information to noble Lords.

To conclude, we need to see more of such investments in the United Kingdom, and we need to really turn this stalling performance into sustained growth—growth that translates into more jobs, better pay, a happier workforce and more innovation. It is only through investment from this new Government, British businesses and international investors that we can make those things possible and make the UK one of the best places in the world to live, work and innovate.

House adjourned at 6.50 pm.

Grand Committee

Tuesday 10 September 2024

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, I start with the usual warning that, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells ring and resume after 10 minutes.

Bank Resolution (Recapitalisation) Bill [HL]

Committee (2nd Day)

3.45 pm

Clause 1: Recapitalisation payments

Amendment 13

Moved by ***Baroness Bowles of Berkhamsted***

13: Clause 1, page 2, line 3, at end insert—

"(6) Use of the Financial Services Compensation Scheme for bank recapitalisation and associated costs must not reduce bank depositors' entitlement to the full amount of Deposit Guarantee Insurance."

Baroness Bowles of Berkhamsted (LD): My Lords, it falls to me to open proceedings again. This is very much a "what it says on the tin" amendment. If it were phrased as the question "Will the deposit guarantee always be honoured?", I would expect the answer to be yes.

Last week, we discussed that there may be more than one recapitalisation dip. For a moment, let us imagine a worst-case scenario where there is more than one but things are worse than expected due to market circumstances—maybe contagion or other unforeseen circumstances—and the insolvency route has to be taken. Can we be certain that there would be no change to bank depositors' entitlement—I do not think that is intended in any way, but I would like to hear the Minister say it—and that the system would have the capacity for whatever is thrown at it, if not cash capacity then some form of underwriting in addition to whatever borrowing is available? Does the overall capacity extend beyond the borrowing that is already set up or is it fundamentally underwritten by the Government? As they will get it back, I do not object to that; I am just inquiring as to what the mechanism is, although maybe one does not want to think about that until we get there, if we do.

Are the state of the Financial Services Compensation Scheme and the affordability of the levy, if there had already been recent large calls, for example, a factor in the analysis of whether to mount a recapitalisation rather than allowing the insolvency? There could be public interest factors that relate not merely to the bank under consideration per se. Does the public interest consideration also extend to the state of the compensation scheme? I beg to move.

Baroness Vere of Norbiton (Con): My Lords, I rise to make a few comments about this, many of which have already been made by the noble Baroness, Lady Bowles. I am determined to make my comments none the less, so I shall use different words in a different order. The amendment does what it says on the tin—that is absolutely right—and I am confident that the Minister will state that there will be no diminution in the benefit of the deposit guarantee scheme, but is that in and of itself sufficient comfort? The framing of this Bill and the Minister's exposition of it are shaped by a mindset that there will be a single resolution event; it will be an isolated occurrence; it will clearly be in the public interest, and it will be a single financial institution following specific issues relating only to that bank. That seems to be the vibe that I get when I read the information, particularly that which accompanies the Bill, and I remain concerned that there are insufficient checks and balances in place to enable Treasury input when the measures are used as envisaged, but also where there are multiple failures during a wider systemic event—a reasonable worst-case scenario.

A reasonable worst-case scenario can develop quickly, or it may become apparent only over time. In a slow burn and developing situation, decisions relating to banks facing challenges early on in a prolonged event will be made in a very different context from those whose challenges perhaps developed over a longer period. In essence, decisions will be made, but in very different environments, given what might have happened in the intervening period. It may well be that there is significantly less money left with which to play, so to speak, to ensure financial sustainability.

Whether a reasonable worst-case scenario is a one-off event or a slow burn, FSCS resources are going to come under significant pressure should two or more banks face insolvency or resolution, and choices will surely have to be made. Who makes those choices and based on what guidance? Will the FSCS prioritise DGI entitlements over the resolution of a bank or banks? What would happen in circumstances where the public interest test is at best marginal? There will be many circumstances when it is very clear, black and white, but there will be some when it is not quite so clear. On one hand, one might have a bank which needs to go through the insolvency procedure and therefore one set of obligations fall on the FSCS and, on another, a bank could go through resolution and it is a bit marginal whether the public interest test has been met. How are all those decisions going to be worked through, given the lack of direct oversight from the Treasury?

We have been told that the FSCS will be unfettered when it comes to decisions relating to the allocation of existing resources and borrowing from sources other than the Treasury for DGI or recapitalisation. Therefore, it seems that until the FSCS needs to go cap in hand to the Treasury to get more money over and above what it can already borrow, there is an obligation on the FSCS only to consult the Treasury and others and the decision-making essentially remains beyond the reach of Ministers. I will be interested in the Minister's response.

The Financial Secretary to the Treasury (Lord Livermore) (Lab): My Lords, I hope I can address the concerns of the noble Baronesses, Lady Bowles and Lady Vere, and provide them with reassurances about the protections in place for depositors as a result of the mechanism under this Bill. I can assure the noble Baroness, Lady Bowles, that in the event that the mechanism under the Bill is used, it would not reduce a covered depositor's entitlement to a payout in the event of a subsequent bank insolvency. In this situation, eligible depositors would continue to be paid out up to the coverage limit set by the Prudential Regulation Authority, which is currently £85,000. That protection is enshrined in the rules set by the Prudential Regulation Authority. If the mechanism under the Bill is used and a bank subsequently enters insolvency, the Financial Services Compensation Scheme will continue to have access to the same resources as it does now. This means that it would first seek to use any existing funds or its commercial borrowing facility to meet its costs. If that is not sufficient, the Financial Services Compensation Scheme is able to turn to the Treasury and request a loan under the National Loans Fund. Any borrowing under the National Loans Fund would then be repaid by future levies. That is an important backstop that means that the Financial Services Compensation Scheme can continue to access the funding it needs.

The noble Baroness, Lady Bowles, asked a specific question about affordability being taken into account when deciding to recapitalise using the payout in insolvency. The answer to that is yes. The bank would consult the PRA when deciding to use its powers to consider affordability in levies. I hope this provides the reassurance that the noble Baroness is seeking that covered depositors will not face a reduction in what they are entitled to in insolvency if the new mechanism is used. On that basis, I hope she will be able to withdraw her amendment.

Baroness Noakes (Con): Can I just clarify what happens when the FSCS has gone to the Treasury, because there does not appear to be a limit on the amount of money that it could draw down to meet its obligations to protected depositors? As the noble Lord, Lord Eatwell, pointed out on our first Committee day, there might be several financial institutions—my noble friend also raised this—in play at one time. It cannot be the case that an infinite amount of money can be funnelled through the FSCS and ultimately funded by loans from the National Loan Fund with the expectation that that will always then be met by subsequent years' levies on the institution. Is there is there no break in the system which says, "No, this is too much for the FSCS to deal with", especially as it is now potentially being loaded with a different kind of expense to process through its mechanisms?

Lord Livermore (Lab): As the noble Baroness said, we touched on this briefly in the first day of Committee. If it is okay with her, I will write to set out the precise way in which the mechanism would work in that instance.

Baroness Bowles of Berkhamsted (LD): I thank the noble Lord for his reply, which was broadly as I expected. We can draw from it that, in a situation in which the scheme will be used for recapitalisation, it will not set any precedents, because we do not know how much money will be in the pot if there have been other events. It will be considered case by case.

On the one hand, that has to be so, otherwise you might fall into the sort of trap perceived by the noble Baroness, Lady Noakes: that it is a perpetual pot, which the banks will have to fill, no matter what. That is not satisfactory but, at the same time, it is nice to have as much clarity as possible about the expected outcomes. We come back to the same point about what goes into the code of practice or other versions of it, whatever they may be.

My final point—I do not need to labour points that we have been around before—is that, in his answer about eligible depositors, the Minister said that this is enshrined in PRA rules. I just wish that it was enshrined in primary legislation, as it used to be. I had not absorbed how that was in the rules and was therefore changeable by the PRA. I thought that it would be fixed in primary legislation, but that is something else to think about. With those comments, I beg leave to withdraw my amendment.

Amendment 13 withdrawn.

Amendment 14 not moved.

Amendment 15

Moved by ***Baroness Noakes***

15: Clause 1, page 2, line 3, at end insert—

"214F Engagement with Parliamentary Committees

(1) If the Bank of England exercises the power under section 214E it must, as soon as reasonably practicable, notify in writing the chair of each relevant Parliamentary Committee that the power has been exercised.

(2) Relevant Parliamentary Committees are—

(a) the Treasury Committee in the House of Commons, and

(b) the Financial Services Regulation Committee in the House of Lords.

(3) References to the committees referred to in subsection (2)—

(a) if the name of the Committee is changed, are references to that Committee by its new name, and

(b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons or the House of Lords, are to be treated as references to the Committee by which the functions are exercisable.

(4) Any question arising under subsection (3) is to be determined by the Speaker of the House of Commons in relation to committees of the House of Commons and by the Senior Deputy Speaker of the House of Lords in relation to committees of the House of Lords."

Member's explanatory statement

This amendment provides that the Bank of England must notify the Treasury Committee of the House of Commons and the Financial Services Regulation Committee in the House of Lords if the recapitalisation power is used.

Baroness Noakes (Con): My Lords, Amendment 15 would add a new section to FSMA. This would create a requirement for the Bank of England to notify the Treasury Select Committee in the other place and

the Financial Services Regulation Committee of your Lordships' House of the use of the recapitalisation power.

On our last Committee day, I tried to add a requirement for Treasury consent when the recapitalisation payment power was used in order to improve parliamentary accountability around the use of the power. That would, in effect, have tied Ministers into the decision, thus allowing Parliament—in particular, the other place—to hold Ministers to account. As I have said many times, the accountability of the Bank of England is weak. Unsurprisingly, because Ministers have never been known to be in love with ministerial responsibility or accountability, the Minister turned this down.

However, in response to my amendment, the Minister said, as if it was a self-evident truth, that:

"It is important to maintain the position that the Bank of England can take decisions on the appropriate resolution action independently".—[*Official Report*, 5/9/24; col. GC 33.]

I am not sure that that is correct. The independence of the Bank of England certainly exists in relation to monetary policy, but it does not extend to the totality of its functions.

I invite the Minister to look at Section 4 of the Bank of England Act 1946, which was when the Bank of England was nationalised. Section 4 allows the Treasury to issue directions to the Bank of England—it has in fact never issued a direction, but the power exists. There are carve-outs from that power of direction to cover monetary policy, the activities and functions of the PRA, and something to do with central counterparties. It does not carve out the Bank as a resolution authority, so a power exists for the Treasury to direct the Bank on resolution functions. We should not therefore get hung up on the so-called independence of the Bank in considering amendments to this Bill, though we may well return to the topic on Report.

4 pm

Amendment 15 is a way to improve the parliamentary accountability of the Bank in another way. I believe that the parliamentary committees that scrutinise the financial services sector will be interested whenever this new power is used, particularly when it is used for anything other than small banks or banks that do not have MREL. The failure of such banks will call into question the effectiveness of regulation, since it implies that a failed bank did not have enough core capital or MREL, if it was on a glide path to achieving an amount of MREL. Capital requirements are set by the PRA, which is part of the Bank of England, and the Bank sets MREL.

Parliamentary committees are likely to want to look at this. They should also be interested if, for example, the Bank double-dips into the FSCS for extra recapitalisation payments, since these imply that the Bank's initial estimates were not sound or that new facts have emerged, either of which could call into question the continued use of the bridge bank rather than bank insolvency procedure as the strategic solution for the failed bank.

Amendment 15 is a simple notification requirement. It would enable one or both committees to take evidence, not necessarily in public, about the circumstances surrounding the need to use the power. Importantly, it would also allow the committee to examine why the bridge bank solution had been selected over the bank insolvency procedure, which is and has always been regarded as the default procedure.

The Treasury will be familiar with the construct of my new clause, because it is based on paragraph 28 of Schedule 1ZA and paragraph 36 of Schedule 1ZB to FSMA. Those were inserted into FSMA by Section 38 of the Financial Services and Markets Act 2023. As initially drafted, it provided for notification of relevant consultations only to the Treasury Committee, but it was amended after debate in Committee in your Lordships' House to include reference to any committee set up in your Lordships' House or any future Joint Committee of both Houses. It effectively paved the way for the creation of the Financial Services Regulation Committee, which, as I mentioned on our first day of Committee, is now up and running.

Section 38 of the 2023 Act was an inspirational bit of legislation for which the last Government deserve great credit. I believe it should be broadened whenever new circumstances arise. This Bill creates an important new power which is broadly drafted, as we discussed on the first day of Committee, and therefore lends itself to parliamentary scrutiny. The new power is in many ways analogous to the powers given to the PRA and the FCA via the 2023 Act. In that case, there was a huge repatriation of EU financial services legislation and the PRA and the FCA were given powers to set the detailed rules in this big new area without any direct parliamentary oversight. A positive link was made to the parliamentary committees so that they could oversee the use of the powers. This case is very similar. Another great big power will be given to the Bank which could be used in very different ways, so the parliamentary committees should have an interest in how it is used.

My amendment requires the Bank to notify the parliamentary committees

"as soon as reasonably practicable",

which is the formulation used in Section 38. One might also consider specifying a number of days after the use of the power. Without this provision, the committees of each House might not know about the use of the power until one of the reports under Section 79A or Section 80 of the Banking Act 2009 came into play. As the Minister knows and has explained to the Committee, these reports are received as soon as practicable after one year, so the first knowledge that any of our committees would have could be something like 15 or 16 months after the first use of the power. I do not believe that is adequate in the context of parliamentary accountability.

I hope that the Treasury is proud of its new creation, via Section 28 of the 2023 Act, and will want to make use of this brilliant new way of keeping Parliament's committees informed and capable of exercising their scrutiny powers on a timely basis. I hope that the Minister will support anything that increases the effectiveness of parliamentary accountability for the Bank. I beg to move.

Lord Vaux of Harrowden (CB): My Lords, very briefly, I support the noble Baroness's amendments. Perhaps I would say that as a member of the Financial

[Lord Vaux of Harrowden]
Services Regulation Committee—as one of the majority of us in this Room, I should say, who are members of that committee.

I see this as working closely alongside the reporting amendments that we discussed on Thursday. When we were talking about the reporting requirements the noble Baroness, Lady Vere, mentioned that it is all very well issuing reports, but not if there is no one to read them. This gives us somebody to read them. It is a fairly light-touch requirement: it is an obligation to notify but does not give any obligation on anybody to do anything with it, unless they feel they need to and that it is important. I hope that this simple measure, alongside the reporting discussions we had last week, will be something that the Minister is minded to accept.

Lord Eatwell (Lab): My Lords, perhaps I might suggest that it would be wise of the Minister, if I may be so bold, to look warmly on the amendment. Discussions around the accountability issue were a persistent theme in the debates on what is now the Financial Services and Markets Act 2023, and led as the noble Baroness, Lady Noakes, pointed out, to the creation of the Financial Services Regulation Committee of your Lordships' House, charged with the responsibility for maintaining parliamentary accountability of financial services regulators. I can assure him that if the Treasury does not accept this amendment, he will become weary of the number of times that it will come back again and again—the reason being simply that the committee feels strongly that its role is now a crucial part of the regulatory framework in the UK and that the reports to the committee effectively establish the groundwork of its role in pursuing the accountability agenda.

Baroness Bowles of Berkhamsted (LD): Not surprisingly, I too support this amendment. I congratulate the noble Baroness, Lady Noakes, on her exposition of the genesis of the terms of Section 38 of the 2023 Act. Of course, I am a member of the committee that came as a consequence of that. In her presentation, although not in the amendment—wisely so—she suggested that maybe there would be some hearings and questions, and the possibility that they would be in camera.

I urge the Minister, the Treasury and, indeed, the Bank not to shy away from such suggestions, because it would not be the first time that I have heard mutterings about things being confidential and not wanting to talk about them to parliamentary committees. In Germany, its parliamentary committees can look into the books of the banks and get all kinds of confidential information and—do you know?—it does not leak out. It is quite possible for committees of this House to behave just as well. I put that in as some impetus for how you can get better accountability, oversight and, I suggest, help from the committees, where everybody, ultimately, is pulling in the same direction.

Baroness Vere of Norbiton (Con): My Lords, there is not an awful lot more to say. This is a very elegant amendment from my noble friend Lady Noakes, and it was very elegantly explained. I am the sole member of this Committee today who is not a member of the Financial Services Regulation Committee—no, neither is the Minister—and I am sorry about that. All noble Lords involved in getting the committee set up have an enormous amount of experience in the field of financial services regulation and, looking at the inquiries that it is already doing, I think it will be a very valuable part of our regulatory infrastructure. I look on this amendment with warmth and favourability and I should imagine that the Minister will do so, too.

Lord Livermore (Lab): My Lords, the amendment tabled by the noble Baroness, Lady Noakes, focuses on the important theme of how the Bank of England is accountable to Parliament. As I have said in response to other amendments, the Government agree that it is right that the Bank of England is held to account for the actions it takes in resolution. That includes being accountable, as appropriate, to Parliament, so I do look warmly, in the words of my noble friend Lord Eatwell, at the intent of this amendment. I also stress that it is right that the Bank of England can act quickly and decisively when exercising its powers. That is particularly important in a crisis situation.

That said, the Government expect that the Bank of England would engage with Parliament after taking resolution action, including when the mechanism under the Bill is used. Specifically, under the existing provisions of the Banking Act, when the Bank of England exercises its resolution powers it must provide a copy of the relevant legal instrument to the Treasury. The Treasury must then lay that instrument in Parliament and the Bank of England must also publish it. This will continue to apply under the new mechanism and ensure that Parliament is notified when resolution action is undertaken. I shall give one specific example. In the case of SVB, the Bank sent to the Treasury the copy of the legal instrument the same morning as it exercised its power. The Treasury then laid the relevant document in Parliament on the very same day.

I also reiterate points I have made elsewhere about the Government's commitment to require the Bank of England to produce reports in the event that the mechanism is used. The Government strongly expect such reports to be made public and laid in Parliament unless there are clear public interest grounds for not doing so, such as issues of commercial confidentiality. I hope this provides some comfort to the noble Baroness and, on that basis, I respectfully ask her to withdraw her amendment.

Baroness Noakes (Con): Just to clarify something with the Minister, I understand that the resolution instruments are notified to the Treasury and laid before Parliament but they, of course, do not refer to the use of the mechanism in the Bill. That is what I was focusing on, rather than the resolution action itself. They may be separated, so it is not quite satisfactory to say that the law already provides for the resolution instruments to be relaid, unless that bit of the legislation, from the 2009 Act, were amended to cover the use of the Bank's payment capitalisation power. I was trying to fill in a gap that I thought existed.

Lord Livermore (Lab): I do not know whether this goes far enough for the noble Baroness but we absolutely intend, and would be clear, that we expect the same exact procedure to apply for this new mechanism.

Baroness Noakes (Con): I am very glad that the Minister has said that.

First, I thank my fellow members of the Financial Services Regulation Committee for their support on this amendment—I was never in any doubt that I would get it—and I thank my noble friend, the shadow Minister, for her support.

I think this will come down to whether the Treasury's expectations should be backed up somewhere in the legislation or whether we can allow it to exist on the basis that Treasury expectations will always somehow work out in practice. I favour the former: we need to be clear in the legislation about the trail of information that needs to go and when it needs to go.

4.15 pm

I would like to think again about what the Minister said. My solution may not be quite the right one but it is consistent with policy established in connection with the 2023 Act and so is not something to be dismissed lightly. It was not put forward as an aggressive amendment but as one that complements a mechanism that the previous Government put in place for the very good reason that the Minister agrees with, which is parliamentary accountability. Perhaps we can have an opportunity to discuss the best way forward of dealing with that between now and Report. I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Clause 1 agreed.

Clause 2: Reimbursement in respect of recapitalisation payments

Amendment 16 not moved.

Amendment 17

Moved by ***Lord Vaux of Harrowden***

17: Clause 2, page 2, line 20, at end insert—

"(aa) on a winding up of the institution, any recapitalisation payment is to be treated as a debt of the institution and paid out of the institution's assets in preference to all other claims except any prescribed fees or expenses of the official receiver;"

Member's explanatory statement

Because the recapitalisation payment is not paid by the FSCS to the institution, but is paid to the Bank of England, it is not clear how it would be treated on a winding up of the institution. This probing amendment aims to ensure that it is treated as a debt of the institution and to ensure that recapitalisation payments are recovered first in any insolvency process, in preference to other creditors or shareholders, other than the expenses of the receiver.

Lord Vaux of Harrowden (CB): My Lords, this amendment is simply intended to try to obtain some clarification on how a recapitalisation payment that has been made by the FSCS to the Bank of England will be treated if the failing bank eventually gets into insolvency. This could occur if the bank is transferred to a bridge bank, the buyer is not found and the bank's financial situation does not improve. There is a two-year deadline for the bridge bank although that can be extended in certain circumstances but, eventually, the process can end up with the bank being wound up.

If that happens, the recapitalisation payments should be treated as a debt of the bank and should rank ahead of all other liabilities, debts or other claims other than the fees of the official receiver when it comes to distributing any value that might be left in an insolvency situation. This is related to other discussions that we have already had and partially to Amendment 23, tabled by the noble Baroness, Lady Bowles, which we will debate later.

The principle should be that the shareholders, lenders and other creditors should not be put in a better position as a result of the recapitalisation. To put it another way, the industry-funded compensation scheme should not, in effect, be bailing out the losses of shareholders and creditors other than the depositors who will be compensated under the scheme should their deposits be lost in the insolvency. However, that is not clear in the proposed Bill, although it is entirely possible that I have missed something in the interplay between the various Acts that apply here. I would therefore be most grateful if the Minister could explain exactly how the amount provided by the FSCS would be treated in such a situation. It might most easily and clearly be dealt with by including it in the worked example that the Minister agreed to consider providing during our discussions on Amendment 1 on Thursday.

I should say that I suspect that my amendment as it is currently drafted probably does not work, and that it may require some changes to be made to insolvency legislation to work properly if there is an issue. Rather than worrying about the specifics of the amendment, I hope that the noble Lord will concentrate on the principle and explain how the recapitalisation payment would be treated in an insolvency process, as it stands, in particular in making sure that it does not advantage shareholders and lenders, and ideally point me to the relevant clauses of the relevant legislation. If I am right that the situation is unclear, we can sort the details out on Report. I beg to move.

Baroness Noakes (Con): I support the amendment that the noble Lord, Lord Vaux, has put forward, and in particular the request for worked examples, preferably with numbers in, because the noble Lord, Lord Vaux, and I are accountants and we like looking at numbers rather than words. Having read the proceedings of the first Committee day in *Hansard*, I realised that I did not know how some of these things work in practice, so I think that it is important to have those worked examples.

Baroness Bowles of Berkhamsted (LD): I support this amendment as well, or something like it, and I would be very pleased if the Minister was prepared to try to work out something that might go in the Bill, because we need to have some clarity around these issues. We come back, as has been suggested, to our shareholders being advantaged at the end of the day. I find who is getting what in insolvency remarkably difficult to follow anyway; I certainly defer to the noble Lord, Lord Vaux, who is an accountant and a lot better at it than I am. I suggest that, if the noble Lords present cannot get their heads around it or are wondering, it needs laying out somewhere for clarity, ideally in legislation.

Lord Livermore (Lab): My Lords, I am about to write to the noble Lord, Lord Vaux, on the matter that he raises in his Amendment 17, following a commitment that I gave on the first day in Committee. I will also happily reflect any points raised in this debate in that letter, if helpful. In the meantime, I will set out some of the content of that letter, while providing some additional clarity on the points he raises. Again, I hear the request for worked examples that we discussed on day one.

The Bill extends the role of the Financial Services Compensation Scheme to include providing funds at the Bank of England's request, which the Bank of England could then use to recapitalise the firm in question. As I have set out previously, the intention would be to achieve that recapitalisation by injecting equity into the failed firm, helping to restore it to viability. In the event that the Bank of England places the failed firm into a bridge bank, the Bank of England would become the sole shareholder for that bridge bank.

It is therefore possible that the Bank of England would receive recoveries in a subsequent winding-up of the bridge bank if all other claims were met, reflecting its position in the creditor hierarchy as a shareholder. The Bill provides for any such recoveries to be returned to the Financial Services Compensation Scheme. The Government consider this to be an appropriate method for dealing with funds used in a resolution and in keeping with the existing principles of the creditor hierarchy. I note four further important points.

First, by ensuring an injection of equity, it achieves the core purpose of the new mechanism, which is to restore the firm to solvency. By contrast, if such a payment were classified as debt—even if that had a more favourable ranking in the creditor hierarchy—there is a risk that it would not restore the firm to the necessary level of balance-sheet health.

Secondly, I note that the primary intention in deploying resolution tools using the new mechanism would be to sell the firm. It is therefore the Government's expectation that a sale should be the outcome in the majority of cases, rather than placing the firm into insolvency and winding it up from a bridge bank.

Thirdly, I point out that, if the firm entered insolvency from a bridge bank and there were still eligible depositors, the Financial Services Compensation Scheme would pay compensation to those depositors and take on their position in the creditor hierarchy, as it usually does. That of course is the right approach, ensuring depositors maintain their super-preferred status in an insolvency. It is important to note that changes to the creditor hierarchy must be considered carefully to ensure there is clarity for investors and market participants as to how they would be treated in a failure scenario. Treating the funds provided by the Financial Services Compensation Scheme as a debt only at the point of winding up the firm, and not prior to that, might create uncertainty as to its interaction with insolvency law more broadly.

Finally, I note that the super-preferred status in the creditor hierarchy that the Financial Services Compensation Scheme currently enjoys in insolvency reflects a different set of objectives. In those circumstances, the Financial Services Compensation Scheme is standing in the shoes of depositors and that preferred status is seeking to protect depositors' interests. That is different to the intent of the mechanism delivered by the Bill, which is to provide a source of resolution funding to recapitalise a failing firm.

I appreciate the Committee's interest in what is a technical but important matter. I hope that I have been able to clarify the intent of the Bill and that the noble Lord is able to withdraw his amendment as a result.

Lord Vaux of Harrowden (CB): I understand what the Minister says about the equity of the original shareholders being effectively written down to zero, but what happens with, for example, lenders who are transferred into the bridge bank? It cannot be right that they probably lose everything in the event of an insolvency situation, but if the FSCS, via the Bank of England, has injected a load of money into the failing bank and it then goes into insolvency, there is more money there and therefore those lenders will receive a share of their cash, if there is enough, which they would have lost in an insolvency situation. However, the FSCS gets nothing back because there is nothing to recoup as it has gone to the lenders. In effect, in certain circumstances the lenders to the failing bank may be bailed out by the FSCS through the Bank of England. That does not seem right to me. Those lenders took a risk in the first instance that was not predicated on being bailed out. I think there is something here that needs to be followed up. Have I got that right?

Lord Livermore (Lab): In the letter I will write, we will set out exactly what would happen in the example that the noble Lord gives.

Lord Vaux of Harrowden (CB): I thank the Minister for that explanation and look forward to receiving the letter with the details and, I hope, a detailed worked example. However, an issue remains. The principle must be that a recapitalisation of the bank by the FSCS will not, in effect, bail out the existing shareholders—which it seems it does not do—or existing creditors, with the exception of the depositors, who are protected separately. There is something that needs looking at quite carefully here. I think we will come back to this on Report, but for the moment I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Clause 2 agreed.

Clause 3: Amendments to the Financial Services and Markets Act 2000

Amendments 18 and 19 not moved.

Clause 3 agreed.

Clause 4: Amendments to the Banking Act 2009

Amendment 20

Moved by ***Baroness Noakes***

20: Clause 4, page 3, line 15, at end insert—

"(2A) In section 4 (special resolution objectives), at the end of subsection (9) insert—

"(9A) Objective 8, which applies in any case in which the Bank of England uses the power in section 214E of the Financial Services and Markets Act (recapitalisation payments), is to ensure that the costs which are born through the Financial Services Compensation Scheme do not exceed those which would have been born if the bank insolvency procedure had been used.""

Member's explanatory statement

This amendment adds to the special resolution objectives so that the Bank of England has to consider the net costs recouped via the FSCS if it uses the recapitalisation power with the counterfactual of the use of the bank insolvency procedure.

Baroness Noakes (Con): My Lords, this amendment would insert a new special resolution objective into Section 4 of the Banking Act 2009. That objective is to ensure that the costs of using the recapitalisation payment power, thus loading costs on to the banking sector and in due course on to its customers, are not more than if the bank insolvency procedure had been used.

The special resolution objectives in Section 4 are not absolute requirements. The Bank has to have regard to them when using the resolution and related powers under the 2009 Act. There are seven existing objectives, and I am simply adding one more "have regard" for use only when the bank recapitalisation payment power is used. Section 4(10) states:

"The order in which the objectives are listed in this section is not significant; they are to be balanced as appropriate in each case".

Thus, I am not trying to impose a requirement which trumps everything else in the special resolution regime. I regard this amendment as quite modest.

Two strands of analysis underlie my tabling of this amendment. The first is that the code of practice is clear that the bank insolvency procedure is the default option, unless there are public interest considerations that outweigh the important market discipline of failure. I am not sure we have seen in practice the use of the default option, but it ought to remain the core option for smaller banks in particular, which the Government insist are the main target of this new power.

The second concern was expressed during the consultation on this Bill—that there ought to be something akin to the "no creditor worse off" provisions of the Banking Act 2009. These provisions ensure that creditors are not disadvantaged by the use of one of the resolution tools compared with the option of insolvency. I am trying to ensure that the banking sector, which is footing the bill via the recapitalisation payment, should not be worse off than if the failed bank had been put through the insolvency process, resulting in the banking sector picking up the costs of reimbursing protected depositors.

I completely accept that there are difficulties in making this an absolute rule, because the Bank of England may well prioritise other matters, such as the continuity of banking services for critical functions. That is why I have drafted this amendment as an additional objective rather than an absolute rule. However, its inclusion in the 2009 Act would ensure that the Bank was especially mindful of the costs that would fall on the banking sector when using the bank recapitalisation power. I beg to move.

4.30 pm

Baroness Bowles of Berkhamsted (LD): I have mixed feelings about this amendment. I am grateful for the comments of the noble Baroness on why it was an objective; I understand that. Very definitely, the costs should not be disproportionately larger, but, if it was a relatively small amount larger than an insolvency and there was a good public interest case, I would not want to bar it. I am not quite sure whether the words used and having it as an objective necessarily convey that; if we were to proceed further with it, we could somehow make it a little more explicit in that regard. It needs to be in the same order of magnitude, not hugely more. With that caveat, I am probably in the same position as the noble Baroness, Lady Noakes.

Lord Vaux of Harrowden (CB): I was not going to speak on this amendment, but I am also slightly in two minds. One hesitation is that it is very hard to know on the day you do the recapitalisation payment what the cost of an insolvency situation would be. However, I understand where the noble Baroness is heading with this, and there is a lot of sense in the sentiment behind it. This gives more ammunition to the question around reporting—we need the Bank of England to give a very clear explanation as to why it has chosen recapitalisation over insolvency. That might be my preferred way of going about it, but I understand absolutely what the noble Baroness said and support the sentiment behind it.

Baroness Vere of Norbiton (Con): I also support the sentiment in the amendment from my noble friend Lady Noakes. I think all noble Lords here, including the Minister, would agree that this has the right intention but, as the noble Baroness, Lady Bowles, mentioned, there will be edge cases which we cannot foresee at this time. The question is: should such a statement of intent be in the special resolution objectives and, if not, where should it go? I do not know—perhaps in a code of practice, or perhaps not. I am interested to hear what the Minister has to say.

Lord Livermore (Lab): My Lords, the amendment tabled by the noble Baroness, Lady Noakes, seeks to introduce a new objective into the special resolution regime. The new objective would state that the costs in using the new mechanism should not exceed those that would be incurred in the counterfactual of placing the firm into insolvency. This amendment therefore touches on an important point raised both in consultation and during Second Reading, which is whether there should be a formal test or objective that seeks to prevent the use of the new mechanism, or make its use significantly more challenging, where the cost is higher than insolvency.

I also note that the noble Lord, Lord Vaux, raised similar points on the first day of Committee, which he alluded to today, making the case that the Bank of England should be required to present an assessment of costs in reports to the Treasury and to Parliament.

The Government carefully considered the case for inclusion of various forms of such a safeguard, sometimes referred to as a least-cost test, in response to feedback received during the consultation. In considering this matter, it is important to strike the right balance

[LORD LIVERMORE]
between ensuring that the Bank of England can respond quickly and flexibly to a firm failure and ensuring that costs to industry are properly considered. Having considered this, the Government concluded that the existing public interest test and special resolution regime objectives remained the appropriate framework for deciding whether the mechanism in this Bill could be used.

Adding a specific objective for the Bank of England to ensure that the costs to industry from using the new mechanism do not exceed insolvency could prevent it taking the most appropriate action to advance its broader resolution objectives. Those objectives include protecting financial stability, certain depositors and public funds. It is right that these aims are prioritised at a time of significant risk, which is part of the reason why the Government have not proposed changes to the broader resolution framework.

There is also the potential for such a change to impose important practical challenges. Resolution would likely take place in an uncertain and fast-paced context. Estimating the costs of different approaches during this period will be highly challenging and could change over time. There is therefore a risk that such an objective could create legal uncertainty around any resolution action, which in turn may undermine the usability and effectiveness of the new mechanism in situations where it is justified. This could have significant and undesirable consequences, including crystallising a set of indirect costs for the financial services sector and the wider economy. Further, it should be borne in mind that the alternative if the new mechanism is not available may be to use public funds.

However, I appreciate the intent behind the noble Baroness's amendment and hope that I can provide some reassurance by reiterating previous points on the subject of the scrutiny and transparency of the Bank of England's actions. As I have noted, the Bank of England is required under the Banking Act 2009 to report to the Treasury when exercising some of its stabilisation powers and, as was set out in response to the consultation, it is the Government's clear intention to use these existing reporting mechanisms to ensure that the Bank of England is subject to appropriate scrutiny when using the mechanism provided by the Bill. However, I take the point that the noble Baroness made in response to my earlier point.

The Government have committed to updating the code of practice to provide further details on how these reporting requirements will apply when the mechanism is used. I reaffirm that the Government intend to include confirmation in the code that, after the new mechanism has been used, the Bank of England would be required to disclose the estimated costs to industry of the options considered, including the comparison with insolvency. The Government consider that using the code of practice in this way, rather than putting these requirements in the Bill, is the best approach to hold the Bank of England to account for its actions.

The Bank of England is legally required to have regard to the code and the Government are required to consult the Banking Liaison Panel, made up of regulatory and industry stakeholders, when updating it. Using the code will therefore ensure that a full and thorough consultation is taken on the approach. Given the complex and potentially fast-moving nature of bank failures, this will also ensure that any approach is sufficiently nuanced to account for the range of possible outcomes under insolvency or through the use of other resolution tools.

As I have previously said, the Government will share drafts of the updates to the code of practice as soon as practicable and provide sufficient opportunity for industry stakeholders to be consulted on them. The noble Baroness also made the case that insolvency should be a preferred strategy for small banks and I stress that this is the case. I hope that I have provided some helpful explanation to her of the Government's position on this matter and respectfully ask that she withdraws her amendment.

Baroness Noakes (Con): My Lords, I thank noble Lords for supporting the principle behind my amendment, even if they did not fully align with the mechanism that I have chosen. We have had a useful debate on the issues involved. The Minister's response was clearly helpful and I want to consider it carefully.

The Minister talked about things being very fast-paced, which I completely accept. Nevertheless, the Bank has to make a decision on the best information that it has. I am trying to build only on what it should be doing anyway, even though that is difficult to do when things are moving very fast.

Let me reflect on what the Minister said. It may come back to the issues which I am going to discuss in the next amendment, which are about the code of practice and needing to see what is likely to be said in that. I will shut up at this point and save my powder until the next group. I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendment 21

Moved by ***Baroness Noakes***

21: Clause 4, page 3, line 15, at end insert—

"(2A) In section 5 (code of practice), at the end of subsection (1) insert "and—

(iv) the bank recapitalisation power under section 214E of the Financial Services and Markets Act 2000.""

Member's explanatory statement

This amendment requires the Treasury to include the use of the recapitalisation power created in this Bill in the Code of Practice issued in respect of the special resolution regime.

Baroness Noakes (Con): Amendment 21 would amend the Banking Act 2009 so that the code of practice, which has to be issued for various aspects of the special resolution regime, must cover the use of the bank recapitalisation payment power being created by the Bill.

My reading of Section 5 of the 2009 Act is that it would not require the Treasury to cover the use of the recapitalisation payment power in the code of practice. Although I am aware that the Treasury says that it intends to update the code of practice—the Minister repeated that again, a few minutes ago—it should be

put beyond doubt in the Bill that it is one aspect of the resolution regime, as a result of the Bill, that should be covered in the code of practice. It should not be optional now or at any point in the future.

We debated the code of practice a little in our first Committee day, and we do not yet have any idea of when the revision to the code will appear. Can the Minister assure the Committee that it will be reissued before the Bill comes into force? The Treasury has control of that because it has control of the regulations bringing the Bill into force, and it clearly is important that there is a revised code of practice covering the use of the recapitalisation of payments available at the same time.

The Minister would not give any specific timing for the updated code or the consultation on it when he responded last week. He repeated that a few minutes ago. Last week, I specifically asked him whether the draft updates, which he had said to my noble friend Lady Penn would be provided, would be available ahead of Report. On checking *Hansard*, I found that he had sidestepped that question. I hope that he will answer it today because, if he cannot commit to sharing draft updates before Report, it puts the House in a difficult position when it comes to that stage of the Bill.

Turning from timing to topics, can the Minister outline which topics are likely to be addressed in any updates?

In our first Committee day, when we debated the first group of amendments which sought in various ways to constrain the scope of the bank recapitalisation payment power to small banks or those on the glide path into the MREL regime, the Minister said:

"I appreciate noble Lords' concerns about this issue and am happy to commit to exploring how to provide further reassurance on the Government's intent via the code of practice".—[*Official Report*, 5/9/24; col. GC 11.]

I found that rather alarming, as it implied that it was not the Government's current intention to include something about the key target of the bank recapitalisation payment power being small banks. However, that is exactly how the power in the Bill has been marketed—a power to deal with the insolvency of small banks or the failure of small banks. I would have expected the code to set out where the Government expect the new power to be used, especially as the power has been drawn so very broadly.

Our second group of amendments on the first Committee day concerned the extremely wide definition of costs which can be covered under the bank recapitalisation power. The Minister said that it was important that the Bill was "not overly prescriptive"; that might have been an opportunity for him to say that the issues would be covered in a code of practice, but he did not do so. Does that mean that the code of practice will be silent on the important issues surrounding this very wide ability to charge practically any cost under the recapitalisation heading? That may be important to those of us who think that the current formulation of the Bill goes too far.

When we discussed double dipping into the FSCS last week, I asked the Minister whether the code of practice would cover the use of the power more than once for the same institution. This would also cover the need to reconsider the resolution strategy of not using the banking insolvency procedure before using the power a second or subsequent time. When I asked the Minister if that would be covered in the code of practice, he said:

"We can certainly take that away and look".—[*Official Report*, 5/9/24; col. GC 25.]

at it. In other words that, too, was not in the plans for updating the code of practice. The only definitive reference to the content of the updated code of practice that the Minister made last week—he made it again in the previous group today—was in relation to the reporting requirements, where he said that the bank

"would be required to disclose the estimated costs".—[*Official Report*, 5/9/24; col. GC 47.]

involved in using the power.

4.45 pm

My Amendment 21 makes sure that the code of practice will cover the bank recapitalisation power, and the Government should have no difficulty in accepting that, since they have already said that they are going to issue an updated code. My amendment does not cover the content of the code or the timing of its issue, but I hope the Minister will understand that content and timing are important to this Committee and will also be important to the House on Report. I hope that he can give us more detail today or soon after the conclusion of this Committee. By the time we get to Report, the House will want to know as much as possible about the code, especially if it is going to be relied upon to avoid the need to accept more detailed amendments. I say gently to the Minister that it is in the Government's interest to be as clear as possible about the code's update and what exactly it will contain. I beg to move.

Lord Vaux of Harrowden (CB): My Lords, on this amendment I agree with every word that the noble Baroness has just said. Like most noble Lords, I have an inherent preference that things should appear in a Bill, rather than relying on slightly woolly statements of Ministers that this is what they intend to do. There are circumstances when that is appropriate but in a case like this, where the code will be so important, there should be an obligation that the code is updated to take account of the recapitalisation process.

To repeat what I said on Thursday, and what the noble Baroness has said, it is deeply unsatisfactory that the Minister seems to be relying on the existence of the code and its updating to avoid detailed amendments being put down on Report and pushed through. If that is the case, it is surely important that we get a chance to look at the revised code before then, or at least a draft of it—or, at the very least, clear details of what Ministers are expecting to include in it. I urge the noble Lord to see what we can do to achieve that. Otherwise, he will face detailed amendments to deal with the issues that we have discussed, because we have nothing else on which to base our position.

Baroness Bowles of Berkhamsted (LD): I agree with what both previous noble Lords have said. We cannot rely just on the fact that something is going to be revised. It is the same old problem that we have with

[Baroness Bowles of Berkhamsted]
primary legislation a lot of the time: it lays out something that could be good or bad, but it says, "Trust me, we will get it right when we come to secondary legislation or something else down the track". That is not satisfactory and, in the absence of some more detail, we have to see something about the code of practice or similar—whatever one calls it—in the Bill, just to make sure that there is an understanding of the direction of travel for the sort of detail that we are asking about.

Lord Eatwell (Lab): I should like to pick up on the request for detail put forward by the noble Baroness, Lady Noakes. I am concerned that the powers that the Bank of England has to act in an emergency, which this would presumably be, should not be constrained to any degree other than that which is absolutely necessary. In other words, we should not load up the code with detail, the reason being that the next crisis will be one that none of us has anticipated. It will be completely different.

If we look at the financial crises that have occurred, the major one in 2007-09 and some minor ones since, they have appeared in completely unexpected directions. The Bank must then have the freedom to adapt its procedures to whatever new challenge arises. I quite understand that we do not want just to say it can do anything it likes, but I feel strongly that we must be very careful about loading the code, and indeed the legislation, with excessive detail.

Baroness Vere of Norbiton (Con): My Lords, I added my name to the amendment in the name of my noble friend Lady Noakes about the code of practice because it is important that we have this debate. I recognise what the noble Lord, Lord Eatwell, says, but it slightly struck fear into my heart because it is about those circumstances where there is not sufficient guidance or a code of practice. Essentially, this is not necessarily just for the Bank of England; it is for all those stakeholders who will be involved in the other side of a resolution. A lot of people will read the code of practice and internalise it. When it is needed, it will therefore already be in their hearts because they will have read it, so I am not as concerned as the noble Lord is about putting in too much detail. The simple fact is that we have not seen anything, so we do not really know what we are dealing with.

It struck me that in the slight rush to bring forward some legislation to keep Parliament occupied, perhaps, the Government are not providing all the information that the House needs to consider this Bill fully. It is complex, and as noble Lords go through it, it is clear that we are all picking up new nuances that we consider might be of concern in the future. The code of practice makes up an important component of the regime and the Committee is slightly flying blind, having not seen a draft of the changes—not only a draft of what would happen as a result of the Bill, but also potentially to fill gaps that we know are not going to be part of the Bill. We know that the code is potentially the only protection between anybody who uses banks—essentially, the taxpayer—and the Bank being able to perform maximum adaptation to a situation. There has to be something in the middle that stops that happening.

I am warming to my noble friend Lady Noakes's suggestion that the Bill should not come into force until the code of practice is finalised, but I sense that that might be a little churlish. The amendment itself is a little anodyne. I think all noble Lords agree that the Government will, of course, make changes to the code of practice, but I would appreciate hearing more information from the Minister about what changes are anticipated—specifically, what will be left out—and the timing for any code of practice because while it remains outstanding, even in draft form, there is a significant lack of clarity.

At Second Reading, the Minister stated that the update will happen in due course. How many times have I used that phrase? I know exactly what it means. It means "when we are sort of ready". We need to be a bit more ambitious than that. Can the Minister give any further guidance on timing? If he cannot, would it be helpful if I tabled an amendment on Report that required the code of practice to be updated within, say, three months and subject to approval by both Houses? I am happy to do that if it is helpful.

As my noble friend Lady Noakes and the noble Lord, Lord Vaux, pointed out, the Minister has referred to these things being addressed in the code of practice. Many of the elements in the reporting are also supposed to be in that code. My concern is that six weeks have now passed since the Minister said "in due course" and the House rises at the end of the week for Conference Recess. I presume that the Treasury is still working, so that would be a further window during which progress on a draft code of practice could be made. Therefore, I very much hope that the Minister can commit to having a draft document available for review before Report stage is scheduled. I look forward to hearing from the Minister.

Lord Livermore (Lab): My Lords, I should state at the outset that the Government have no objections to the principle under discussion. Indeed, the Government have already stated publicly in our response to the consultation on these proposals that we intend to update the code of practice to reflect the measures in the Bill. I have already committed to share a draft of the proposed updates at the earliest opportunity, and I am happy to reaffirm that commitment today. I am aware that this is not the answer that the Committee is looking for, but I am afraid that I cannot commit to providing that before Report. However, I expect it to be available before the Bill comes into force.

As set out in the Government's consultation response, the updates to the code will do three things: first, they will ensure that the code appropriately reflects the existence of the new mechanism; secondly, they will set out that the Bank is expected to set out estimates of the costs of the options considered and, as noted elsewhere, this is expected to include the case of insolvency; and thirdly, they will set out the expectation that any use of the mechanism is subject to the ex post scrutiny arrangements that I have described elsewhere.

The noble Baroness, Lady Noakes, perfectly fairly asked for a series of clarifications of what the code will include. She asked about two points specifically. The first was whether the code will confirm the mechanisms intended for small banks and the expenses

covered? Yes, it is the intention that it will. She also asked whether the code will cover multiple uses of the mechanism. Yes, the code will cover that. I will answer other specific questions in writing.

In preparing these updates, the Government are mindful to ensure that they are done efficiently and carefully to ensure that they achieve the intended effect within the wider resolution framework, for instance, ensuring that the right set of costs is considered on the appropriate basis.

The Government will ensure sufficient opportunity for industry stakeholders to be consulted on these proposed updates to the code of practice. In particular, the final wording of any proposed updates would be subject to review by a cross-section of representatives from the authorities and the industry on the statutory Banking Liaison Panel, which advises the Treasury on the resolution regime. As noted, the Government will aim to progress these updates and make the proposed changes available for consultation with industry as soon as practicable.

Finally, I note that the Banking Act 2009 already imposes an implicit requirement on HM Treasury to update the code of practice, even without this amendment. Addressing the operation of the new mechanism would therefore already fall within the scope of this requirement.

I know that this explanation may not be sufficient, but I respectfully ask the noble Baroness to withdraw her amendment.

Baroness Noakes (Con): The Minister just referred to an "implicit requirement" in the Act. Does he believe that Section 5 can be interpreted only as requiring the code of practice to include matters relating to the bank recapitalisation power? That would be extraordinary because nobody knew about the bank recapitalisation power when the 2009 Act was drafted, so under the principles of ordinary interpretation, it would not be included.

Lord Livermore (Lab): I will write to the noble Baroness on that.

Baroness Noakes (Con): I thank noble Lords for taking part in this short debate. There were three parts. First, Section 5 of the 2009 Act needs to mention the bank recapitalisation power, which is what the amendment does. The Minister is going to write on that.

We moved on to issues with the content and timing of the code. I say to the noble Lord, Lord Eatwell, that we all understand that the Bank needs powers to act as quickly as possible. Nobody is trying seriously to harm that. Taking what the noble Lord said to its logical conclusion, the statute would say just that the Bank of England can do whatever necessary when it comes to situations of bank failure—full stop. We would not have the many pages of the 2009 Act and all the complicated, mind-blowing arrangements that exist, holding companies and everything like that. We would not need that because we could just say that it could do everything. It is overstating the case to say that trying to write codes of practice would hold the Bank up in doing its duty when things go wrong.

What the Minister said on content is a helpful move forward from where we were. We may want to explore that a bit further on Report. However, timing is a concern, as we will not have further clarity by the time we reach Report. The only useful thing he has said is that they expect to reissue the code of practice prior to this Bill coming into force. I suggest that it would be pretty negligent not to update it before bringing the Bill into force.

5 pm

This whole area needs thinking about, including whether we need to look again at reporting requirements and how it all fits together, because some of these themes have occurred in different amendments. However, I sense that it is almost time to bring this Committee to a close, so I beg leave to withdraw my amendment.

Amendment 21 withdrawn.

Amendment 22 not moved.

Amendment 23

Moved by ***Baroness Bowles of Berkhamsted***

23: Clause 4, page 3, line 20, after "question" insert "and, for such a bank, the shortfall may only be reduced insofar as necessary to cover recapitalisation."

Member's explanatory statement

This amendment seeks to ensure that the FSCS should only be used for recapitalisation not for bailing out shareholders.

Baroness Bowles of Berkhamsted (LD): I am afraid that I will have to spend a little time on this, although we will still close well before time. We are in a slightly new world. The noble Lord, Lord Eatwell, referred to how—although he did not say it like this—once upon a time, when there were problems, you left it to the Bank of England to do the right thing. By and large it did, within the state of knowledge of that time.

However, banking and the way that we deal with resolutions have moved on a long way since then. We are moving further with this small but significant Bill, using the funds of other banks to give to a bank that has failed. Beyond the public interest of depositor guarantees, which in their day were a new thing, we are using private money for what would in the past have been done with public money. That is a different place. Just as with insolvency, you put in the right safeguards about priority orders and so on, we need to put in priority orders for how that money is properly used.

Turning to my amendment, I will have to delve into realms where words have taken on different meanings over time. "Recapitalisation" now seems to incorporate bits of resolution; it does not just mean "putting capital in". I used that sense of it in my amendment but I will carry the Committee through it as best I can.

The purpose of this amendment is to probe further whether the language used in the Bill, which ends up meaning "reducing the shortfall", is too broad and therefore allows the FSCS funds to be used not only as new capital for the ongoing bank but to reduce the write-down of other capital instruments and correspondingly increase the amount that would otherwise have been taken from the Financial Services Compensation Scheme above the level that would have been needed if those

[Baroness Bowles of Berkhamsted]
other capital instruments were fully written down, as is the present presumption under the Banking Act 2009 and everything that feeds into it.

When I wrote the amendment, I was thinking of the ordinary meaning of recapitalisation—replacing capital—and not covering write-down manoeuvrings. So, please think about it as if I had said that and at the end it said: "and without reducing write-down of loss-absorbing capital instruments or shareholdings", or some such wording. That was the intention of the amendment; if I go around the loop again, I will have a better shot at it.

Overall, I now come to the thought that my previous Amendment 22, which just deleted this, was probably a better option and a good thing for a variety of reasons. We need to avoid capture by the dubious "shortfall" wording from the Banking Act 2009 and the EU BRRD. The things that feed into shortfall are now synonymous with the things that are called MREL but they are looking at it from different ends. If we are going to tie back to the BRRD, I remind noble Lords that the shortfall is the sum of write-down of eligible liabilities to zero—that is what it says under Article 47.3(b)—plus the recapitalisation amount under Article 47.3(c). In essence, I am saying that the FSCS should be used only for amounts under Article 47.3(c)—that is the recapitalisation, which is what I am trying to capture—and that it cannot be used ahead of the writing down to zero of what is in Article 47.3(b). However, the trouble is that we are dealing in this world now where different things have been put in a pot, this time called the shortfall, linked by "and", and we have no idea which bit we are allowing to be changed.

If we look at the broader picture of trying to cover banks with MREL, that is where it starts to get messy. It was quite simple if we just did it for the smaller banks, and we did not have to worry about things that were supposed to be written down to zero not being written down to zero again. It seems that that is exactly what the Explanatory Notes are telling us—I will quote from my copy to keep myself on track. They say that Clause 4(3)

"amends section 12AA",

which goes back to the things I have just talked about,

"to allow the Bank to take into account the funds provided by the FSCS when they are calculating the contribution of shareholders"—

that is what it says at paragraph 26—

"and creditors required when exercising the bail-in write-down tool. This is to ensure that the Bank is not required to write-down more capital than necessary".

However, as I read the law when it came from BRRD in the Banking Act 2009, you have to write down to zero unless you have so much that you get there before you have written it down to zero, and then you should not be going fishing in any other ponds anyway. So, there is some inconsistency or there is a hidden agenda.

There are some things in the insolvency stack that are worthy of rescue, as was the Silicon Valley Bank reasoning—such as uninsured deposits—but not things in that loss-absorption stack, especially not shareholders, because they are right at the top. Otherwise, what is the point of all the expense and effort that we go to to provide MREL, which is further on down, if we are then not going to use it? I really cannot understand what is meant to be going on by adding in this reference to the shortfall. I tried to amend it to say that it should not do bad things, in effect, but I think that we are a lot better off without it.

I then went back and looked at the response the Minister gave me when I raised this on the first day in Committee. He said:

"The noble Baroness, Lady Bowles, asked whether the Bank of England should reduce MREL requirements in the knowledge that it could instead use FSCS funds. The Bank of England sets MREL requirements independently of government but within a framework set out in legislation … The Bank of England will consider, in the light of this Bill and wider developments, whether any changes to its approach to MREL would be appropriate".—[*Official Report*, 5/9/24; col. GC 11.]

The Minister was answering a question that I did not ask, but it is an interesting response, which the larger banks should get quite excited about. Is a quid pro quo for chipping in through the FSCS that you end up having less MREL? What an interesting suggestion. I can read what was said that way. According to that interpretation, reading through what is in the Bill, it is perfectly open that you could then not write down to zero things that appear under article 47.3(b) of the BRRD.

I can skip a lot of the other things that I was going to say but, to summarise, if the Explanatory Notes are correct, the intention is to use the FSCS to reduce the amount of write-down for shareholders or other loss-absorbing capital instruments. That is almost going backwards to the days that the noble Lord, Lord Eatwell, was perhaps recollecting of the Bank basically choosing who it should favour in the capital and liability stack. That seems to be the power we are giving it. If we are returning to something like that, it should be done in the context of a proper review of the Banking Act 2009, not in a kiss-me-quick Bill like this one, which was sold to us as being rather more about saving uninsured deposits, not saving sophisticated investors who have enjoyed good returns from bail-inable bonds or who are at the top of the stack and are the shareholders in the failing bank.

The FSCS cannot just be a pot for general usage; it has to be targeted. I tried to amend it with this amendment, but I am now coming to the conclusion that linking back to shortfall has no place in this Bill because it introduces too many ambiguities. I beg to move.

Baroness Noakes (Con): My Lords, I will be brief. The noble Baroness raises some important issues in her amendment. I think the Minister confirmed earlier that shareholders would disappear because the Bank of England would take over their share capital, so they could not benefit from the use of the recapitalisation, but if there is any suggestion that the recapitalisation amount will excuse the bail in of some of the bail-inable liabilities, that would be pretty unacceptable. I hope that the worked examples that I hope the Treasury will enjoy working on while we are on Recess can illuminate how all this is going to work.

Lord Vaux of Harrowden (CB): My Lords, I find my head spinning a little about some of this. It comes back to the confusion about how the various flows

here work, so that worked example is becoming more and more crucial. I come back to the principle that I raised before: recapitalisation by the industry should not bail out those who should be at risk in the case of a failure. MREL capital et cetera must surely be used up first before we take recourse to the industry. It is similar to, but slightly different from, the point we made in Amendment 17 that, again, people who are creditors of the failing bank should not be bailed out by the recapitalisation in the event that it all goes wrong. It seems rather confused, so I look forward to the worked example, and I wish the Minister good luck with getting something that covers all the aspects.

5.15 pm

Lord Eatwell (Lab): My Lords, I was rather enjoying being characterised as an old-fashioned central banker, until the noble Baroness, Lady Bowles, attributed to me to me the idea that selecting from whichever pot would be entirely at will, so to speak. I add my support to what the noble Lord, Lord Vaux, just said: in a recapitalisation, shareholders and MREL must clearly be used first, and FSCS money used simply when those pots have been exhausted.

Baroness Vere of Norbiton (Con): My Lords, I simply make the same point. The noble Lord, Lord Vaux, was absolutely right to summarise the principle which I think all noble Lords on the Committee feel is the purpose of the Bill. There cannot be any circumstances by which there is MREL or whatever it might be left, yet money is going in from FSCS to ensure the resolution of the bank. I cannot see any circumstance in which that would happen—perhaps Treasury officials would be able to think of one—but I think all noble Lords are agreed on the need for some clarity on what would happen.

I appreciated the comments from the noble Baroness, Lady Bowles. I got about 60% of them, so I was really proud of myself; the other 40% went way over my head. I am going to try to understand her points. We are in quite a difficult situation, but the way that she has been so forensic about it has allowed the noble Lord, Lord Vaux, to state what the principle is. It is about combining those two things—the forensic attitude to "This is what the Bill could say if read in a certain way" versus "Just tell us whether the Bill abides by the very simple principle that basically FSCS money should be a last resort, not there for anybody else, but just to prop up a bank to make sure it gets through to the other side of resolution, for the public interest and no more".

Lord Livermore (Lab): My Lords, in response to the amendment tabled by the noble Baroness, Lady Bowles, I reassure her that the Bill does not seek to introduce measures to bail out shareholders. I note that she raised concerns about this point on the first day in Committee, about which I am about to write to her. I hope my response will provide the clarification she is seeking pending that letter and the worked examples that we have discussed.

The amendment relates to a subsection of the Bill that would amend Section 12AA of the Banking Act 2009. This sets out the definition of the shortfall amount, which is a figure calculated by the Bank of England when using the bail-in resolution tool. The shortfall amount determines how much of a firm's resources need to be bailed in to restore its capital ratio to the extent necessary to sustain sufficient market confidence and enable it to continue to meet the conditions for authorisation for at least one year and to continue to carry out its authorised activities. The methodology for determining the shortfall amount is not changed by the Bill, and it remains the case that when using the bail-in tool a firm's own resources and eligible liabilities—its shareholders and creditors—would bear losses.

The relevant provision is not intended as a means of reducing the amount of MREL that should be used when bailing in a firm. Instead, it is intended to ensure that, in the event the mechanism is used alongside the bail-in tool, funds from the Financial Services Compensation Scheme are taken into account and used rather than the Bank of England having to bail in other creditors further up the creditor hierarchy. As an example, without this provision, if a firm had insufficient MREL to meet its shortfall amount without being able to take into account Financial Services Compensation Scheme funds, it may need to bail in creditors, such as uncovered depositors. Retaining this provision therefore ensures that the Bank of England may exercise some discretion in not bailing in other liabilities beyond a firm's MREL, such as uncovered deposits, where to do so might risk further destabilising the business of the firm, other participants in the banking sector or other sectors, or reducing wider confidence in the financial system. Therefore, the Government consider it important to maintain flexibility to respond to the relevant circumstances.

In this context, I also note that funds provided by the Financial Services Compensation Scheme under the new mechanism can be used to cover the costs of recapitalising the failed firm, the operating costs of a bridge bank, and Bank of England and HM Treasury costs in relation to the resolution.

It is important to note that Sections 6A, 6B and 12AA of the Banking Act 2009 require the Bank of England to ensure that shareholders and creditors bear losses when a banking institution fails. This is an important principle that will continue to apply where the new mechanism is used.

I can reassure the noble Baroness, Lady Bowles, that the regime provides an extensive and proportionate set of powers to the Bank of England to impose consequences on the shareholders of a failed firm in resolution. The bail-in tool specifically enables the Bank of England to impose losses on shareholders and to write down certain unsecured creditors. This is an important principle that ensures the firm's owners and investors must bear losses in the case of failure.

This is of course a highly technical area, and I understand the noble Baroness's concerns. To that end, I am happy to explore whether there is further material that the Government can make available, such as worked examples, to help illustrate how this approach may work in practice. I hope these points can reassure the noble Baroness and I respectfully ask her to withdraw this amendment.

Lord Vaux of Harrowden (CB): The noble Lord has just confirmed the point that we talked about in Amendment 17, that there are situations where the use of the recapitalisation payment can, in effect, bail out some types of creditors. Indeed, he referred to unprotected deposits as being one area that might make sense. This is quite complex and I suspect that when we have seen the worked examples and so on, there is going to be more to discuss. Would he be prepared to meet with officials and Members of the Committee to go through these things prior to Report, so that we can make sure that we all really understand in what circumstances that that could happen and in what circumstances it cannot?

Lord Livermore (Lab): Yes, absolutely; I will very happily meet. I will write a letter setting this out in greater detail, provide the worked examples, and then perhaps we can meet on that basis.

Baroness Bowles of Berkhamsted (LD): I thank the Minister for his replies but I am still not satisfied, in part because of what is in the Explanatory Notes. They should be amended because they cannot stand alongside everything else that is said. I know that they have no legislative power but if we are looking for ways to interpret, they are there. The problem comes from, as I said, "shortfall", which is defined in a way that has ambiguities. I know full well that "shortfall" was an unusual word; it did not need to be in the BRRD and was put in by the counsel—I think I know who did so because I was told to guard it with my life—for various operations that may still be needed. Now is the time to make it clear. The linkage back to it is not good.

Alongside worked examples, it would probably be quite useful to have a list of the instruments that we think are covered and those that are outside. MREL, which is loss absorption amount plus recapitalisation amount, covers common equity tier 1, other equity instruments, subordinated senior non-preferred instruments and ordinary unsecured senior instruments. It does not include repayable deposits and non-returnable deposits.

How have we ended up talking about bailing in unsecured depositors when we are talking about MREL, because they should not be there in the first place, as far as I understood things? If we cannot understand that, that is not right to put before the public. Can we have a list of the instruments that we think can be bailed in, where they are bailed in, and then the point at which in that stack the FSCS compensation can come in? Once we have worked out where that is and can see it clearly, I should be much better pleased if we could define that ab initio in the Bill rather than reference back to language that is flawed and risks either leading us up the garden path or not being able to understand it, even though I declare that I have confidence that the Bank of England will probably get it right.

It is splitting hairs, but I cannot make that wording work; I am sorry. Therefore, in hoping that I will get some more explanations, for the present, I shall withdraw the amendment, but it may well be that either this or my Amendment 22 in some form might need to reappear on Report. I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendment 24 not moved.

Clause 4 agreed.

Amendment 25 not moved.

Clause 5 agreed.

Bill reported without amendment.

Committee adjourned at 5.26 pm.